


# Memo

**To:** Planning Board

**From:** Kim Golden, Engineering & Planning 

**cc:** Doug Kneupper, P.E., Herman Meyer, CBO

**Date:** December 17, 2021

**Re:** 6813 Wetzel - Request for variance to allow construction of a new single family residence on less than 2 acres.

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**Background** - The Applicant seeks to construct a new single family residence upon a one-acre parcel of property located at 6813 Wetzel Rd. The one-acre parcel was once part of a larger tract which has been in the applicant's family for generations. In 2014 the applicant's parents held title to approximately two acres where they resided in a single family dwelling with address 6811 Wetzel. The applicant's parents conveyed a one-acre parcel to the applicant by Warranty Deed with a metes and bounds description. See attached Exhibit A. The property conveyed was the west half of a Lot 3 described more particularly by metes and bounds. Applicant indicates the property as conveyed was landlocked and did not have public access.

In February 2019 the applicants parents then conveyed to her and her husband a second one-acre lot, being the east half of a Lot 3 described more particularly by metes and bounds. See attached Exhibit B. Based upon these transactions, Applicant owned a one-acre lot in her name alone which was landlocked, and a second, adjacent one-acre parcel in joint ownership with her husband. The second parcel was adjacent to a public street (Wetzel) and is understood to be the parcel where her parents reside in an existing single family dwelling.

In 2019 the applicant started contacting the City about building upon a one acre parcel. She was aware of the two-acre rule at the time of her inquiry. By email from an employee of the City she was advised in August 2019 that she would be allowed to build upon the one acre lot provided she acquired a 30ft easement across the lot which she represented as belonging to her parents to provide access to a public street. A copy of this email is attached as Exhibit C.

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Applicant had no further contact with the City until September 2021 at which time the Applicant's contractor sought to obtain a building permit to build a single family residence upon the one acre parcel. The Chief Building Official denied the permit for failure to meet the minimum lot size requirement of 2 acres.

**Applicable Ordinances:** The property does not have access to off-site sanitary sewer service which triggers the minimum lot size requirements of Section 159.050. The ordinance requires a minimum of 2 acres at least 200 ft wide for residential construction.

Per the ordinance, the sole variance procedure specific to lots without access to sanitary service is by the City Commission which has the authority for granting variances to the minimum lot size requirement, following review and written recommendation from the Planning Board. Sec 159.050 (F)(3)(a)-(d).

The City Commission may authorize a variance from the two-acre or 200-foot width requirements for on-site sanitary sewer facilities when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the Commission shall prescribe only conditions that it deems necessary or desirable to protect the public interest. Sec 159.050 (F)(3)(a).

In making the findings required in this section, the Commission shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who will reside at the proposed location, and the probable effect of the variance upon the public health, safety, convenience and welfare in the vicinity. Sec 159.050(F)(3)(b).

The ordinance states "no variance shall be granted unless the Commission finds:

1. There are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his or her land;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
3. The granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
4. The granting of the variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this chapter."

**Role of the Planning Board** – Although most site specific variances are referred through the Board of Adjustments, the Texas City Code of Ordinances clearly carves out the particular variance from the 2 acre and 200 ft width minimums for lots with on-site sanitary sewer to the City Commission for specific consideration and decision. However, the ordinance does not leave the decision to the unfettered discretion of the Commission. Rather, the Ordinance enumerates four specific findings which must be made to support the granting of a variance. To assist the Commission with these findings, the Ordinance also directs the Planning Board to review and make written recommendation to the City Commission concerning such variance.

The role of the Planning Board is to review all of the information provided by the applicant and by staff in the context of the specific findings which must be established to support the granting or denial of a variance. The Planning Board is required to make written recommendation to the City Commission regarding the variance request. As with referrals to City Commission from the Zoning Commission, the Planning Board may recommend approval, approval with conditions, or recommend denial of the variance request. The recommendation must be in writing.

**Staff analysis:** The entirety of applicant's submittals are presented to the Planning Board for review. A copy of the complete ordinance relating to the lot size minimums and the variance procedure has also been provided. The facts are a bit convoluted and span a period of almost 3 years. During that time the City has been through a period of transition with staffing and other changes at every level of the administration. The disruption of COVID and the pandemic should also not be overlooked.

The applicant shows through her application and supporting documentation that she has attempted to understand and comply with the applicable ordinances. There are two complicating factors. First, the ownership of two one-acre lots. Second, a lack of clarity about Applicant's intended use and future plans regarding sale of the existing residence (6811 Wetzel).

Timeliness of request: The applicant asserts and has evidence that she received approval from staff in August 2019 to construct a single family home upon a one-acre lot with on-site sewer provided she obtained an easement to the public street, Wetzel. However, applicant did not request nor obtain a building permit within 12 months from such approval. Applicant's contractor began seeking a building permit in September 2021.

Applicant has provided information explaining the delays between August 2019 and September 2021. Texas City is very consistent in requiring prompt action upon approvals in the context of zoning approvals, planning approvals, and building permits. All of these actions require substantial action in exercising the permissions and moving forward with the intended project within 12 months from receiving the approval, or it is considered expired.

The creation of two one-acre lots: Dividing the property by Warranty Deed violated the requirements of Subdivision Ordinance Section 159.005 which requires the filing of a plat for any division of property which creates lots smaller than 5 acres. If applicant had followed the subdivision procedure as outlined in the Subdivision Ordinance, the subdivision of the two-acre parcel into two one-acre lots would have been denied due to the lack of access to off-site sanitary sewer service.

Applicant indicates she is unable to re-plat the two one acre parcels into a single two acre parcel because of her active construction loan which encumbers only the parcel which will be the site of the new house. She also indicates that the parcel upon which her parents reside has certain favorable conditions regarding property tax due to their ages.

Intended use or purpose: Applicant's communications have not been totally clear about whether she intends to have two permanently occupied residences upon the two acres, or a permanent residence and a guest quarter. This lack of clarity from the beginning has contributed in part to the confusing responses from city staff. In 2019 when former City Engineer, Doug Kneupper, P.E., indicated after consultation with the administration that a

building permit could issue it was in the context that the existing residence would be removed when vacated by the parents or converted to a guest quarter. A “guest quarter” is defined in the Zoning Ordinance as “A secondary structure on a lot which may contain dwelling accommodations for the occupancy by guests not for rent or lease or permanent occupancy. Such building shall not have a separate utility meter.” Sec. 160.006(c).

Other considerations in the area: Humble Camp Road and Wetzel Road are within an area of Texas City where land values are rising. However, neither municipal water nor sanitary sewer service are available. Extensions of such services are cost prohibitive and unlikely to occur within a foreseeable future timeframe. Market pressures are motivating landowners and developers to seek subdivision into less than two-acre lots. The CBO also frequently receives requests to construct barns and “barndominiums” on parcels of less than two acres. Such requests are routinely denied in accordance with the Subdivision Ordinance.

The CBO has received a specific complaint about this site from the adjacent property owners. A copy of their email communications are provided.

Applicant’s examples of existing exceptions to the 2-acre minimum: The addresses provided by the Applicant are being researched by the Chief Building Official. This report will be supplemented with his additional findings at the meeting of the Planning Board.

Written Recommendation from the Planning Board. As previously indicated in this report, the Planning Board upon consideration of the facts and information it receives from the public meeting and from the documents submitted by the Applicant and by staff, the Board is required to make a written recommendation to the City Commission regarding action upon the request for variance from the requirement of a minimum lot size of 2-acres and 200 ft width.

When the Board determines it has sufficient information to make a recommendation, it could impose reasonable conditions upon such recommendation. A requirement to re-plat is specifically identified as a reasonable condition in Section 160.050 (F)(3)(e)(2) of the Ordinance.

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Exhibit A – Warranty Deed 2014

Exhibit B – Warranty Deed 2019

Exhibit C – COTC email dated August 2019