June 25, 2021 at 2:00 P.M.

City of Bastrop Zoning Board of Adjustment meetings are available to all persons regardless of disability. If you require special assistance, please contact the Board Secretary at (512) 332-8840 or write 1311 Chestnut Street, 78602, or by calling through a T.D.D. (Telecommunication Device for the Deaf) to Relay Texas at 1-800-735-2989 at least 48 hours in advance of the meeting.

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purposes of seeking confidential legal advice from the City Attorney on any item on the agenda at any time during the meeting.

The City of Bastrop reserves the right to reconvene, recess, or realign the Regular Session or called Executive Session or order of business at any time prior to adjournment.

1. CALL TO ORDER

2. EXECUTIVE SESSION

2A. The Board shall convene into closed executive session pursuant to Texas Government Code Sections 551.071 to seek the advice of legal counsel on a grandfathering request for Bastrop Grove, Section 3, Lot 7, being 1.11 acres out of Nancy Blakey Survey Abstract 98, located in the 600 Block of West State Highway 71, east of State Highway 304 and south of State Highway 71, within the City Limits of the City of Bastrop, Texas.

3. CITIZEN COMMENTS

At this time, comments will be taken from the audience on any topic.

In accordance with the Texas Open Meetings Act, if a citizen discusses any item not on the agenda, the Board cannot discuss issues raised or make any decision at this time. Instead, city Boards are limited to making a statement of specific information or a recitation of existing policy in response to the inquiry. Issues may be referred to the Staff Liaison for research and possible future action.

It is not the intention of the City of Bastrop to provide a public forum for the embarrassment or demeaning of any individual or group. Neither is it the intention of the Board to allow a member of the public to slur the performance, honesty, and/or integrity of the Board, as a body or any member or members of the Board, individually
or collectively, nor any members of the city’s staff. Accordingly, profane, insulting, or threatening language directed toward the Board and/or any person in the Board’s presence will not be tolerated.

4. **ITEMS FOR INDIVIDUAL CONSIDERATION**

4A. Consider action to approve meeting minutes from the October 7, 2020 Zoning Board of Adjustment Meeting.

4B. Public hearing and consider action on a grandfathering request for Bastrop Grove, Section 3, Lot 7, being 1.11 acres out of Nancy Blakey Survey Abstract 98, located in the 600 Block of West State Highway 71, east of State Highway 304 and south of State Highway 71, within the City Limits of the City of Bastrop, Texas.

5. **ADJOURNMENT**

I, the undersigned authority, do hereby certify that this Notice of Meeting as posted in accordance with the regulations of the Texas Open Meetings Act on the bulletin board located at the entrance to the City of Bastrop City Hall, a place of convenient and readily accessible to the general public, as well as to the City’s website, [www.cityofbastrop.org](http://www.cityofbastrop.org) and said Notice was posted on the following date and time: Tuesday, June 22, 2021 at 1:30 p.m. and remained posted for at least two hours after said meeting was convened.

[Signature]

Jennifer C. Bills, Assistant Planning Director
MEETING DATE:  June 25, 2020

AGENDA ITEM:  4A

TITLE:
Consider action to approve meeting minutes from the October 7, 2020 Zoning Board of Adjustment Meeting.

STAFF REPRESENTATIVE:
Vivianna Nicole Andres, Development Coordinator

ATTACHMENTS:
Meeting Minutes
The City of Bastrop Zoning Board of Adjustments met Wednesday, October 7, 2020 at 6:00 p.m. online.

1. CALL TO ORDER

Patrick Connell called the meeting to order at 6:00 p.m.

Patrick Connell  Present
Gary Moss  Present
Jimmy Crouch  Present
Scot Robichaud  Present
Jeff Haladyna  Present

2. CITIZEN COMMENTS

There were no citizen comments.

The Zoning Board of Adjustments adjourned from the Regular Meeting to convene into Executive Session at 6:02 pm.

The Zoning Board of Adjustment adjourned from the Executive Session and reconvened into their Regular Meeting at 6:45 pm.

3. ITEMS FOR INDIVIDUAL CONSIDERATION

3A. Consider action to approve meeting minutes from the August 5, 2020 Zoning Board of Adjustment Meeting.

Jimmy Crouch made a motion to recommended approval of the August 5, 2020 meeting minutes. Gary Moss seconded the motion and the motion carried unanimously.

3B. Public Hearing and consider action on variances from the Bastrop Building Block (B³) Code, Chapter 8 – Signs, Article 8.3 (c) Band Signs for the number of signs, sign height, letter height exceeding the maximums, and continued use of the existing non-conforming internally illuminated pole sign on Bastrop West Commercial, Section 2, Lot 3B Resubivision, located at 484 (previously 490) State Highway 71, within the City Limits of the City of Bastrop, Texas.

Jennifer Bills presented the information distributed in the Zoning Board of Adjustment Agenda Packet. She discussed the history of the site and the previous signage at that location.

Jennifer Bills discussed with the Board the notifications City Staff had sent out for the public hearing. Jennifer Bills stated Staff agrees with the applicant’s request to follow the previous Sign Code in effect before the adoption of the Bastrop Building Block Code, and was recommending approval of the variances from the Bastrop Building Block (B³) Code, Chapter 8 – Signs, Article 8.3 (c) Band Signs for the number of signs, sign height, letter height exceeding the maximums, and continued use of the existing non-conforming internally illuminated pole sign on Bastrop.
West Commercial, Section 2, Lot 3B Resubivision, located at 484 (previously 490) State Highway 71, within the City Limits of the City of Bastrop, Texas.

Thomas Mathias, the Managing Director for Real Estate for the Cash Store, spoke with the Board regarding the request. He stated the entire feasibility for the project rests with the approval of the sign variances, if the variance were to not be granted the Cash Store would not move forward with their plans for the site. Additional discussion commenced between the Board and Thomas regarding the sign variance request, and the timing of the change within the Sign Ordinance during the course of this project.

Patrick Connell opened the Public Hearing.

There were no citizens comments from the public.

Patrick Connell closed the Public Hearing.

Larry Nieman, the owner of the property, addressed the Commission stating he was in favor of the zoning variance requests and felt they should be granted due to the changing of the Sign Ordinance after the applicant had initially reached out to obtain the sign standards.

Jimmy Crouch made a motion to deny requested variances from the Bastrop Building Block (B³) Code, Chapter 8 – Signs, Article 8.3 (c) Band Signs for the number of signs, sign height, letter height exceeding the maximums, and continued use of the existing non-conforming internally illuminated pole sign on Bastrop West Commercial, Section 2, Lot 3B Resubivision, located at 484 (previously 490) State Highway 71, within the City Limits of the City of Bastrop, Texas:

1. A sign square footage of 107.16 square feet, where the B³, Article 8.3 c) b allows 57.9 square feet.
2. A total height of 3.46 feet for the south sign, where the B³, Article 8.3 c) d allows 3 feet maximum.
3. A letter height of 27.5 inches on the north sign and 22 inches on the south sign, where the B³, Article 8.3 c) h allows 18 inches maximum.
4. The reuses of the existing non-conforming pole sign with internal illumination, where the B³ Code, Section 8.1.011 Sign Permit Requirements requires all signage to conform to the current provision, including Section 8.1.009 (b) C. requiring all illumination to be external.

The decisions was based on the following findings of facts:

1. The Board properly discussed possible conditions the Board could impose that would mitigate the adverse effects of granting the variances sought. The Board explored opportunities to find a compromise between the previous code standards desired by the Applicant and the adopted Bastrop Building Block Code requirements in order to reduce the overall effect of the increased signage on the site (Item 5).
2. The Board adequately contemplated the nature of the surrounding property and the community’s emphasis on bringing buildings and signs up to the standards of the new B³ Codes.

3. The Board sufficiently weighed the evidence of the City of Bastrop’s conflicting sign requirements online against the Applicant’s duty regarding reasonable inquiry into the status of sign code updates and not having submitted any permit applications prior to the new B³ Codes having been enacted.

4. The Applicant stated that they were not willing to accept any conditions that would change the request. The Applicant repeatedly asserted that they were not empowered to negotiate a compromise or accept anything less than all of the variances as requested in the Applicant.

Scot Robichaud seconded the motion, and the motion carried four to one with Gary Moss opposed.

4. ADJOURNMENT

Gary Moss made a motion to adjourn at 7:43 p.m.. Jimmy Crouch seconded the motion, and the motion carried unanimously.

_______________________
Chair

_______________________
Vice-Chair
MEETING DATE:  June 25, 2021  AGENDA ITEM:  4B

TITLE:
Public hearing and consider action on a grandfathering request for Bastrop Grove, Section 3, Lot 7, being 1.11 acres out of Nancy Blakey Survey Abstract 98, located in the 600 Block of West State Highway 71, east of State Highway 304 and south of State Highway 71, within the City Limits of the City of Bastrop, Texas.

AGENDA ITEM SUBMITTED BY:
Jennifer C. Bills, Assistant Planning Director  
Trey Job, Assistant City Manager of Community Development

ITEM DETAILS:
Site Address:  600 Block of West State Highway 71, east of State Highway 304 and south of State Highway 71 (Attachment 1)
Total Acreage:  1.11 acres
Legal Description:  1.11 acres of land out of the Nancy Blakey Survey, Abstract 98
Property Owner:  71 Retail Partners/Douglas MacMahon
Agent Contact:  Carlson, Brigance, and Doering/Brendan McEntee
Existing Use:  Vacant/Undeveloped
Existing Zoning:  P-5, Place Type 5 – Core
Future Land Use:  General Commercial

BACKGROUND/HISTORY:
The Texas Local Government Code Chapter 245 contains specific language about projects and permits that have been filed with a municipality and establishes the intent of the development projects. Below is a timeline of applications that provide the intent to create a nine-lot commercial subdivision. No other master plan or concept plan has been submitted that further defines the project for the entire subdivision. For Lot 1 and Lot 6, additional site development plans and building permits were submitted and subsequently constructed, completing the projects for those particular lots. However, no plans other than subdivision have been submitted for the remaining seven lots.

With the project information provided to this date, the City determined the appropriate grandfathering date is May 22, 2017, which is the date the applicant submitted the Preliminary Plat that has been moving forward with subsequent permits. The City agrees that the property classification is commercial, and as additional permits are submitted, will review them under the regulations in effect per the grandfathered date for subdivision and specific municipal regulations that informed the subdivision standards, including regulation in effect related to landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage or building size. All other elements will be reviewed under current regulations.
The timeline below establishes the applications that have been considered during the review.

The applicant is appealing this determination. The basis for their appeal is included as Attachment 7.

Bastrop Grove Plat Timeline:
- **July 24, 2013** – Preliminary Plat for The Grove Application Submitted
  - Eight lot commercial subdivision - Approved by City Council on July 8, 2014
  - Plat expired on March 30, 2015

- **August 5, 2013** – Final Plat for Bastrop Grove Phase 1 Application Submitted
  - One lot Final Plat – Comments sent September 29, 2013
  - No response from applicant – expired November 13, 2013 (45 days)

- **May 23, 2014** - Final Plat for The Grove Phase 1 Lot 5 Application Submitted
  - One lot Final Plat approved by City Council August 12, 2014
  - 180-day Extension approved by City Council on July 28, 2015
  - Plat expired February 8, 2016

- **May 22, 2017** – Preliminary Plat for The Bastrop Grove Application Submitted
  - Approved August 8, 2017, by City Council – replaced expired The Grove Preliminary Plat from July 24, 2013

- **March 17, 2018** – Final Plat for Bastrop Grove Section 1 Application Submitted
  - 5 lots approved by City Council on July 24, 2018
  - Recorded July 27, 2018

- **May 23, 2018** – Bastrop Grove Drainage Improvements – Improvements to Lots 1 & 2 and offsite Application Submitted
  - Plans Approved October 1, 2018
  - Completed May 17, 2019

- **January 3, 2020** – Final Plat for Bastrop Section 2, Lot 6 Application Submitted
  - Approved by Planning & Zoning Commission on November 21, 2019
  - Recorded January 3, 2020

Individual lot timelines for Site Development and Building Permits:
- **Bastrop Grove, Phase 1, Lot 1**
  - Site Development Plan
    - Approved July 27, 2018, Amended September 25, 2019
    - Completed November 19, 2019
  - Building Permits
    - Issued August 1, 2018
    - Project/Permit Completed November 19, 2019

- **Bastrop Grove, Section 2, Lot 6 – Bastrop Medtail (ARC Medical)**
  - Final Drainage Plan
    - November 22, 2019 Application
POLICY EXPLANATION:

V.T.C.A. Local Government Code Chapter 245 ("LGC 245"), provides an opportunity for landowners or developers to lock-in certain government regulations that apply to a particular development by filing a specific permit application. are regulated under Section 212.172 of the Texas Local Government Code.

Bastrop adopted Article 1.20 – Uniformity of Requirements, commonly referred to as the “Grandfathering Development Status Ordinance”. This provides standards and procedures to determine possible grandfathered development status of development projects.

Procedure:

1. Applicant submission of Grandfathering Request with documentation
   a. March 15, 2021 (Attachment 2)

2. Grandfathering Review Committee (Director of Planning, City Engineer, and Public Works Director) makes determination within 15 business days.
   a. The Committee determination was made and sent on March 30, 2021. (Attachment 3)

3. Applicant can request reconsideration of the determination by the Grandfathering Review Committee within 15 business days of determination.
   a. Submitted April 14, 2021 (Attachment 4)

4. Grandfathering Review Committee can either affirm or reverse the determination within 15 business days of request.
   a. Decision upheld – April 22, 2021 (Attachment 5)

5. If the determination reconsideration is denied, the request is automatically forwarded to the City Manager for determination, which must be completed within 15 business days of reconsideration determination.
   a. Forwarded on April 22, 2021
   b. Determination on May 7, 2021 (Attachment 6)

6. Applicant can appeal the City Manager’s determination to the Zoning Board of Adjustment within 15 business days of determination.

7. The ZBA must be convened within 30 days after the appeal has been received, or the appeal is deemed to have automatically been denied.
   a. Meeting called for June 25, 2021 (day 29).
8. Should the appellant be dissatisfied with the actions of the ZBA, the appellant may pursue all legal remedies to review the ZBA’s decision as set forth in LGC Section 211.011.

RECOMMENDATION:
Hold public hearing and consider action to uphold the City Manager’s determination on a grandfathering request for Bastrop Grove, Section 3, Lot 7, being 1.11 acres out of Nancy Blakey Survey Abstract 98, located in the 600 Block of West State Highway 71, east of State Highway 304 and south of State Highway 71, within the City Limits of the City of Bastrop, Texas.

ATTACHMENTS:
- Attachment 1 – Location Map
- Attachment 2 – Applicant Grandfathering Request for Bastrop Grove, Section 3, Lot 7 March 15, 2021
- Attachment 3 – Grandfathering Review Committee Determination March 20, 2021
- Attachment 4 – Applicant GRC Reconsideration Request April 14, 2021
- Attachment 5 – GRC Reconsideration Determination April 22, 2021
- Attachment 6 – City Manager Reconsideration Determination May 7, 2021
- Attachment 7 – Applicant Appeal to Zoning Board of Adjustment May 7, 2021
The accuracy and precision of this cartographic data is limited and should be used for information (planning purposes only). This data does not replace surveys conducted by registered Texas land surveyors nor does it constitute an “official” verification of zoning, land use classification, or other classification set forth in local, state, or federal regulatory processes. The City of Bastrop, nor any of its employees, do not make any warranty of merchantability and fitness for particular purposes, or assumes any legal liability or responsibility for the accuracy, completeness or usefulness of any such information, nor does it represent that its use would not infringe upon privately owned rights.

Date: 6/15/2021

Grandfathering Request
Bastrop Grove
Section 3, Lot 7

1 inch = 300 feet
## Project Information

Legal Description: ABS A98 BLAKEY, NANCY, ACRES 20.520

Project Address(es): Not Addressed

Total Acreage: 1.11 BCAD Property ID: 126678

Was the Project in progress on or after September 1, 1997? After

## Property Owner

Name/Entity/Trustee: 71 RETAIL PARTNERS LP

Mailing Address: 8214 WESTCHESTER DR STE 550

Phone & Fax Numbers: 214-622-6525 E-mail Address dm@morancap.com

## Applicant

Name/Entity/Trustee: Brendan P. McEntee, P.E. - Carlson, Brigance & Doering, Inc.

Mailing Address: 12129 Ranch Road 620 North, Suite 600 Austin, Texas 78750

Phone & Fax Numbers: (512) 280-5160 E-mail Address bmcantee@cbdeng.com

## Permit Identification

### First Permit

Name: The Grove Preliminary Plat Application Date: 07-24-2013

Approval Date: Expiration Date: Volume and Page No.: 

### Additional Permit

Name: Please see the attached supplement document Application Date:

Approval Date: Expiration Date: Volume and Page No.: 

### Additional Permit

Name: Approval Date:

Expiration Date: Volume No.: Page No.: 

### Additional Permit

Name: Approval Date:

Expiration Date: Volume No.: Page No.:
Grandfathered Development Status Application

Additional Permit

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**APPLICANT:**

Included in Submittal

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<th>Per Ordinance 2019-10, Additional Submittal Items are:</th>
<th>Meets Standard</th>
<th>Does Not Meet Standard</th>
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<td>√ 1 Identification of the “Project,” as that term is defined in LGC 245.001(3), as may be amended. Example: Residential Subdivision</td>
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<td>√ 2 Narrative description of the development/construction Project or proposed land use for which the Permit is being sought. Describe which Permits have been completed and which are remaining.</td>
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<td>√ 3 Layout of the site, including locations of buildings, streets, utilities, fences, drives, sidewalks, drainage facilities, and any other permanent or temporary structures which may be present at the time of application</td>
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| √ 4 Identification of each City regulation in effect at the time of the original application for the Permit filed that applies to the Project and that the Applicant contends:
  A. Is grandfathered
  B. Controls the approval, disapproval, or conditional approval of an application for a Permit, pursuant to LGC 245.002(a), as may be amended |                |                        |
| √ 5 Identification of each current City regulation for which the Applicant seeks an exemption due to the grandfathered development status provided the property owner by LGC 245 or other applicable vesting laws |                |                        |
| √ 6 Explanation of the applicability of any approval expirations and related requests for extension of approvals |                |                        |
| √ 7 Photographs, drawings, maps, and previous approvals that would assist the Grandfathering Review Committee in making its determination |                |                        |
| √ 8 Certified land survey of topography showing existing drainage patterns and structures |                |                        |
| √ 9 Any other information or supportive materials deemed necessary and requested in writing by the Director of Planning and Development |                |                        |

**Signature and Certification**

The applicant certifies that the facts stated herein and exhibits attached hereto are true, correct, and complete.

[Signature and Title]

Project Engineer and Agent

03-15-2021

Date
Process Overview

1. Complete Application, which includes: Application, Permit Identification, and Additional Submittal Items
   a. Incomplete submittals will not be accepted.
2. Director of Planning & Development will promptly forward to the Grandfathering Review Committee.
3. Determination made by Grandfathering Review Committee.
   a. Within 15 days of Application filing, the Committee will issue a written administrative determination approving the application, disapproving the application, or requesting more information.
   b. Determination shall identify the date the original Permit was filed, which claims have been recognized, and which claims have been rejected.
4. Reconsideration: must be requested in writing within 15 days of the Determination
5. Appeal to City Manager: must be requested in writing within 15 days of the date that the Committee declined to reconsider the Application.
6. Appeal to Zoning Board of Adjustment: must be requested in writing within 15 days of the City Manager’s Determination.

Determination Standards

1. Date of first application
2. Fair notice
3. Consistency
4. Subsequent development
5. Prior vested rights determinations
6. Regulations
7. Expiration of prior applications
8. Exemptions in LGC 245.004
9. Expiration of Project
10. City Code
11. State Law

Staff Use Only

☐ Received  By:  Date:

Fees Paid $

Comments:
Bastrop Grove Lot 7
Grandfathered Development Status Application
Supplement Document-Permit Identification

First Permit
Name: The Grove Preliminary Plat
Application Date: 07-24-2013
Volume No:
Page No:

Additional Permit
Name: Bastrop Grove Phase 1 Final Plat
Application Date: 08-05-2013
Volume No:
Page No:

Additional Permit
Name: The Grove Phase 1 Lot 5 Final Plat
Application Date: 05-23-2014
Volume No:
Page No:

Additional Permit
Name: Bastrop Grove Preliminary Plat
Application Date: 05-22-2017
Approval Date: 08-08-2017
Volume No:
Resolution No: R-2017-62

Additional Permit
Name: Bastrop Grove Section 1 Final Plat
Approval Date: 03-27-2018
Volume No:
Page No:

Additional Permit
Name: Bastrop Grove Drainage Improvements
Approval Date: 10-01-2018
Additional Permit
Name: Bastrop Grove Medtail - Final Drainage Plan
Approval Date: 11-22-2019
Volume No:
Page No:

Additional Permit
Name: Bastrop Grove Medtail - Site Development plans
Approval Date: 02-27-2020
Volume No:
Page No:

Additional Permit
Name: Bastrop Grove, Section 2, Lot 6 Final Plat
Approval Date: 01-03-2020
Volume No:
Page No:
Bastrop Grove Lot 7
Grandfathered Development Status Application
Checklist Supplement

1. Identification of the “Project,” as that term is defined in LGC 245.001(3), as may be amended. Example: Residential Subdivision

   Please see the attached project narrative

2. Narrative description of the development/construction Project or proposed land use for which the Permit is being sought. Describe which Permits have been completed and which are remaining.

   Please see the attached project narrative

3. Layout of the site, including locations of buildings, streets, utilities, fences, drives, sidewalks, drainage facilities, and any other permanent or temporary structures which may be present at the time of application

   Please see the attached final drainage plan

4. Identification of each City regulation in effect at the time of the original application for the Permit filed that applies to the Project and that the Applicant contends:
   a. Is grandfathered
   b. Controls the approval, disapproval, or conditional approval of an application for a Permit, pursuant to LGC 245.002(a), as may be amended

   Provided in the attached project narrative

5. Identification of each current City regulation for which the Applicant seeks an exemption due to the grandfathered development status provided the property owner by LGC 245 or other applicable vesting laws

   Provided in the attached project narrative

6. Explanation of the applicability of any approval expirations and related requests for extension of approvals

   Explained in the attached project narrative

7. Photographs, drawings, maps, and previous approvals that would assist the Grandfathering Review Committee in making its determination

   Previously approved/submitted plans that are listed in the ‘Permit Identification’ section have been attached.

8. Certified land survey of topography showing existing drainage patterns and structures

   Please see the attached final drainage plan
9. Any other information or supportive materials deemed necessary and requested in writing by the Director of Planning and Development

N/A.
Trey Job, Assistant City Manager  
City of Bastrop, TX  
Planning and Development Department  
1311 Chestnut Street  
Bastrop, TX 78602

RE: Grandfather Development Status – Lot 7 of Bastrop Grove  
Project Description Letter

Bastrop Grove is a multi-lot commercial land development at the SE corner of Hwy 71 and FM 304 in the City of Bastrop. It includes 7 out-parcels (avg. 1.5 ac. rectilinear lots) with frontage on Highway 71 and access limited to an internal private drive. There are 2 larger parcels behind the out-parcels with direct access to Agnes Street and FM 304 (the western portion). Proposed Lot 7, a portion of this Bastrop Grove development, consist of 1.1-acre of land located just south of State Highway 71 and west of the Seton Hospital asphalt access drive and the earlier platted Lot 6. As discussed in numerous meetings with staff regarding this project it is my belief that the project has vested rights, based on the earlier applications and entitlements and the continued nature of this commercial land development project, and therefore we are submitting this letter and the accompanying documentation for a Grandfathering Determination.

The project is described in the following Project related applications for permits required for the Project:

- Application dated 07-24-2013 for Preliminary Plat for The Grove
- Application dated 08-05-2013 for Final Plat for the Bastrop Grove Phase 1
- Application dated: 05-23-2014 for Final Plat for The Grove Phase 1 Lot 5
- Application dated 05-22-2017 for Preliminary Plat for The Bastrop Grove
- Application dated: 03-17-2018 for Final Plat for Bastrop Grove Section 1
- Application dated 10-01-2018 for Bastrop Grove Drainage Improvements
- Application dated 11-22-2019 for Drainage Plan for the Bastrop Grove Medtail
- Application dated 02-27-2020 for Site Plan Approval for the Bastrop Grove Medtail
- Application dated 01-03-2020 for Final Plat for Bastrop Grove, Section 2, Lot 6

It is my understanding that the project is not subjected to any City of Bastrop regulations except those described in Tx. Loc. Gov’t Code Section 245.0004.
Furthermore, I understand that the zoning provisions of the City’s Bastrop Building Block Code (B3) relating to the following are not applicable to the project as being within the exemptions for the general exception from vested rights as to municipal zoning ordinances, which are all those which affect (have an effect on):
- Landscaping or tree preservation
- Open space or park dedication
- Property classification (permitted uses)
- Lot size, dimensions or coverage
- Building size

It is my belief that all provisions in the Bastrop Building Block Technical Manual and the City of Bastrop Development Manual are subject to vesting, and not applicable to the Project. Only the City regulation in effect as of initial September 24th, 2013 apply to the project including the City Subdivision Ordinance and the portions of the City Zoning ordinance which affect (have an effect on):
- Landscaping or tree preservation
- Open space or park dedication
- Property classification (permitted uses)
- Lot size, dimensions or coverage
- Building size

Based on the above vesting the following provisions of the City Zoning Ordinance as of April 13th, 1991 (1991 Zoning Ord.) apply to the Project, as vested rights:
The permitted uses under Section 28 - C-1 - Commercial-1 District (Light) are listed in the following exhibits.
Exhibit A - Use Regulations Chart, City of Bastrop, 1991,

The permitted lot size, dimensions or coverage for the Project under Section 28.4 - Area Regulations Size of Lot:
- Minimum Lot Area - Twelve thousand (12,000) square feet.
- Minimum Lot Width - One hundred feet (100’).
- Minimum Lot Depth - One hundred ten feet (110’).
- Maximum Lot Coverage: Fifty percent (50%).

The permitted building size under Section 28 (including the related regulations which affect Building Size, such as:
- Setback- Section 28.4
- Height- Section 28.3
- Required Parking- Section 38

Other Regulations: As established in the Development Standards, Sections 37 through 45
Required landscaping or tree preservation in Section 39.5, 39.6 & 39.7

The Project is also vested from changes in flood regulations effective outside the FEMA flood plain.

The Project is not dormant, as progress has been made towards completion of the original contemplated project as follows:

- Plat of Seton Hospital land-Project Name: Bastrop Grove Section 1 Final Plat (Approval Date: 03-17-2018)
- Construction of the offsite Drainage Channel to the Colorado River- Project Name: Bastrop Grove Drainage Improvements (Approval Date: 10-01-2018)
- Medtail Final Plat- Project Name: Bastrop Grove, Section 2, Lot 6 Final Plat (Approval Date: 01-03-2020)
- Cost have been incurred for development the project with CBD Engineering, and other professional and legal firms

Should you have any questions or require any additional information, please feel free to call/email.

Sincerely,

Carlson, Brigance & Doering, Inc.
F-3791

[Signature]
Brendan P. McEntee, P.E.
Branch Manager
## Cash Receipt

**DATE:** 7-24-13  
**CR#:** 16-1992  
**RECEIVED FROM:** 71 Retail Partners, LP

**ADDRESS:**  
The Grove, Prelim. Plat  
**FOR:** Preliminary Plat - The Grove  
Hwy 71 & 384

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**DOLLARS:** $1120.00  
**BY:** Marie Murray

---

**P.O. Box 427 • Bastrop, Texas 78602**  
(512) 321-3457
ADMINISTRATIVE PLAT APPLICATION
(For amending plats or minor plats meeting the conditions and
requirements in accordance with Local Government Code Section 212.0065)

Please complete all of the following information (type or print):

Project Name: The Grove Phase 1, Lot 5, Block A

Project Address/Location: 1,450' +/- east of FM 304 / Hwy 71 intersection

Legal Description: Nancy Blakey Survey, A-98

Zoning District (if inside city limits): C-1 (Commercial-1)

Owner / Developer (applicant):

Contact Person: Douglas MacMahon

Company: 71 Retail Partners LP

Address: 8214 Westchester Drive

City, State Zip: Dallas, Texas 75225

Phone Number: (214) 622-6525 E-mail Address dm@morancap.com

Agent:

Contact Person: Geoff Guerrero

Company Name: Carlson, Brigance & Doering, Inc.

Address: 5501 W. William Cannon Drive

City, State Zip: Austin, Texas 78749

Phone Number: (512) 280-5160 E-mail Address geoff@cbdeng.com

Engineer / Surveyor (all plats must be prepared by a licensed engineer or land surveyor):

Contact Person: Tim Holland

Company Name: Carlson, Brigance & Doering, Inc.

Address: 5501 W. William Cannon Dr.

Phone Number: (512) 280-5160 E-mail Address tim@cbdeng.com

Signature of Owner: [Signature]

(STAFF USE ONLY) Date Submitted: __________________ Fee Paid: ______________ Received by __________________

Administrative Plat Application - Revised 3-14-2013
Page 1 of 5
# ADMINISTRATIVE PLAT APPLICATION

The signature of the Owner authorizes the City of Bastrop and its agents to visit and inspect the property for which this application is being submitted. The signature also indicates that the Owner or his Agent has reviewed the requirements of this checklist and all items on this checklist have been addressed and complied with. **Note:** The Owner’s signature designates the Agent as the official contact person for this project and the single point of contact. All correspondence and communication will be conducted with the Agent. If no agent is listed, the Owner will be considered the Agent.

## REQUIRED ITEMS FOR SUBMITTAL PACKAGE:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Completed and signed application/checklist. Provide a brief letter explaining the number of lots you are proposing and if these are residential or commercial lots.</td>
<td></td>
</tr>
<tr>
<td>2. Prints of plat—<strong>Collated and Folded, 24” x 36” and one 11” x 17”</strong> (Submit 6 prints of plat within City, 5 prints when in ETJ-Area A)</td>
<td></td>
</tr>
<tr>
<td>3. Two (2) copies each: ___ drainage study and three (3) copies each: ___ utility schematic/plan. If outside the City, three (3) copies.</td>
<td></td>
</tr>
<tr>
<td>4. A tax map highlighting the subject property.</td>
<td></td>
</tr>
<tr>
<td>5. Copy of deed showing current ownership and a copy of the current tax certificate showing taxes have been paid.</td>
<td></td>
</tr>
<tr>
<td>6. Planning Dept. Review Fee: $450.00 <strong>Does not include County recording fees.</strong></td>
<td></td>
</tr>
<tr>
<td>7. 3 copies of the recorded final plat. Check with Bastrop County Clerk’s office to see if this property is part of/within an existing recorded plat.</td>
<td></td>
</tr>
<tr>
<td>8. Is this plat a part of an approved Planned Development? Y/N If yes, name of PD:</td>
<td></td>
</tr>
<tr>
<td>n/a</td>
<td>a. Provide letter and 3 copies, outlining PD development requirements and how they are addressed on the plat.</td>
</tr>
</tbody>
</table>

Note: No partial submittals will be accepted by this office.
ADMINISTRATIVE PLAT APPLICATION

The following shall be provided in accordance with the plat details stated in Section 4.40.3 of the subdivision ordinance, unless otherwise approved by the Planning and Development Director in coordination with the City Manager. Note: references to standards required in other sections of the City’s development ordinances are provided to facilitate completion of the administrative procedures application. However these references are not inclusive of all regulations applicable to the proposed development, and must conform to the conditions and requirements in accordance with Local Government Code Section 212.0065.

The applicant is encouraged to contact the Planning Department with any questions regarding the required information. Written explanation must be provided for any requirement not submitted with the application or not addressed in accordance with the Zoning and Subdivision Ordinances.

<table>
<thead>
<tr>
<th>Section 4.40 Administrative Procedures Plat Details</th>
<th>To Be Completed By Applicant</th>
<th>Indicate Below Compliance With The Following.</th>
<th>Comments</th>
<th>To Be Completed By Staff</th>
<th>Reviewed By:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 4.40.1.C</td>
<td>The topography of the tract and the surrounding lands is such that no regard need be given in such subdivision to drainage. If drainage facilities are required, this administrative process cannot be used.</td>
<td>□ Yes □ No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 4.40.1.D</td>
<td>Each lot meets the minimum lot requirements as set forth in Section 5.50 and 6.110.4 and does not require any variance or exception to regulations. The resubdivision of any lot, tract or parcel of land within a rural subdivision shall not be permitted if the proposed lot(s) size will be less than one (1) acre.</td>
<td>□ Yes □ No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 4.40.1.E</td>
<td>The perimeter of the tract being subdivided has been surveyed and marked on the ground, and each corner of each lot of such proposed subdivision has been marked on the ground, and is tied to a corner of the tract being subdivided. A plat thereof shall be filed with the City as outlined in Section 4.30.2 and 4.30.3.</td>
<td>□ Yes □ No</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### ADMINISTRATIVE PLAT APPLICATION

| Section 4.40.3.A | The name of the land owner or owners - the name of the licensed public surveyor responsible for the preparation of the plat; the scale and location of each lot with reference to an original corner of the original subdivision or tract of which said land is a part; the date, north point and total acres in the proposed subdivision or lots. | ✔ |
| Section 4.40.3.B | The certificate of the licensed public surveyor and/or licensed engineer who surveyed, mapped and monumented the land shall be placed on the face of the plat as described in Section 4.40.3.B | ✔ |

<table>
<thead>
<tr>
<th>To Be Completed By Applicant</th>
<th>Indicate Below Compliance With The Following.</th>
<th>To Be Completed By Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 4.40.3.C</td>
<td>A certificate of ownership acknowledged before a notary public by the owners and any holders of liens against the land.</td>
<td>Yes</td>
</tr>
<tr>
<td>Section 4.40.3.D</td>
<td>An accurate on-the-ground boundary survey of the property showing bearing and distances and the lines of all adjacent land, streets, easements and alleys with their names and width. (Streets, alleys and lot lines in adjacent subdivisions shall be shown dashed.) All necessary data to reproduce the plat on the ground must be shown on the plat.</td>
<td>✔</td>
</tr>
<tr>
<td>Section 4.40.3.E</td>
<td>A certificate of approval to be signed by the mayor shall be placed on the face of the plat. See Section 4.20.3.</td>
<td>✔</td>
</tr>
<tr>
<td>Section 4.40.3.F</td>
<td>The plat shall show all existing features within the area being subdivided, amended or replatted such as existing drainage, easements, width of adjacent streets and alleys.</td>
<td>✔</td>
</tr>
</tbody>
</table>
and existing utility easements.

| Section 4.40.3.G | Lot lines and numbers of all lots proposed to be created with complete dimensions for front, rear and side lot lines. | ✓ |
| Section 4.40.3.H | Building setback lines shall be shown for each lot created. Refer to Section 5.70 for set back dimensions. | ✓ |
| Section 4.40.3.I | Existing Utilities and Drainage. Five (5) copies of the proposed plat marked to show locations and size of dimensions of existing utilities, drainage and streets. | ✓ |
| Section 4.40.3.J | A receipt showing that all taxes have been paid shall be submitted with the plat. | ✓ |
If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your social security number or your driver's license number.

GENERAL WARRANTY DEED

The State of Texas  
County of Bastrop  

MC Bastrop X, LP, a Texas limited partnership (hereinafter called "Grantor"), in consideration of the sum of TEN AND NO/100 ($10.00) DOLLARS and other good and valuable consideration in hand paid by 71 Retail Partners, LP, a Texas limited partnership, whose address is 214 Westchester Drive, Suite 350, Dallas, Texas 75225 (hereinafter called "Grantee"), the receipt and sufficiency of which are hereby acknowledged, has GRANTED, BARGAINED, SOLD AND CONVEYED, and by these presents does hereby GRANT, BARGAIN, SELL and CONVEY unto Grantee, the real property located in Bastrop County, Texas which is more particularly described on Exhibit A, attached hereto and made a part thereof for all purposes (the "Land"), together with all right, title and interest of Grantor, if any, in (i) all improvements and fixtures on the Land, (ii) all oil, gas and other minerals in, on or under the Land, (iii) all adjacent and/or contiguous streets, roads, avenues, alleys, and rights of way, (iv) rivers, streams, and strips and gore of land adjoining, adjacent and contiguous thereto, (v) all easements, rights of ingress and egress, rights of way, and covenants appurtenant to the Land, (vi) all airspace rights, surface and underground water rights, and any and all other water rights pertaining to the Land and (vii) all permits, approvals, licenses, rights, and authorizations and exemptions of any kind from governmental authorities related to the ownership, maintenance, use, development or operation of the Land or any improvements thereon (the Land together with such rights, titles, being collectively called the "Property"), subject to, however, those exceptions and encumbrances set forth on Owner's Policy of Title Insurance No. 5019648-00116490 dated October 6, 2011, issued by First American Title Insurance Company (said exceptions and encumbrances being called the "Permitted Exceptions").

To have and to hold the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors and assigns FOREVER, subject to the Permitted Exceptions, and, subject to the Permitted Exceptions, Grantor does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND and to hold the Property unto Grantee, its successors and assigns, against every person who shall lawfully claim or to claim the same or any part thereof.

Real property ad valorem taxes and assessments having been prorated to the date hereof, Grantee hereby assumes and agrees to pay when due all such ad valorem property taxes and assessments for the year 2013 and subsequent years.
GRANTOR:

MC BASTROP 71, LP,
a Texas limited partnership
By: MC Bastrop 71 GP, LLC,
a Texas limited liability company,
its General Partner

By: 
Douglas MacMahon, Manager

STATE OF TEXAS
COUNTY OF Dallas

This instrument was acknowledged before me on the 3rd day of July, 2013, by Douglas MacMahon, the Manager of MC Bastrop 71 GP, LLC, a Texas limited liability company, the General Partner of MC Bastrop 71, LP, a Texas limited partnership, on behalf of said limited partnership.

Andrea J McLeod
Notary Public in and for the State of Texas
My Commission Expires: 11/29/2015
Printed Name
STATE OF TEXAS  
COUNTY OF BASTROP  

52.684 ACRES  
NANCY BLAKEY SURVEY, A-98

DESCRIPTION

DESCRIPTION OF A 52.684 ACRE TRACT OF LAND OUT OF THE NANCY BLAKEY SURVEY, A-98, BASTROP COUNTY, TEXAS, AND BEING A PORTION OF THAT CERTAIN TRACT OF LAND CALLED TO BE 145.691 ACRES, DESCRIBED IN A DEED TO MC BASTROP 71-09, OR RECORD IN VOLUME 2097, PAGE 241, OF THE OFFICIAL PUBLIC RECORDS OF BASTROP COUNTY, TEXAS, SAID 52.684 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron rod with cap marked "Property Corner" found June 22, 2011, in the south right-of-way line of State Highway 71, at the northeast corner of Lot 1A, Block A, Resubdivision of Lot 1 Block A Center of Woodland Village Bastrop, a subdivision of record in Cabinet 4, Page 160-A, of the Plat Records of Bastrop County, Texas, said iron rod being the most northerly northwest corner of said 145.691 acre tract, and the most northerly northwest corner of the herein described tract;

THENCE, with the south right-of-way line of said State Highway 71, the following two (2) courses:

1) N 87° 45' 43" E, 2.05 feet to a large hole where concrete with TXDOT Brass Cap found disturbed;
2) A curve to the right having a radius of 5058.69 feet, an arc distance of 1554.38 feet, a central angle of 17° 36' 16", and a chord which bears S 79° 29' 26" E, 1548.27 feet to an iron rod with cap marked "Property Corner" found June 22, 2011, at the northwest corner of a tract of land called to be 43.112 acres, described in a deed to John Alan Nixon, of record in Volume 1908, Page 825, of the Official Public Records of Bastrop County, Texas, said iron rod being the northeast corner of said 43.112 acre tract, and the northeast corner of the herein described tract;

THENCE, S 09° 40' 03" W, with the east line of said 145.691 acre tract, and the west line of said 43.112 acre tract, at 1090.61 feet passing a ½ inch iron rod found June 22, 2011, and continuing for a total distance of 1168.33 feet to a 5/8 inch iron rod with cap set October 1, 2010, found June 22, 2011, for the southeast corner of the herein described tract.

THENCE, across said 145.691 acre tract, the following two (2) courses:

1) A curve to the right having a radius of 1000.00 feet, an arc distance of 193.46 feet, a central angle of 11° 05' 05", and a chord which bears N 85° 52' 07" W, 193.16 feet to a 5/8 inch iron rod with cap set October 1, 2010, found June 22, 2011;
2) N 80° 19' 35" W, 1885.70 feet to a 5/8 inch iron rod with cap set October 1, 2010, found, June 22, 2011, in the east right-of-way line of State Highway 304, same being the most westerly west line of said 145.691 acre tract, said iron rod being the southwest corner of the herein described tract;
THENCE, N 09° 40' 25" E, with the east right-of-way line of said State Highway 304, at 96.48 feet passing a ½ inch iron rod found June 22, 2011, and continuing for a total distance of 717.00 feet to a ½ inch iron rod found June 22, 2011, at the southwest corner of said Lot 1A, Resubdivision of Lot 1, Block A, Center of Woodland Village Bastrop, said iron rod being the most westerly northwest corner of said 145.691 acre tract, and the most westerly northwest corner of the herein described tract;

THENCE, S 80° 19' 00" E, with the westerly north line of said 145.691 acre tract, and the south line of said Lot 1A, 925.56 feet to a ½ inch iron rod found June 22, 2011, at the southeast corner of said Lot 1A, said iron rod being an ell corner of said 145.691 acre tract, and an ell corner of the herein described tract;

THENCE, N 09° 41' 29" E, with the northerly west line of said 145.691 acre tract, and the east line of said Lot 1, 1,492.23 feet to the POINT OF BEGINNING containing 52.684 acres of land within these metes and bounds.
71 Retail Partners, LP
NAME: City of Bastrop

CHECK DATE: 5/23/2014

Administrative Plat Filing Fee

450.00

American National Ba  The Grove Phase 1, Lot 5, Block A

450.00

71 Retail Partners, LP
8214 Westchester Drive
Suite 550
Dallas, TX 75225

American National Bank of Texas
800-637-6584
www.anbtx.com
88-151/1110

PAY 450.00

MEMO: The Grove Phase 1, Lot 5, Block A

PAY  Four Hundred Fifty and 00/100 Dollars

TO THE ORDER OF

City of Bastrop

R. H. W.签字

CHECK IS PRINTED ON SECURITY PAPER WHICH INCLUDES A MICROPRINT FOR BLACK LIGHT RESEARCH PURPOSES
July 29, 2014

Ms. Yvonne Pritchard  
City of Bastrop  
1311 Chestnut Street  
Bastrop, Texas 78602

Re: The Grove Phase 1, Lot 5, Block A  
Comment Response Update #1  
CBD No. 4697

Dear Ms. Pritchard,

Please find attached our itemized responses to comments issued on June 24, 2014.

Melissa McCollum, AICP, LEED AP-Director of Planning and Development

1. Zoning of the property has been added to the face of the plat.
2. Rear setback corrected to 20’ as required in C1, Commercial.
3. Utility providers added to the face of the plat.

Wesley Brandon, PE – City Engineer

1. Lot 5 does not adjoin F.M. 304. No tie added. A tie across Hwy 71 is on the face of the plat.
2. Benchmark information added to the face of the plat.
3. Width of adjacent access easement added to the face of the plat.
5. Revised note 26 to state reciprocal access shall be provided. Language was revised to what was approved via email on June 26, 2014. A reference to note 26 has been added to the face of the plat.
7. Access easement not recorded at this time. Will be recorded concurrent with final plat. Easement documentation was previously sent for approval.
8. No new easements recorded at this time.

Trey Job, Director of Water and Wastewater and Public Works

1. Comment acknowledged.
Diane Schulze, PE, Assistant Area Engineer, TxDOT

1. Comment acknowledged.
2. Comment acknowledged.
3. Comment acknowledged.

Yvonne Pritchard, Project Coordinator

1. No other changes made.

If additional information is required, please contact me at 512-280-5160.

Sincerely,

CARLSON, BRIGANCE, & DOERING INC.

[Signature]

Robert J. Gertson, R.P.L.S.
RESOLUTION NO. R-2017-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS, APPROVING THE PRELIMINARY PLAT KNOWN AS BASTROP GROVE BEING 52.684 ACRES OUT OF THE NANCY BLAKEY SURVEY, LOCATED EAST OF STATE HIGHWAY 304 AND SOUTH OF WEST STATE HIGHWAY 71, WITHIN THE CITY LIMITS OF BASTROP, TEXAS, REPEALING ALL CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to the Texas Local Government Code Section 212 and the City of Bastrop Subdivision Ordinance, the City Council is required to take action regarding certain plats; and

WHEREAS, 71 Retail Partners LP ("the Applicant") has submitted a preliminary plat for Bastrop Grove, a commercial subdivision; and

WHEREAS, the preliminary plat is consistent with the Comprehensive Plan designation of General Commercial and requirements of the Zoning District, C-1, Commercial-1; and

WHEREAS, the preliminary plat is conforms to the Transportation Master Plan and includes right-of-way dedication for the extension of Agnes Street; and

WHEREAS, the preliminary plat for Bastrop Grove was recommended for approval by the Planning & Zoning Commission on July 27, 2017; and

WHEREAS, the Bastrop Planning and Engineering Department has reviewed the above-referenced final plat and found it is in compliance with the Comprehensive Plan, Zoning Ordinance, and Subdivision Ordinance; and

WHEREAS, notice of the subdivision were sent in accordance with the Subdivision Ordinance to notify the public.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BASTROP, TEXAS:

Section 1. The Preliminary Plat known as Bastrop Grove, being 52.684 acres out of the Nancy Blakey Survey, located east of Highway 304 and south of West State Highway 71, attached hereto as Exhibit “A” and incorporated herein for all purposes.
Duly Resolved and Adopted by the City Council of the City of Bastrop this 8th day of August, 2017.

City of Bastrop, Texas

Approved:

[Signature]
Connie B. Schroeder, Mayor

Attest:

[Signature]
Ann Franklin, City Secretary

Approved as to Form:

[Signature]
David F. Bragg, City Attorney
BASTROP GROVE
PRELIMINARY PLAT

WATERSHED STATUS:

THE SITE IS LOCATED WITHIN THE LOWER COLORADO-CUMMINS WATERSHED.

FLOODPLAIN INFORMATION:

A PORTION OF THE SUBJECT PROPERTY IS LOCATED WITHIN THE BOUNDARIES OF THE 500 YEAR FLOODPLAIN, AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, SHOWN ON MAP NO. 48021C0355E, DATED JANUARY 19, 2006 FOR CITY OF BASTROP.

LEGAL DESCRIPTION:

52.684 ACRES OF THE NANCY BLAKEY ABSTRACT NO. 98 SITUATED IN THE CITY OF BASTROP IN BASTROP COUNTY, TEXAS PER VOLUME 2245, PAGE 828.

UTILITY PROVIDERS:

WATER SERVICE:  CITY OF BASTROP
WASTEWATER SERVICE:  CITY OF BASTROP
ELECTRIC:  BLUEBONNET ELECTRIC
GAS:  CENTERPOINT ENERGY
TELEPHONE:  AT&T

OWNER:
71 RETAIL PARTNERS LP
4214 WESTCHESTER DRIVE, SUITE 550
DALLAS, TEXAS 75225

ENGINEER:
STANTEC CONSULTING SERVICES, INC.
221 WEST SIXTH STREET, SUITE 600
AUSTIN, TEXAS 78701
(512) 328-0011

SURVEYOR:
STANTEC CONSULTING SERVICES, INC.
221 WEST SIXTH STREET, SUITE 600
AUSTIN, TEXAS 78701
(512) 328-0011

OWNER:
71 RETAIL PARTNERS LP
4214 WESTCHESTER DRIVE, SUITE 550
DALLAS, TEXAS 75225

ENGINEER:
STANTEC CONSULTING SERVICES, INC.
221 WEST SIXTH STREET, SUITE 600
AUSTIN, TEXAS 78701
(512) 328-0011

SURVEYOR:
STANTEC CONSULTING SERVICES, INC.
221 WEST SIXTH STREET, SUITE 600
AUSTIN, TEXAS 78701
(512) 328-0011

I, JOSE M. FARIS, P.E., P.E., AM AUTHORIZED UNDER THE LAWS OF THE STATE OF TEXAS TO PRACTICE THE PROFESSION OF ENGINEERING, AND HERBY CERTIFY THAT THIS PRELIMINARY PLAN IS FEASIBLE FROM AN ENGINEERING STANDPOINT AND COMPLIES WITH THE ENGINEERING RELATED PORTIONS OF CHAPTER 10 OF THE BASTROP CITY CODE AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, I CERTIFY THAT THESE ENGINEERING DOCUMENTS ARE COMPLETE, ACCURATE, AND ADEQUATE FOR THE INTENDED PURPOSES, BUT ARE NOT AUTHORIZED FOR CONSTRUCTION PRIOR TO FORMAL CITY APPROVAL.

SUBDIVISION NO.:

ADDRESS:

SUBMITTAL DATE:
MAY 22, 2017

SUBMITTED BY:
JOSE M. FARIS, P.E., P.E.
STANTEC CONSULTING SERVICES, INC.
221 WEST SIXTH STREET, SUITE 600
AUSTIN, TEXAS 78701
(512) 328-0011

APPROVED FOR ACCEPTANCE:

CITY COUNCIL

DATE

FILE: V:\2220\active\222010772\civil\cad\prelim plat\222010772TI2.dwg modified by jamartinez on  Jul 7, 17 2:26 PM

In accordance with the requirements of Texas Water Code Sections 49.003, 49.004, 49.005, and 49.007, this plat has been prepared and filed with the City of Bastrop, Texas. No representation is made as to the suitability of the plat for any purpose. In addition, the plat is subject to all applicable laws, regulations and plat approval requirements. Use of this plat for planning purposes is not intended to supersede the requirements of the City of Bastrop plat approval process. Use of this plat is at your own risk and with no warranty of any kind. All questions concerning the plat or the accuracy of the plat should be directed to the City of Bastrop Plats and Records Department.
BASTROP GROVE PRELIMINARY PLAT
Notice of Pending Subdivision Approval
City of Bastrop
City Council

Dear Property Owner:

The City Council will conduct a meeting on March 27, 2018 at 6:30 p.m. in the City Hall Council Chambers located at 1311 Chestnut Street, Bastrop, Texas on the request for Final Plat for Bastrop Grove, Section 1, being 30.970 acres out of the Nancy Blakey Survey, Abstract 98.

Owner/Applicant: Ascension Texas/Scott Fuller

Address: South of the State Highway 71 and north of the extension of Agnes Street, located in the city limit of Bastrop, Texas

Legal Description: 30.970 acres out of the Nancy Blakey Survey, Abstract 98.

The site location map and Final Plat is attached for reference.

As a property owner within 200 feet of the above referenced property, you are being notified of the upcoming meetings per the Bastrop Code of Ordinances Subdivision Regulations.

Property owners wishing to subdivide land must follow the rules within the City Subdivision Regulations, which can be found online at:


The city must approve plats in accordance with the process outlined in the Texas Local Government Code, Section 212.

For more information on this project, you can contact the Planning & Development offices at (512) 332-8840, plan@cityofbastrop.org, or visit the office at 1311 Chestnut Street, Bastrop, Texas.
BASTROP GROVE DEVELOPMENT
LOT 7- BASTROP GROVE
CITY OF BASTROP
FINAL DRAINAGE PLAN
BASTROP COUNTY, TEXAS

Sheet List Table
Sheet Number Sheet Title
1 COVER SHEET
2 EROSION CONTROL PLAN
3 HYDROLOGY
4 GRADING PLAN


ACCEPTED FOR CONSTRUCTION:

DIRECTOR OF PLANNING AND DEVELOPMENT

CITY OF BASTROP ENGINEER

THE CITY OF BASTROP FIRE DEPARTMENT

AS OWNER OF THIS PROPERTY, I PROMISE TO DEVELOP AND MAINTAIN THIS PROPERTY AS DESCRIBED BY THIS PLAN.

BRENDAN McENTEE, P.E.

SIGNED AND SEALED CERTIFICATION OF THE LICENSED ENGINEER WHO PREPARED THE SITE DEVELOPMENT PLAN:

I BRENDAN McENTEE, DO HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THESE ENGINEERING DOCUMENTS ARE COMPLETE, ACCURATE, AND ADEQUATE FOR THE INTENDED PURPOSES, INCLUDING CONSTRUCTION, BUT ARE NOT AUTHORIZED FOR CONSTRUCTION PRIOR TO FORMAL CITY APPROVAL.

DATE

LOCATION MAP

SITE

COVER SHEET

1

Know what's below.

before you dig.

Call

R

LOT 7- BASTROP GROVE

CITY OF BASTROP

FINAL DRAINAGE PLAN

BASTROP COUNTY, TEXAS

FILE PATH: J:\AC3D\5349\dwg\5349-Cover Sheet - LOT 7.dwg - Mar 15, 2021 - 3:17pm
STATE HIGHWAY 71
(R.O.W. VARIES)

BASTROP GROVE DEVELOPMENT: LOT 7
FINAL DRAINAGE PLAN
BM SA/ABR
MARCH 2021

HYDROLOGY

·

- DRRAINAGE HAS BEEN DESIGNED IN ACCORDANCE WITH THE CITY OF
  BASTROP STORMWATER DRAINAGE DESIGN MANUAL (REVISED MAY 9,
  2019)
- BDRRAINAGE HAS BEEN DESIGNED ASSUMING A FUTURE DEVELOPMENT
  CONDITION WITH 75% IMPERVIOUS COVER AND A FUTURE EXTENSION
  OF ACCESS ROAD SOUTH OF THE LOT.
BASTROP GROVE MEDITAIL DEVELOPMENT
CIVIL SITE DEVELOPMENT PLANS
CITY OF BASTROP
BASTROP COUNTY, TEXAS

LOCATION MAP

BASIN MAPS

Overview:

The map is located in the Colorado River watershed. No portion of this tract is within the boundaries of the designated flood plains or areas that are below the 100-year flood elevations as defined by the U.S. Army Corps of Engineers. The map is designed to show the flood hazard areas and the boundaries of the floodplain map. The map also shows the location of the drainage system, including the location of the drainage basins and the flow direction of the water. The map is designed for use by local government officials, developers, and the public to understand the flood risk and to plan for development in a safe and sustainable manner.
BASTROP GROVE MEDTAIL DEVELOPMENT
LOT 6 - BASTROP GROVE
CITY OF BASTROP
FINAL MASTER DRAINAGE PLAN SUBMITTED
BASTROP COUNTY, TEXAS

SHEET INDEX

SHEET #: SHEET TITLE
01 COVER SHEET
02 HYDROLOGY SHEET
03 GRADING SHEET
04 STORM PROFILE
05 EROSION CONTROL
06 EROSION CONTROL DETAILS

LOCATION MAP

BENCHMARK:
AT TRINITY MIXED REDEVELOPMENT, AT WEST OF NORTH-EASTERN PROPERTY CORNER.
AT BASE OF ELEVATION ON MARKED AT EAST SOUTH OF PROPERTY BOUNDARY.

GENERAL NOTES:
ALL RESPONSIBILITY FOR THE ACCURACY OF THESE PLANS REMAINS WITH THE ENTRANT WHO PREPARED THEM. IN REVIEWING THESE PLANS, THE CITY OF BASTROP MUST RELY UPON THE ACCURACY OF THE ORIGIN.

THE LOCATION OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE MANNER WHICH MAY NOT BE COMPLIANCE WITH THE CONTRACTOR. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE PROCEEDING WITH THIS PROJECT. IN QUESTIONABLE SITE, THE CONTRACTOR IS TO CONTACT THE CITY OF BASTROP FOR ADDITIONAL INFORMATION AND ALL UNDERGROUND UTILITIES.

THE PROJECT IS LOCATED WITH THE COLORADO PLAIN WATERED.

NO. DESCRIPTION REMOVED FOR USE OF CITY OF BASTROP APPROVING OFFICE APPROVED BY:

811

CITY OF BASTROP ENGINEER

APPROVED BY:

CITY OF BASTROP PLANNING

UTILITY PROVIDERS:

ELECTRIC: BUECKEMOT ELECTRIC
(512) 542-1351

GAS: CENTER POINT ENERGY
(800) 643-9628

PHONE: 4181
(512) 870-1400

WATER: CITY OF BASTROP
(512) 332-8800

WASTEWATER: CITY OF BASTROP (512) 332-8800

CABLE: SPECTRUM
(866) 264-9992

REVIEWED BY:

CITY OF BASTROP ENGINEER

DATE: 11/22/19

APPROVED BY:

CITY OF BASTROP PLANNING

DATE: 11/22/19
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY WATER DISTRIBUTION SYSTEM GENERAL CONSTRUCTION NOTES:

1. The "water distribution system" must be constructed in accordance with the current Texas Commission on Environmental Quality (TCEQ) Rules and Regulations for Surface Water Systems. All water systems must meet the current TCEQ's "Rules and Regulations for Public Water Systems." It shall be the responsibility of the Contractor to ensure that the water system is constructed in accordance with the TCEQ Rules and Regulations for Public Water Systems. Water systems must also comply with all applicable federal, state, and local regulations.

2. All water main materials and related products must conform to American Society for Testing and Materials (ASTM) Standard F 137-81. The materials must be approved by the Contractor and the local building authority.

3. Plastic pipe for use in public water systems must be in accordance with the National Fire Protection Association (NFPA) Standard 1911. The plastic pipe must be approved by the local building authority.

4. No pipe whose length exceeds 20 feet must be used in any gravity conveying system. The pipe shall be installed in such a manner as to prevent any water that may enter the system from entering the water main in a manner that could cause damage to the system.

5. The maximum allowable number of bends in any pipe shall be 3 bends per 100 feet of pipe. No sharp bends shall be used in any part of the system where there is a change in direction of 45 degrees or more.

6. The contractor shall not place the pipe in water where it can be frozen or subjected to change in temperature, such as in freezing. The contractor shall provide adequate protection to prevent freezing.

7. The contractor shall provide all necessary materials for the construction of the water distribution system, including all necessary excavation work and necessary equipment for excavation and installation. The contractor shall provide all necessary tools and equipment for the construction of the water distribution system.

8. The contractor shall ensure compliance with all applicable federal, state, and local regulations. The contractor shall be responsible for obtaining all necessary permits and approvals for the construction of the water distribution system.

9. The water mains shall be constructed in accordance with the Texas Commission on Environmental Quality (TCEQ) Regulations for Surface Water Systems. The water mains shall be constructed in accordance with the TCEQ’s "Rules and Regulations for Public Water Systems." The water mains shall comply with all applicable federal, state, and local regulations.

10. The contractor shall provide all necessary materials for the construction of the water distribution system, including all necessary excavation work and necessary equipment for excavation and installation. The contractor shall provide all necessary tools and equipment for the construction of the water distribution system.

11. The contractor shall ensure compliance with all applicable federal, state, and local regulations. The contractor shall be responsible for obtaining all necessary permits and approvals for the construction of the water distribution system.

12. The water mains shall be constructed in accordance with the Texas Commission on Environmental Quality (TCEQ) Regulations for Surface Water Systems. The water mains shall be constructed in accordance with the TCEQ’s "Rules and Regulations for Public Water Systems." The water mains shall comply with all applicable federal, state, and local regulations.

13. The contractor shall provide all necessary materials for the construction of the water distribution system, including all necessary excavation work and necessary equipment for excavation and installation. The contractor shall provide all necessary tools and equipment for the construction of the water distribution system.

14. The contractor shall ensure compliance with all applicable federal, state, and local regulations. The contractor shall be responsible for obtaining all necessary permits and approvals for the construction of the water distribution system.

15. The water mains shall be constructed in accordance with the Texas Commission on Environmental Quality (TCEQ) Regulations for Surface Water Systems. The water mains shall be constructed in accordance with the TCEQ’s "Rules and Regulations for Public Water Systems." The water mains shall comply with all applicable federal, state, and local regulations.

16. The contractor shall provide all necessary materials for the construction of the water distribution system, including all necessary excavation work and necessary equipment for excavation and installation. The contractor shall provide all necessary tools and equipment for the construction of the water distribution system.

17. The contractor shall ensure compliance with all applicable federal, state, and local regulations. The contractor shall be responsible for obtaining all necessary permits and approvals for the construction of the water distribution system.

18. The water mains shall be constructed in accordance with the Texas Commission on Environmental Quality (TCEQ) Regulations for Surface Water Systems. The water mains shall be constructed in accordance with the TCEQ’s "Rules and Regulations for Public Water Systems." The water mains shall comply with all applicable federal, state, and local regulations.

19. The contractor shall provide all necessary materials for the construction of the water distribution system, including all necessary excavation work and necessary equipment for excavation and installation. The contractor shall provide all necessary tools and equipment for the construction of the water distribution system.

20. The contractor shall ensure compliance with all applicable federal, state, and local regulations. The contractor shall be responsible for obtaining all necessary permits and approvals for the construction of the water distribution system.

GENERAL NOTES:

1. All construction shall be in accordance with the city of Evansville design and construction standard drawings.

2. All existing utilities, pavement, curbs, sidewalks, structures, trees, etc., that are damaged or removed shall be repaired or replaced at the expense of the Contractor.

3. The Contractor shall notify the city of Evansville in advance of any construction. Any changes to the construction plans must be approved by the city of Evansville.

4. The city of Evansville reserves the right to make changes to the construction plans at any time.

5. The city of Evansville reserves the right to make changes to the construction plans at any time.

6. The city of Evansville reserves the right to make changes to the construction plans at any time.

7. The city of Evansville reserves the right to make changes to the construction plans at any time.

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20. The city of Evansville reserves the right to make changes to the construction plans at any time.

CONSTRUCTION SEQUENCE:

1. Road or rough grading may be done until the approval and endorsement are obtained from the Texas Commission on Environmental Quality (TCEQ) and the City of Evansville.

2. Install temporary erosion and sedimentation controls and temporary traffic control measures.

3. Check the approval of all affected utilities; the Contractor may begin clearing and grading.

4. Complete all rough grading and temporary stabilization within the limits of the construction area. Utility easements may be completed.

5. Complete all temporary erosion and sedimentation controls to meet City requirements.

6. Complete all rough grading and temporary traffic controls.

7. Complete all rough grading and temporary traffic controls.

8. Complete all rough grading and temporary traffic controls.

9. Complete all rough grading and temporary traffic controls.

10. Complete all rough grading and temporary traffic controls.

11. Complete all rough grading and temporary traffic controls.

12. Complete all rough grading and temporary traffic controls.

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16. Complete all rough grading and temporary traffic controls.

17. Complete all rough grading and temporary traffic controls.

18. Complete all rough grading and temporary traffic controls.

19. Complete all rough grading and temporary traffic controls.

20. Complete all rough grading and temporary traffic controls.
CONSTRUCTION PLAN NOTES

GENERAL NOTES:
1. All construction shall be in accordance with the City of Beverly Beach Construction Specifications Manual.
2. Any existing utilities, pavement, curbs, sidewalks, driveways, trees, etc., shall not be planned for preservation that will be affected by the construction.
3. The Contractor shall make all safety and health inspections of the site to be constructed in accordance with the City of Beverly Beach Construction Specifications Manual.
4. The Contractor shall give the City of Beverly Beach 20 days notice before beginning work around any public utilities.
5. Roads and streets to be reconstructed shall be in accordance with the City of Beverly Beach Construction Specifications Manual.
6. All ROE shall be minimum Class B.
7. The paving sections are designed to be in accordance with the current City of Beverly Beach Construction Specifications Manual.
8. Fencing and Driveway (MAC) Towers, T-4, 10' Box, Compact Subgrade.
9. The Contractor shall be responsible for the cost of all materials and labor in accordance with the City of Beverly Beach Construction Specifications Manual.
10. Where a new or existing sidewalk is to be installed, an acceptable sidewalk shall be installed and surveyed by the City of Beverly Beach.

STRENGTH AND EARTHWORK NOTES:
11. Pipe materials for water main shall be PVC (LR40 CDS08, minimum Class 200) or DuPage non-irrigation Class C2A8. All materials shall be in accordance with the City of Beverly Beach Construction Specifications Manual.
12. The Contractor shall be responsible for the cost of all materials and labor in accordance with the City of Beverly Beach Construction Specifications Manual.

TRENCH SAFETY NOTES:
13. In accordance with the laws of the State of Texas and per TCOH 5.001, Excavation Safety and Construction Health and Safety Standards, the Contractor shall maintain safe conditions at all times. The Contractor shall be responsible for the cost of all materials and labor in accordance with the City of Beverly Beach Construction Specifications Manual.

STREET AND DRAINAGE NOTES:
14. All construction shall be in accordance with the City of Beverly Beach Construction Specifications Manual.
15. The Contractor shall be responsible for the cost of all materials and labor in accordance with the City of Beverly Beach Construction Specifications Manual.
16. The Contractor is to notify the City as soon as the sidewalk is in place of any deficiencies in the sidewalk, and the deficiencies shall be corrected at the Contractor's expense.

BASEMENT FIRE DEPARTMENT GENERAL NOTES:
1. The Contractor shall be responsible for the 24-hour fire protection system. The Contractor shall be responsible for the cost of all materials and labor in accordance with the City of Beverly Beach Construction Specifications Manual.

TRAFFIC MARKING NOTES:
1. All road markings, signs, and physical markers shall be in accordance with the City of Beverly Beach Construction Specifications Manual.
2. All road markings, signs, and physical markers shall be in accordance with the City of Beverly Beach Construction Specifications Manual.

EROSION AND SEDIMENT CONTROL NOTES:
1. All construction work shall be in accordance with the City of Beverly Beach Construction Specifications Manual.

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EROSION AND SEDIMENT CONTROL NOTES:
1. All construction work shall be in accordance with the City of Beverly Beach Construction Specifications Manual.
2. All construction work shall be in accordance with the City of Beverly Beach Construction Specifications Manual.
Grandfathering Review Committee

Date of Decision – March 30, 2021

Applicant: Carlson, Brigance, and Doering, Inc.
71 Retail Partners LP

Project: #21-000055 – Bastrop Grove Section 3 Lot 7 Grandfathering Request

Members: Director of Planning & Development
City Engineer
Director of Public Works

DETERMINATION

The Grandfathering Review Committee has evaluated the above referenced project and recognizes certain items of the project as grandfathered as described below.

BASIS OF DETERMINATION AND CLAIMS RECOGNIZED / REJECTED

The original lot layout and dimensions for lot 7 that can be seen on the preliminary plat dated May 22, 2017; thus, the City of Bastrop can justify making a determination that the project is grandfathered to that date. Any plans or permits prior to that date appear to have been for what could only be characterized as a different project, and thus do not support an earlier grandfathering determination. The record for this property and the material you submitted do not provide a basis for a finding that the project is grandfathered to July 24, 2013. In addition to the lot layout your request states you believe you are grandfathered to property classification. The City agrees that your property classification was commercial, and it remains commercial. This does not apply to (permitted uses) such as C-1 or C-2 which is a zoning district. However, the new zoning (P5) Placetype 5 allows for more diverse building types such as apartments etc., if it is built in the correct form as seen in the Bastrop Building Block Code (B3 Code).

The duration of the 2017 project for purposes of grandfathering for lot 7 was in our opinion was extended upon recording of the final plat for lot 6 which shows progression of the above-mentioned preliminary plat. This continues the grandfathering status.

Certain items properly characterized as zoning are not recognized as grandfathered in accordance with statutory exemptions listed in LGC 245.004.

Contrary to the Project Description Letter (dated March 16, 2021), the City of Bastrop’s Building Bastrop Block Code (B3) was enacted (in substantive part) in accordance with the City’s statutory zoning authority, and elements of the B3 Code do constitute municipal zoning regulations under LGC 245. Related regulations such as the B3 Technical Manual and Development Manual may be applicable to your project (depending on your specific plans). The City of Bastrop’s process for determining grandfathering is governed by LGC 245 as implemented through Article 1.20 of Bastrop’s Code of Ordinances [Uniformity of Regulations].

SIGNED:

Trey Job, Assistant City Manager for Community Development
Trey Job, Assistant City Manager  
City of Bastrop, TX  
Planning and Development Department  
1311 Chestnut Street  
Bastrop, TX 78602

RE: Grandfather Development Status – Lot 7 of Bastrop Grove  
Request for Reconsideration

The intent of this letter is to request reconsideration of the March 30, 2021 decision of the City of Bastrop Grandfathering Review Committee (GRC) for Project #21-000055 Bastrop Grove Section 3 Lot 7. This reconsideration is required per Section 1.20.013 of the Bastrop Code of Ordinances as the beginning step of the appeals process.

The reconsideration is requested as the applicant believes the following and requests confirmation of such from the GRC:

- While we appreciate recognition of the 2017 vesting date in the 3/30/21 determination we believe the 7/24/2013 submittal represents the same “project” as the 2017 project and therefore the 7/24/2013 application should be the date of vesting.
- With an approved determination we are vested (property classification) in all permitted uses under the 2017 C-1 zoning district and the earlier submitted C-1 Use charts.
- We are entitled to any currently permitted uses under the P5 Place Type, developed per vested development regulations.
- We request clarification on what “substantive part” of the City’s statutory zoning authority is being referred to as allowing enactment of the B3 code.
- We request clarification on what “elements” of zoning within the B3 constitute zoning under LGC245. Only Chapters 2 and 3 of the B3 code address zoning or other related provisions while the balance of the code address items outside of zoning such as subdivision, platting, infrastructure, signage, historic preservation, etc.

Should you have any questions or require any additional information, please feel free to call/email.

Sincerely,

Carlson, Brigance & Doering, Inc.  
F-3791

Brendan P. McEntee, P.E.  
Branch Manager
Grandfathering reconsideration denial

By Trey Job on 04/22/2021 at 6:15 AM

Having reviewed the letter provided by CBD on April 14, 2021 requesting reconsideration, the Grandfathering Committee does not see a basis for changing its position.

The City of Bastrop's Code of Ordinances provides a process and criteria for making these determinations. The applicant has a requirement to provide new information and factual grounds upon with the city could reach a different conclusion. Neither has been provided.

above is a link to the code reference for convenience

Comments (0)

This Correction Item currently has no comments.

Add your comment

Please enter your comments related to the above correction item.

☐ Make this comment internal use only
71 Retail Partners LP  
C/O Douglas MacMahon  
8214 Westchester Drive, Suite 550  
Dallas, TX 75225

Dear Mr. MacMahon,

I have reviewed the documents that have been submitted and the previous determinations of the Grandfathering Committee issued by Trey Job, Assistant City Manager (Acting Director of Planning & Development).

This request is to determine which of the previously adopted city codes can be utilized by the current project, not which sections of the current code are applicable. I concur with the determination that the property described as Bastrop Grove, Section 3, Lot 7 is grandfathered to specific regulations in effect as of May 22, 2017, the date of the submittal of the Bastrop Grove Preliminary Plat, which was approved by City Council on August 8, 2017. This is the controlling document for the approval, disapproval, or conditional approval of future application for subdivision, pursuant to LGC § 245.002(a) and (b), as may be amended.

To this end, the project is grandfathered to the Subdivision Ordinance (Chapter 10 of the Code of Ordinances 2017), and specific municipal regulations that informed the subdivision standards, including regulations in effect related to landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size (Chapter 14 of the Code of Ordinance 2017). As noted in the previous determination, the property classification as of May 22, 2017 was commercial, and the property remains classified as commercial with the Place Type 5 district as rezoned during in the B³ Code (Attachment 1).

The project is not grandfathered to any regulations exempted by LGC § 245.004, which includes drainage and zoning regulations, which were updated with the Stormwater Drainage Ordinance and the Bastrop Building Block (B³) Code in 2019. The B³ Code is a unified development code, which includes subdivision, zoning, and sign regulations.

Sincerely,

Paul A. Hofmann  
City Manager

CC:  Trey Job, Assistant City Manager  
     Jennifer Bills, Assistant Planning Director

Enclosure: Attachment 1
Notice ofPending Zoning Change
City of Bastrop
Planning & Zoning Commission
And City Council

Dear Property Owner: 71 RETAIL PARTNERS LP

The Planning and Zoning Commission will conduct a public hearing on Thursday, September 26, 2019 at 6:00 p.m. and the City Council will conduct a public hearing (first reading) Tuesday, October 8, 2019 at 6:30 p.m. and a public hearing (second reading) Tuesday, October 22, 2019 at 6:30 p.m. in the City Hall Council Chambers located at 1311 Chestnut Street, Bastrop, Texas on changing the zoning of all property within the City Limits of Bastrop, Texas.

Property ID/Parcel Number: 126678
Current Zoning: Commercial-1
New Zoning (Place Type): P-5 Core

If your property is within a Planned Development District, the change in zoning will not affect your specific Planned Development District standards.

The City will host a Come and Go Open House for citizens on Thursday, September 19, 2019 from 6:30 p.m. to 8:00 p.m. in the City Hall Council Chambers located at 1311 Chestnut Street, Bastrop, Texas. This is an opportunity to have property-specific questions answered.

Additional information on the Bastrop Building Block Code and a zoning map are available at this website: https://www.cityofbastrop.org/page/buildingbastrop

You may also contact the Planning & Development Department at (512) 332-8840, plan@cityofbastrop.org, visit the office at 1311 Chestnut Street, Bastrop, Texas, or mail the response card below to PO Box 427, Bastrop, Texas 78602.

PROPERTY OWNER’S RESPONSE
As a property owner within 200 feet: (please check one)
☐ I am in favor of the change.
☐ I am opposed to the change.
☐ I have no objection to the change.

Property Owner Name: ____________________________________________
Property Address: ________________________________________________
Mailing Address (if different than property address): __________________________
Phone (optional): ___________________ Email (optional): ___________________

Property Owner’s Signature: __________________________________________

Additional Comments (Optional): ________________________________________

Re: Bastrop Building Block Code Zoning Change

PLANNING & DEVELOPMENT
1311 Chestnut Street – PO Box 427 – Bastrop, Texas 78602 – 512.332.8840
www.cityofbastrop.org
City of Bastrop  
Zoning Board of Adjustment  
1311 Chestnut Street  
Bastrop, TX 78602

Dear Sir or Madam,

71 Retail Partners, L.P. ("71 RP") filed a Grandfathering Development Status Application (the "GDSA Application") under City Code Art. 1.20 (the "Ordinance") on March 15, 2021. The Grandfathering Review Committee (the "GRC") issued a determination (the "GRC Determination") on March 30, 2021. 71 RP requested reconsideration of the GRC Determination on April 14, 2021 (the "Reconsideration Request") and the GRC declined to reconsider on April 22, 2021, which automatically appealed the GRC Determination to the City Manager, who issued his determination (the "CM Determination") on May 13, 2021. This is an appeal of the prior determinations, and, in the alternative, a request for a variance.

The GRC Determination is required by the City for the City to make its own determination of its position on the application of Texas Local Government Code ("LGC") Chapter 245 ("LGC 245"), which provides protections from changes in local regulation as to an ongoing development project (such protections being commonly known as "vested rights"). Only LGC 245 determines the applicable vested rights, and to the extent the Ordinance seeks to limit vested rights or to give the City control over the interpretation process (such as, but not limited to, establishing standards and burdens), we protest, and submit this application under protest. The GRC Determination and interim administrative appeals are for the benefit of the City and are not binding on 71 RP as to the nature or extent of vested rights. 71 RP reserves all its rights under LGC 245.

Vested Rights defined (emphasis added):

- "If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered
by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.” LGC 245.002(b)
• “Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought.” LGC 245.002(a-1)

APPEAL OF GRANDFATHERING DETERMINATIONS

71 RP hereby appeals to Zoning Board of Adjustment (the “ZBA”) pursuant to the Ordinance, which requires the following:

1. A statement that the appellant sought an appeal from the City Manager, and that the appeal:
   a. Was denied;
   b. Yielded an erroneous determination regarding the project's eligibility for grandfathered development status.
2. A statement of the reasons why the determination should be reversed or modified;
3. An explanation of the legal and factual grounds of the appeal; and
4. Payment of the appeal fee established by the City Council, as codified in the city's fee schedule.

For purposes of this appeal request, the word “Project” refers to the development of the 52.68 acre tract that was owned on the date of the original application by 71 RP and shown on the plat applications discussed below, inclusive of the creation of the lots and related infrastructure and the construction of buildings thereon. Both the land development and the building development are entitled to vested rights. 71 RP has continuously pursued this Project since the 2013 Application, having sold land which has been platted and buildings constructed, such as Seton Hospital and Medtail. The scope and nature of the Project is well known to the City, as suburban retail/commercial pad site development for buildings consistent with the Medtail project. The elements of the contemplated retail/commercial pad sites are relatively small buildings (usually 1 story), typically centered in each lot, with ample surface parking surrounding the building, and cross access easements shared among the other pad sites. These lots are typically called “commercial reserves”. Lot 8 is a typical pad site and Lot 9 is a larger tract for larger development. Lots 8 & 9 were planned for and contemplated building for the uses permitted under Zoning District C-1 at the time of the 2017 Preliminary Plat application.

Appeal # 1: Which application is the original application for the Project?

71 RP believes the GRC Determination made an erroneous determination that the original application for the Project is the application dated 5-22-2017 for the Preliminary Plat for the
Bastrop Grove (the “2017 Application”). 71 RP agrees that the 2017 Application was a vesting event, but asserts that the first vesting event was the application dated 7-24-2013 for Preliminary Plat for the Grove (the “2013 Application”).

71 RP asserts that the original application for the Project that gave the regulatory agency fair notice of the Project and the nature of the permit sought pursuant to LGC 245.002(a-1) was the 2013 Application.

71 RP asserts the following in support of its request and offers the following explanation of the legal and factual grounds of this appeal:

- The 2013 Application and 2017 Application are both for the exact same tract of land.

- The 2013 Application and 2017 Application generally provide both the same access points onto State Highway 71 and the same internal vehicular circulation.

- A side-by-side comparison of the 2013 Application and 2017 Application shows that they are substantially similar and generally depict the same project, which is a development of smaller lots and buildings fronting on State Highway 71 with the remainder of land available for further subdivision and future development of larger buildings as the Project progresses.

- LGC 245.002(a-1) states:

  “Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought.” emphasis added.

  ▪ 71 RP did file the 2013 Application on 7-22-2013 properly and as required.
  ▪ The 2013 Application was of sufficient detail to give fair notice of the Project and the nature of the permit sought.
  ▪ The City has accepted the 2017 Application and a side by side comparison shows that the 2013 Application and 2017 Application are substantially similar.

- LGC 245.002(b) states:

  “If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single
series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.” emphasis added.

- Both the 2013 Application and 2017 Application are Preliminary Plat applications for the same exact tract of land and therefore are deemed to be one series of permits for the Project under Texas LGC 245.002(b).
- The 2017 Application was merely a refinement of the Project.

In summary, 71 RP is vested with the both the 2013 Application and the 2017 Application.

Appeal # 2: Is the Grandfathered Development Status Application process (the “GDSA Process”) (1) a request to determine which of the previously adopted city codes can be utilized by the current project, (2) a request to determine which sections of the current code are applicable, or (3) both?

71 RP believes the CM Determination made an erroneous determination in the following statement, “This request is to determine which of the previously adopted city codes can be utilized by the current project, not which sections of the current code are applicable.”

71 RP asserts that the GDSA Process prescribed in the Ordinance should include a determination of both which previously adopted city codes can be utilized as well as which sections of the current code are and are not applicable. Otherwise, the effort has no practical benefit for either the City or the developer. The City seems to rely on Sec. 1.20.004(c) which states “This section shall not apply to permits or regulations listed as exemptions in LGC 245.004, as may be amended.” The City acknowledges that the Subdivision Ordinance in effect in 2017 applies, but does not explain its position as to what aspect of the B3 Code (as defined below) are applicable. It is only fair that the City provide this determination.

The City’s position is inconsistent with another grandfathering determination (for adjacent Lots 8 & 9) in which the City provided a partial position on the scope of grandfathering, relating to property classification, and affirmatively took a position on drainage standards, uniform building codes, landscaping or tree preservation, permitted uses, building size and zoning district. 71 RP requests the City provide its position on these important matters as part of this process.

71 RP asserts the following in support of its request:

- Section 1.20.003 of the Bastrop City Code states that the purpose of the GDSA Process is to “Provide increased certainty and predictability in the city’s regulatory process.”
• Section 1.20.006 of the Bastrop City Code states “It is the policy of the city that the construction, development, and/or land use permit applications filed with the city are presumed to be governed by then-current regulations.”

• Section 1.20.010 of the Bastrop City Code states “If an applicant contends that certain city regulations do not apply to the project, the applicant is expected to identify, with particularity, all requirements that the applicant contends do not apply to the current application.”

• 71 RP’s GDSA Application stated that the following regulations do not apply to the Project: (1) Bastrop Building Block Code, (2) the Bastrop Building Block Technical Manual, and (3) the Bastrop Development Manual.

• The GRC Determination states that, “the new zoning (P5) Placetype 5 allows for more diverse building types such as apartments, etc., if it is built in the correct form as seen in the Bastrop Building Block Code (B3 Code).” It goes on to say, “...elements of the B3 Code do constitute municipal zoning regulations under LGC 245. Related regulations such as the B3 Technical Manual and Development Manual may be applicable to your project (depending on your specific plans).”

• 71 RP’s Reconsideration Request requested “clarification of what ‘elements’ of zoning within the B3 constitute zoning under LGC 245”.

Given the above, if (1) the purpose of the GDSA Process is to provide increased certainty and predictability, (2) the policy of the city is a presumption that the current regulations apply, (3) the city code requires the applicant to specify which regulations in the current code are not applicable to the Project, (4) the GDSA Application states with specificity which regulations 71 RP believes do not apply, (5) the GRC Determination states that certain elements of the B3 Code do apply without specificity, and (6) the Reconsideration Request asked for clarification of the statements in the GRC Determination, 71 RP asserts the following:

• To achieve the stated purpose of providing increased certainty and predictability, the CM Determination should have included a clear determination of which regulations do and do not apply. To say that some regulations apply and others may apply as the GRC Determination did does not achieve the stated purpose of the GDSA Process.

• The City Manager erred in stating that 71 RP’s GDSA Application is not to determine which sections of the current code are applicable. In fact, Section 1.20.010 of the Bastrop City Code requires the applicant to identify which sections of the current code are not applicable under LGC 245, 71 RP did this as part of its application, and the City Manager is required to make a determination of the statements in the GDSA Application with a level of specificity that provides increased certainty and predictability.
In summary, 71 RP requests a clear determination that either i) the GDSA Process does not apply to LGC 245.004 exemptions, or ii) that it does, and then provide a determination of what regulations are applicable to the Project, as requested below.

**Appeal # 3: Is the Project subject to the Bastrop Building Block (B3) Code, the B3 Technical Manual, and the Development Manual?**

71 RP believes the CM Determination made an erroneous determination that (1) the Bastrop Building Block (B3) Code (the “**B3 Code**”) is exempted by LGC 245.004 as a zoning ordinance and (2) the Stormwater Drainage Code is also exempted. The CM Determination is silent as to the applicability of the B3 Technical Manual and Development Manual that is asserted in the GRC Determination, but for purposes of this appeal, the term B3 Code includes these documents and this appeal makes the assumption that the City Manager concurrs with the GRC Determination. We request a clear determination of this issue.

The B3 Code does not apply to the Project, as it does not qualify for exemption under Texas LGC 245.004.

71 RP asserts the following in support of its request and offers the following explanation of the legal and factual grounds of this appeal:

- LGC 245.004(2) provides an exemption to LGC 245 for “**municipal zoning regulations** that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality”. *emphasis added.*

- In order for a zoning regulation to be exempt under LGC 245.004 (2), such regulation must be a municipal zoning regulation and must not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size (collectively the “**LGC 245.004 Vested Rights**”). The word “affect” means “having an effect on”, which is a broad interpretation. The B3 Code impacts every aspect of the LGC 245.004 Vested Rights. 71 RP asserts that the B3 Code fails this test as follows:

  - The B3 Code is not a municipal zoning regulation, but a “form based code” whose regulations are based on public infrastructure. Public infrastructure is regulated by the subdivision and platting process, not the zoning process. Zoning focuses on separation of use by geographic district. Use is not directly regulated by the B3 Code. There are no permitted/prohibited uses, no use table or matrix, and no
use definitions. A fair reading of the B3 Code shows it is not zoning regulations, but subdivision and platting regulations.

- Page 22 of the B3 Code states “Blocks are the foundation for development in Bastrop.” If Blocks (and therefore street grids/specifications and lot sizes/dimensions) are the foundation of development in Bastrop under the B3 Code, then the B3 Code, without question, fails the test and does not qualify as exempt under LGC 245.004 exemption for “municipal zoning regulations.”

- The B3 Code is a “unified development code” which mixed various types of land use regulations that otherwise would be separate ordinances. It is not “municipal zoning regulations” of the type contemplated when LGC 245 was adopted. This is particularly true for a form-based code. The “Explanation of the Code” on Page 15 of the B3 Code states “Each section of the Code provides Standards that guide development to be holistic to each Building, Street, Block, and neighborhood.” Merriam-Webster defines “holistic” as “relating to or concerned with wholes or with complete systems rather than with the analysis of, treatment of, or dissection into parts”. As a result, the B3 Code in its entirety fails the test to be “municipal zoning regulations” and does not qualify as exempt under LGC 245.004.

- The broad exceptions to the general “municipal zoning regulations” exception in LGC 245.004 swallow the general exception when applied to the B3 Code. The “B3 Development Tables” in the Code, which “contain the details necessary to develop using the Code” contain specific requirements for lot sizes, lot dimensions, lot coverage, building sizes, open space and park dedication requirements. Any regulations which have any effect on these areas are subject to vesting as “exceptions to the exceptions”. As a form-based code, the core focus is on infrastructure, particularly the street grid and “blocks”. This approach, by its nature, affects the LGC 245.004 Vested Rights. Given that the details necessary to develop using the B3 Code directly affect the LGC 245.004 Vested Rights, the B3 Code fails the test and does not qualify as exempt under LGC 245.004.

In summary, the B3 Code (as defined herein to include relating manuals) is not exempt from LGC 245 and therefore, the B3 Code does not apply to the Project.

**Appeal #4: To the extent the Project is subject to any elements of the Bastrop Building Block (B3) Code, the B3 Technical Manual, and the Development Manual, what are they?**

As stated in #3, 71 RP asserts that the entirety of the Bastrop Building Block (B3) Code, the B3 Technical Manual, and the Development Manual are not applicable to the Project. To the extent the City asserts that the B3 Code is a “municipal zoning regulation”, subject to the LGC 245.004...
Vested Rights in LGC 245.004(2), 71 RP asserts that the Project is specifically exempt from the following elements (listed by Chapter) and asks the City to confirm the same:

- **Executive Summary:** This section is not regulatory in nature and should not be applicable to the Project.

- **Chap. 1:** Chapter 1: *Subdivisions* is not applicable to the Project. Pursuant to LGC 245, the Project is grandfathered to the subdivision ordinance in effect at the time of the original application and therefore any future subdivision or platting application for the Project would not be subject to the requirements of Chapter 1.

- **Chap. 2:** Chapter 2: *Zoning Procedures* deals with procedural aspects only. It is only applicable to the extent there is no effect on the LGC 245.004 Vested Rights (which we believe eliminates the B3 Code in its entirety).

- **Chap. 3:** Chapter 3: *Place Type Zoning Districts* cannot be fairly read as “municipal zoning regulations”. There is no focus on use, whether with a hierarchy of uses or separate of uses. But for a gratuitous scattering of the word “zoning” in Chap. 3, it reads like a subdivision or platting regulation, focused on street and block patterns and size. The geographic division is not based on use, but on street block based subdivision/platting standards. The requirement to prepare a Neighborhood Regulating Plan (a “NRP”) is a critical component of the B3 Code and its focus is purely streets and blocks. Each NRP will be unique to each site, thus will not be uniform for each class or type of building in a district, as required by LGC 211.005. The districts and related regulations do not consider each district’s peculiar suitability for particular uses, as required by LGC 211.005, and don’t consider or regulate uses at all. Chapter 2 of the B3 Technical Manual, which describes the NRP process, is titled “Site Planning and Private Realm.” A fair reading of that Chapter shows that it is not part of “municipal zoning regulations”, but rather subdivision and platting regulations. Article 2.3 of the B3 Technical Manual states “Neighborhood Regulating Plans are used as the process to create new complete neighborhoods. Each neighborhood will be made of a series of blocks created for a variety of Street Types, Building Types, and Place Types.” The NRP’s process to create “new complete neighborhoods” requires dedication of land for streets of designated sizes to creates certain block sizes to build specifically designated building types. The NRP is platting and subdivision regulation, not zoning, which is why the NRP is the first step for any owner of greater than 3.4 acres under the B3 Code seeking to subdivide its land. The NRP is a part of the the platting process, not the zoning process. The NRP process is subject to vested rights and is not applicable to the Project (and no portion of Chapter 3 of the B3 Code or Chapter 2 of B3 Technical Manual is applicable). As such, the NRP
process directly affects the LGC 245.004 Vested Rights and is not exempt under LGC 245.004.

- **Chap. 4-** Chapter 4: *Character Districts* of the B3 Code can’t be fairly read as “municipal zoning regulations”. There is no focus on use, whether with a hierarchy of uses or separate of uses. The districts and related regulations do not consider each district’s peculiar suitability for particular uses, as required by LGC 211.005, and don’t consider or regulate uses at all. Chapter Four of the B3 Code states that “Character Districts are the largest regulating geographic boundary in the Code” and “…each character district allows for different Development Patterns.” If this Chapter is “municipal zoning regulations”, it is only applicable to the extent there is no effect on the LGC 245.004 Vested Rights (which we believe eliminates the B3 Code in its entirety).

- **Chap. 5-** Chapter 5: *Development Patterns* of the B3 Code states “The Development Pattern type will be used to guide the creation of...the Neighborhood Regulating Plan.” Chapter 5 cannot be fairly read as “municipal zoning regulations”. There is no focus on use, whether with a hierarchy of uses or separate of uses. As stated above, the Project is exempt from submitting a NRP and therefore is exempt from Chapter 5 of the B3 Code. In addition, Chapter 5 states the Project is located in the “Meadows” Character District, which solely permits either a Development Pattern of Traditional Neighborhood Development or Village Center Development. Each of these Development Patterns imposes development requirements on the Project that affect LGC 245.004 Vested Rights. If this Chapter is “municipal zoning regulations”, it is only applicable to the extent there is no effect on the LGC 245.004 Vested Rights (which we believe eliminates the B3 Code in its entirety).

- **Chap. 6-** Chapter 6: *Private Realm* is not applicable to the Project. Chapter 6 states the permitting requirements under the B3 Code for building and site plan approvals, which are pre-requisites under the B3 Code for issuance of a building or construction permit. Chapter 6 clearly affects the LGC 245.004 Vested Rights, including without limitation, lot coverage and building size (as dictated by the Façade Buildout at Build-to-Line minimum percentage requirement), which is shown most clearly in the chart under Sec. 6.5.003 on Page 109. While lot coverage is explicitly dictated by Chapter 6, the use of the minimum “Build-to-Line” percentage requirement effectively dictates building size, which is included in the LGC 245.004 Vested Rights by requiring that a building be a minimum length based on the lot dimensions. By imposing a strict requirement on building dimensions, certain building sizes are impossible or impractical to build. Chapter 6 also affects landscaping and tree preservation (Section 6.3.004), which is a LGC 245.004 Vested Right.
• **Chap. 7**- Chapter 7: *Public Realm* is not applicable to the Project. Chapter 7 states the requirements for public dedication of streets and other ROW’s of certain size and design, which impact LGC 245.004 Vested Rights, including without limitation landscaping and tree preservation, open space and park dedication, property classification, lot size, lot dimensions, lot coverage, and building size. Each aspect of Chapter 7 affects the LGC 245.004 Vested Rights and are therefore not exempt under LGC 254.004(2). Instead, Chapter 7 is a subdivision or platting regulation. In addition, Section 7.4.001 *Intent* states “The Bastrop Building Block is the foundation of Bastrop and of the Code.”. If the foundation of the Code is not exempt under LGC 254.004, then the Code itself cannot be exempt. Furthermore, Article 7.5 requires a specific percentage of any Project to be dedicated to Civic Space, which clearly affects LGC 245.004 Vested Rights and is not exempt under LGC 254.004.

• **Chap. 8**- Chapter 8: Signage is not applicable to the Project. Chapter 8 states the requirements for securing sign permits, which is not a municipal zoning regulation and therefore is not exempt under LGC 254.004. In addition, the Project benefits from an agreement between the City of Bastrop and Hal and Lisa Berdoll dated July 17, 1993, in which the City of Bastrop agrees to issue all permits, variances, and approvals as may be required to construct, own, and operate a sign with a height not to exceed twenty (20) feet higher than any sign, flag pole, or similar structure which may exist within 2500 feet (all as more particularly in described in such agreement). 71 RP reserves any and all rights under such agreement.

• **Chap. 9**- Chapter 9: *Historic Landmark Preservation & The Iredell District* are not applicable to the Project due to the nature of such chapter.

• **Chap. 10**- Chapter 10: *Definitions* is not applicable to the Project to the extent such definitions define terms that affect vested rights under LGC 245, including without limitation the LGC 245.004 Vested Rights or are otherwise used in the sections of the B3 Code that are not applicable to the Project.

• The B3 Technical Manual and the Development Manual (collectively the “Manuals”) simply implement the B3 Code, and to the extent the B3 Code (or any portion thereof) is not applicable, then the Manuals are also not applicable. The Manuals do not stand on their own.

The B3 Code does not comply with the mandatory requirements of LGC 211.005(b) for its regulations to be uniform for each class or type of building in a district, to be adopted with reasonable consideration for each district’s peculiar suitability for particular uses, thus the B3
Code cannot be considered zoning regulations, as Texas municipal zoning regulations may only be adopted in compliance with LGC 211.

In summary, 71 RP asserts the listed provisions of the B3 Code (as defined herein to include all related manuals) are not applicable to the Project.

**Appeal #5: The Project is vested from changes in the City Stormwater Drainage Ordinance.**

71 RP believes the CM Determination made an erroneous determination that the Stormwater Drainage Code is exempted from LGC 245, which is incorrect.

LGC 245.004 provides that LCG 245 does not apply to "(9) regulations to prevent imminent destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy..." (emphasis added). This is the only exemption relating to stormwater drainage in LGC 245. Lot 7 is not within a flood plain established by a federal flood control program. The City’s Stormwater Drainage Ordinance is not applicable to the Project. This section is interpreted in the manner requested in the *koppolow* case cited in the Addendum.

**REQUEST FOR VARIANCE**

The Ordinance permits the ZBA to grant a variance from the regulations at issue under the same standards governing variances for other matters.

If the appeal is denied, in the alternative, 71 RP requests a variance for Lot 7 to be exempt from the B3 Code, particularly the requirements for a NRP, the requirements to develop in accordance with the TND or VCD Development Patterns in Chapter 5, compliance with the Building Placement requirements in Chapter 6, any building size regulation (or regulations that affect building size, including without limitation the Build-To-Line and building to land ratio), any minimum or maximum building setback (or “Build-to” requirement), and any other B3 Code requirement which affects the LGC 245.004 Vested Rights. All of the information, documentation and discussion in the City file and in this letter are incorporated as part of the record for this variance.

This variance is based upon hardship, and is not adverse to the public interest (or the interest of any neighboring property), promotes economic development, will promote the availability of market driven providers of goods and services to Bastrop, is due to the unique circumstances of Lot 7, is consistent with intent of City Code to encourage reasonable development, and meets the requirements for a variance under state law and city ordinance.

Lot 7 is a small, single lot located in a suburban area of Bastrop impacted by the existence of State Highway 71, a major, heavily trafficked highway bisecting Bastrop. Lot 7’s only frontage with a public right-of-way is along State Highway 71 and as far back as 2013 has been shown on plats, plans and schemes to be a “commercial reserve” or “pad site”. These reserves/sites are locations for single owners or tenants with retail/office/restaurant/etc. uses who wish to be located on
high traffic roadways in front of other developments, sometimes commercial and sometimes residential. Users are typically single story and require ample parking, and often a drive-through window (1 or more). An example is the Medtail project on Lot 6 directly to the east of Lot 7. In almost all instances, the user requires that vehicles can circle the building, and that there are parking spaces immediately at the entrance of the building, for customer convenience.

There are 8 lots planned in a row, including Lot 7 (and Lot 8 for which a plat has also been filed with the City). These lots are shown on the 2013 Application and the 2017 Application. Five lots are owned by Seton Hospital, one by Medtail and Lots 7 & 8 by 71 RP. On the other side of Lot 8 is a fully developed suburban style retail shopping center. Lots 6 and the shopping center have all been developed prior to the B3 Code.

The Hwy 71 frontage around Lot 7 for a mile in each direction is clearly suburban retail/restaurant/commercial developed in a manner which is fundamentally inconsistent with the B3 Code. The following factors are a hardship for Lot 7:

- The size and lot dimensions of Lot 7 vary significantly from the 330 x 330 preferred Block size for a TND and is substantially smaller than the minimum 13.6 acres for a VCD making development under the B3 Code impractical.
- There is no public right-of-way with frontage on Lot 7 that is conducive to a pedestrian oriented development. State Highway 71 is the only public RCW with frontage on the property. It is doubtful that pedestrians would walk down the frontage road of State Highway 71 to access Lot 7.
- There are no sidewalks as part of the the existing development immediately to the east and west along State Highway 71, which could lead to a potentially dangerous situation if Lot 7 were forced to develop along the highway frontage.

Lot 7 has grandfathered rights under LGC 245, acknowledged by the City to vest Lot 7 in the City Subdivision Ordinance in effect in 2017, prior to the B3 Code. Such vesting also prevents the application of any portion of the B3 Code to the LGC 245.004 Vested Rights, which is acknowledged by the City, but the City does not agree to the scope of those vested rights. By the nature of the B3 Code, 71 RP reasonably believes that, at a minimum, the B3 Code is subject to all vested rights under LGC 245, including without limitation the LGC 245.004 Vested Rights. If not resolved by the Appeal, those rights will be resolved as provided by law. The confusion regarding the applicability of the B3 Code is a hardship.

Requiring Lot 7 to comply with the B3 Code will prevent the appropriate use of Lot 7 and create a hardship because the following are unreasonable and unnecessary in the context of Lot 7 as outlined above and will preclude any market based user:
• compliance with the Building Placement requirements of the B3 Code, including without
  limitation the “Build Along” requirement requiring a building along a minimum amount
  of the building to be constructed along the frontage line;
• any regulations requiring building frontage along public rights-of-way;
• any regulations that affect building size (including without limitation the Build-To-Line or
  building to land ratio);
• any minimum or maximum building setback (or “Build-to” requirement).

A drive along Hwy 71 shows that commercial reserve/pad site users want lots of parking and
access, to face the roadway with the most traffic, to provide for parking around the front entry,
to have drive up/through windows (particularly after the COVID-19 experience), to have small
buildings which are typically squarish (for space efficiency/cost control). A fully B3 Code
compliant building isolated in the middle of typical suburban highway development serves no
purpose and requiring compliance likely eliminates all economically viable use and value.

A NRP of Lot 7 will serve no reasonable purpose if the above regulations are not applicable.

71 RP requests a variance in accordance with the foregoing.

LEGAL CITATIONS

The Ordinance requests legal grounds, and seems to want a legal brief on this matter, when 71
RP is simply trying to comply with a City requirement to help the City determine its own
conclusion on vested rights, and the City has no authority to adjudicate vested rights binding on
71 RP. Nonetheless, we attach an addendum with reference to LGC 245 and relevant case law.
Our primary reliance is on the text of LGC 245, as cited herein and available online to the City.

CONCLUSION

71 Retail Partners and its representatives looks forward to the opportunity to present these
appeals and the variance in person to the Zoning Board of Adjustment. Should any further
information or clarification be required, please do not hesitate to contact us.

Sincerely,

[Signature]

Douglas M. MacMahon
Manager of the General Partner of 71 Retail Partners, L.P.
Addendum

Relevant Caselaw Supporting this Application

River City Partners, Ltd v. City of Austin, NO. 03-19-00253-CV, 2020 WL 3164404 (Tex. App.—Austin, 2020, no pet. h.)- Interpretes the LGC 245.004 Vested Rights and that the term “affecting” means broadly interpreted “to produce an effect on” and is applied to the subject ordinance “as applied” to the project, in this case focused on “building size.”


FLCT, Ltd. v. City of Frisco, 49 S.W.3d 238 (Tex. App.—Fort Worth 2016, pet. den.)- The exceptions to the “municipal zoning regulations” except to vested rights under LGC 245.004 as determined on an “as applied” basis to any regulations which “have an effect” on the listed exception issues. The exception for “property classification” means the permissible uses under the regulator scheme when vesting occurs. A project is entitled to all uses permitted when vesting occurs. “Fair notice” of a project incorporates all the city actual knows about the project, not just what the applicable documents. The definition of a “project” is broad.

City of San Antonio v. Kopplow Development, Inc., 441 S.W.3d 436 (Tex. App.—San Antonio 2014, pet. den.)- LGC 245.004(9) does not vest local flood plain regulation, and the local regulation was subject to vested rights under LGC 245.1.

City of San Antonio v. Greater San Antonio Builders Ass'n, 419 S.W.3d 597 (Tex. App.—San Antonio 2013, pet. den.)- A city may not add local limits to vested rights, only LGC 245 determines vested rights.

Harper Park Two, LP v. City of Austin, 359 S.W.3d 247 (Tex. App.—Austin 2011, pet. den.)- The entirety of a development project is considered in a “project”, not components or phases. The definition of “permit” is very broad. The vesting is considered in the context of the regulatory scheme at the time to determine the scope of the project. The objective intent shown in the permit application is the focus for vested rights, not the subjective intent of the developer at the time of the vesting event.

Hartsell v. Town of Talty, 130 S.W.3d 325, 326 (Tex. App.—Dallas 2004, pet. denied)- Vested rights extend to the entire development project, land and buildings. The city tried to separate land development from building development, but that distinction was not permitted.

City of Austin v. Garza, 124 S.W.3d 867, 868 (Tex. App.—Austin 2003, no pet.)- LGC 254.002(d) is valid and permits the developer to “cherry pick” between vested regulations and later adopted regulations.
Powell v. City of Houston, 580 S.W.3d 391 (Tex. App.—Houston [1st Dist.] 2019 pet. granted)—Interprets what it takes to be a zoning ordinance in Texas and holds that the Houston Historic Preservation Ordinance is not zoning. It cites to several cases which state that use is part of zoning, including N.W. Enterprises, Inc. v. City of Houston, 27 F. Supp. 2d 754, 797 (S. D. Tex. 1998), aff’d in part, rev’d in part, dism’d in part, 352 F.3d 162, (5th Cir. 2003) (stating “the ‘ordinary, contemporary, common meaning’ of zoning refers to a comprehensive plan and encompasses regulations that establish affirmatively what land uses are permissible for certain geographic districts....”), and City of Houston v.Johnny Frank’s Auto Parts Co., 480 S.W.2d 774, 775 (Tex. App. – Houston [14th Dist.] 1972, writ. Ref’d n.r.e.) (stating “The ordinance with which this case is concerned is not a zoning ordinance. It does not establish a comprehensive plan by which the city is divided into districts wherein property is limited to specified uses....”) emphasis added.