

City of Hubbard, Texas

Ordinance 032024-4041

Specific Use Permit and Variance

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUBBARD, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF HUBBARD, TEXAS, TO GRANT A SPECIFIC USE PERMIT AND VARIANCE, SPECIFICALLY TO (1) ALLOW FOR THE CONTINUED OPERATIONS OF A FOOD MANUFACTURING, PROCESSING, PACKAGING, AND DISTRIBUTION FACILITY AT 1005 NW 4TH STREET, J BULLARD A-85 TR 4, 1.88 ACRES (THE "PROPERTY"); (2) PROVIDE FOR SPECIAL CONDITIONS AND EXEMPTIONS; (3) PROVIDE FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND (4) PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, the current owner of the Property ("Current Owner"), for and on behalf of Current Owner and any successors and assigns thereof, has requested a specific use permit for the Property to allow for food manufacturing, processing, packaging, distribution and any ancillary or related activities (such use, the "Specific Use"; such permit, the "Specific Use Permit"); and

WHEREAS, the use, setback, lot width, façade, occupancy, and parking at the Property (the "Nonconformities") do not conform to the zoning ordinances set forth in the Code of Ordinances of the City of Hubbard currently in effect, which zoning ordinances were adopted as part of Ordinance 081115-02 (the "Code of Ordinances"), and Current Owner, for and on behalf of Current Owner and any successors and assigns thereof, has also requested a variance to allow such Nonconformities at the Property (the "Variance"); and

WHEREAS, the City Council which is the governing body of the City of Hubbard, in compliance with the Code of Ordinances, have given the requisite notices by publication and otherwise, and has held a public hearing for the Citizens of Hubbard, and the governing body in the exercise of its legislative discretion has concluded that the Specific Use Permit and the Variance should be granted as follows:

Section 1. The Specific Use Permit and the Variance shall be granted for the facility currently located at the Property only for and on behalf of Current Owner and any successors and assigns thereof. For the avoidance of doubt, this Specific Use Permit is assignable and transferrable, without requiring any further consents or approvals, to any successive owner of the Property so long as the Property is continued to be used for the Specific Use.

Section 2. Notwithstanding any restrictions, prohibitions or requirements set forth in the Code of Ordinances, as they exist now or as may be amended or replaced in the future, including without limitation, Sections 7-1.06 and 7-1.09 of the Code of Ordinances (as same may be amended, modified or replaced): (1) the Specific Use Permit shall allow the continued use of the Property for the Specific Use;

and (2) the Variance shall expressly exempt the Nonconformities on the Property from any ordinance, rule or regulation which requires such Nonconformities to be brought into conformance absent an express termination or revocation of the Variance.

Section 3. That the Specific Use Permit and the Variance shall be subject to the requirements set forth herein below:

1. No live swine or other live animals for slaughter will be allowed on this property.
2. No materially offensive smell may be permitted from the meat packing plant.
3. Building must be on a permanent foundation and all structures that are portable must be behind permanent structured walls that prevent viewing of the portable buildings from Hwy 31.
4. Building Official of the City of Hubbard has authority to deny the Certificate of Occupancy at this location of Plant if there are any State or local violations relating to new improvements for which a permit is required.
5. Except with respect to any ordinance or requirement which purports to prohibit, condition, or otherwise restrict the use of the Property for the Specific Use or the operation of the Property with the Nonconformities in place, the Code of Ordinances of the City of Hubbard shall fully apply to the Property and to any and all activities conducted thereon.

Section 4. Any person, firm, or corporation violating any of the conditions of Section 3 above shall, after failing to cure such violation within thirty (30) days following written notice by the City, be punished by a penalty of fine not to exceed the sum of TWO THOUSAND DOLLARS (\$2,000.00) for each day thereafter that such violation continues.

Section 5. If any section, paragraph, or provision of this ordinance or the application of that section, paragraph, or provision to any person, firm, corporation or situation is for any reason judged invalid, the adjudication shall not affect any other section, paragraph, or provision of this ordinance or the application of any other section, paragraph or provision to any other person, firm, corporation or situation, nor shall adjudication affect any other section, paragraph, or provision of the Code of Ordinances of the City of Hubbard, Texas, and the City Council declares that it would have adopted the valid portions and applications of the ordinance without the invalid parts and to this end the provisions for this ordinance are declared to be severable.

Section 6. The City Secretary confirms that if there are at least 20% of the neighbors that live within 200 feet of said property complain about the specific use permit then at least 4 out of the 5 council members voted for the specific use permit.

Section 7. That this ordinance shall take effect immediately from and after its passage and the publication of the caption of said ordinance as the law in such cases provides.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF HUBBARD, TEXAS, this 19th day of March, 2024.

Mary Alderman

Mary Alderman, Mayor

ATTEST:

Diana Hall

Diana Hall, City Secretary



THIS INSTRUMENT WAS PREPARED BY:
MAYER BROWN LLP
700 Louisiana Street, Suite 3400
Houston, Texas 77002

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
MAYER BROWN LLP
Attn: Andy Romay
700 Louisiana Street, Suite 3400
Houston, Texas 77002

(Reserved)

ENCROACHMENT LICENSE AGREEMENT

This ENCROACHMENT LICENSE AGREEMENT ("Agreement") is entered into this 19th day of MARCH, 2024 by and between CITY OF HUBBARD ("Grantor"), and WILD BOAR MEATS, L.L.C., a Texas limited liability company ("Grantee"). Grantor and Grantee are sometimes collectively referred to as the "Parties," or individually as a "Party." The Parties agree as follows:

RECITALS

WHEREAS, Grantor is the fee simple owner of the street in Hubbard, Texas named NW 3rd Street (the "City Street"), as shown on Exhibit "A" attached hereto and made a part hereof;

WHEREAS, Grantee is the fee simple owner of the real property commonly known as 1005 NW 4th Street, Hubbard, Texas (the "Wild Boar Property"), as more particularly described on Exhibit "B" attached hereto and made a part hereof;

WHEREAS, Grantee and Grantor share a common boundary line along the north boundary of the City Street and along the south boundary of the Wild Boar Property;

WHEREAS, Grantee and/or its predecessor-in-interest to the Wild Boar Property installed and constructed a concrete pad (the "Concrete Pad") and have continuously maintained same since its installation;

WHEREAS, a portion of the Concrete Pad encroaches onto the City Street (the "Encroachment"); and

WHEREAS, Grantee desires to obtain an exclusive encroachment license upon, over, under, through and along City Street within the area depicted on Exhibit "C" attached hereto and made a part hereof (the "License Area") permitting the Encroachment to exist, as more particularly described below, and Grantor desires to provide Grantee with such license in accordance with the terms of this Agreement.

I. TERMS

NOW, THEREFORE, in consideration of the promises, agreements, covenants and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. Recitals. The recitals set forth above are incorporated herein by reference and are made a part of this Agreement.

2. Grant of Easement. Grantor hereby grants and conveys to Grantee an exclusive encroachment license (the "License") to reconstruct, maintain, use, inspect and repair the Encroachment and to allow the continued use by the Grantee upon, over, under, through, along and across the License Area for the benefit of the Wild Boar Property.

3. Assignment. Grantee shall have the right to grant, sell, assign, sublease, convey or transfer all or a portion of Grantee's rights or interest in this Agreement provided (i) any Assignment shall be in writing, duly executed and acknowledged by Grantee and the Assignee; and (ii) that the Assignee assumes and agrees to perform and observe all the agreements, covenants and conditions of this Agreement.

4. Indemnification. Grantee shall indemnify and hold Grantor harmless from and against any actual damage to person or property caused by Encroachment and the negligent acts or negligent omissions of Grantee, its contractors, agents and employees, arising out of any entry by any of the foregoing upon the License Area for the purposes herein set forth.

II. GENERAL PROVISIONS

A. Authority. Grantor and Grantee represent and warrant that each Party: (i) has the requisite power and authority to execute this Agreement and to convey and receive the License as contemplated by this Agreement, (ii) the person executing this Agreement on behalf of each party is authorized to do so, and (iii) each Party has duly executed and delivered this Agreement, and this Agreement constitutes the legal, valid and binding obligation of each Party, enforceable against each Party in accordance with its terms.

B. Advice of Counsel. The Parties represent that they have been advised of the effect of this Agreement by their own attorneys, or that they have had the opportunity to consult with an attorney of their choosing, have investigated the facts and are not relying upon any representation or acknowledgment, whether oral or in writing, of any other Party hereto except as contained herein.

C. Further Assurances. The Parties hereto agree to perform such acts and to prepare, execute, and file any documents required or reasonably requested to perform the covenants, to satisfy the conditions herein contained, or to give full force and effect to this Agreement.

D. Meanings of Pronouns and Effects of Headings. As used in this Agreement, the masculine, feminine and/or neuter gender, in the singular or plural, shall be deemed to include the others whenever the context so requires. Captions and paragraph headings are inserted solely for convenience and shall not be deemed to restrict or limit the meaning of text.

E. Entire Agreement. Except as otherwise set forth herein, this Agreement embodies the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings

relating specifically to the limited subject matter hereof. No course of prior dealing between the Parties, no usage of the trade, and no parol or extrinsic evidence of any nature shall be used or be relevant to supplement, explain, or modify any term used herein.

F. Counterparts. This Agreement may be signed in one or more counterparts, each of which will be deemed an original. Facsimile or E-mail copies of this Agreement and the signatures hereto may be used with the same force and effect as the original. This Agreement will be deemed fully executed and effective when all Parties have executed at least one of the counterparts, even though no single counterpart bears all such signatures.

G. Modification in Writing Only. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated, except by a subsequently executed instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge or termination is sought.

H. Attorneys' Fees and Costs. The Parties are responsible for their own respective attorneys' fees, costs and expenses in connection with the matters which are the subject of this Agreement as well as all attorneys' fees, costs and expenses in connection with the negotiation, drafting, and execution of this Agreement. In the event that any party sues to enforce any provision of this Agreement, the prevailing party shall be entitled to all fees and costs (including reasonable and necessary attorney's fees) incurred in the enforcement of its rights hereunder.

I. Construction and Severability. This Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to resolve completely those claims and disputes between the Parties and any claims or defenses that may exist as more fully described herein. If any provision of this Agreement shall be determined to be invalid, void or illegal, such provision shall be construed and amended in a manner which would permit its enforcement but in no event shall such provision effect, impair or invalidate any other provision hereof.

J. Voluntary Agreement. The Parties acknowledge that this Agreement is executed voluntarily by each of them, without duress or undue influence on the part of any of them.

SIGNATURES ON NEXT PAGE(S)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the day and year set forth above.

GRANTOR:

CITY OF HUBBARD

By: Mary Alderman
Name: Mary Alderman
Title: Mayor

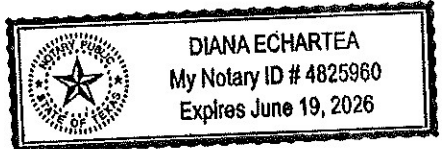
STATE OF TEXAS
COUNTY OF HILL

The foregoing instrument was acknowledged before me this 19th day of MARCH, 2024, by Mary Alderman, Mayor of CITY OF HUBBARD, on behalf of the corporation. He/She is personally known to me or has produced _____ as identification and did (did not) take an oath.

NOTARY PUBLIC:

Diana Echartea
State of Texas (Seal)
Hill County

My commission expires: 6/19/26



GRANTEE:

WILD BOAR MEATS, L.L.C.,
a Texas limited liability company

By: _____
Name: _____
Title: _____

STATE OF TEXAS)
) SS
COUNTY OF HILL)

This instrument was acknowledged before me on _____, 2024, by _____,
_____ of **WILD BOAR MEATS, L.L.C.**, a Texas limited liability company, on behalf of
the limited liability company.

Notary Public

EXHIBIT "A"

Legal Description of City Street



EXHIBIT "B"

Legal Description of Wild Boar Property

All that certain lot, tract, or parcel of land, being 1.88 acres situated in the John Bullard Survey, Abstract No. 85, in the City of Hubbard, in Hill County, Texas, and being part of that certain tract conveyed in a deed from Orville W. Maddox to Ricky Cargile and wife, Carie Cargile, dated March 17, 2009 and recorded in Volume 1589, Page 687, in the Official Public Records of Hill County, Texas. Said 1.88 acres are more fully described as follows:

Beginning at a 1/2" rod set for the north corner of this tract and in a northwest line of the Cargile tract and in a southeast right-of-way of State Highway 31, a/k/a NW 4th Street, and in the west corner of a called 2.00 acres tract conveyed to Sumerukumar Arunkumar and Jalpeben Sumerukumar Nalk and recorded in Volume 1470 Page 534;

Thence South 35 degrees 34 minutes 03 seconds east along the northeast line of this tract and the southwest line of the called 2.00 acres tract, a distance of 255.38 feet to a 1/2" rod found for the east corner of this tract and the south corner of the called 2.00 acres tract, and northwest of a private road;

Thence South 53 degrees 14 minutes 19 seconds west along the southeast line of this tract and northwest of the private road and passing a 1/2" rod found at 291.21 feet, and continuing for a total distance of 326.42 feet to a 1/2" rod set for the south corner of this tract;

Thence North 36 degrees 40 minutes 35 seconds west along the southwest line of this tract a distance of 241.39 feet to a 1/2" rod set for the west corner of this tract and in a southeast line of said highway;

Thence North 46 degrees 46 minutes 47 seconds east along a northwest line of this tract and the highway right-of-way, a distance of 35.44 feet to a concrete monument found at an angle;

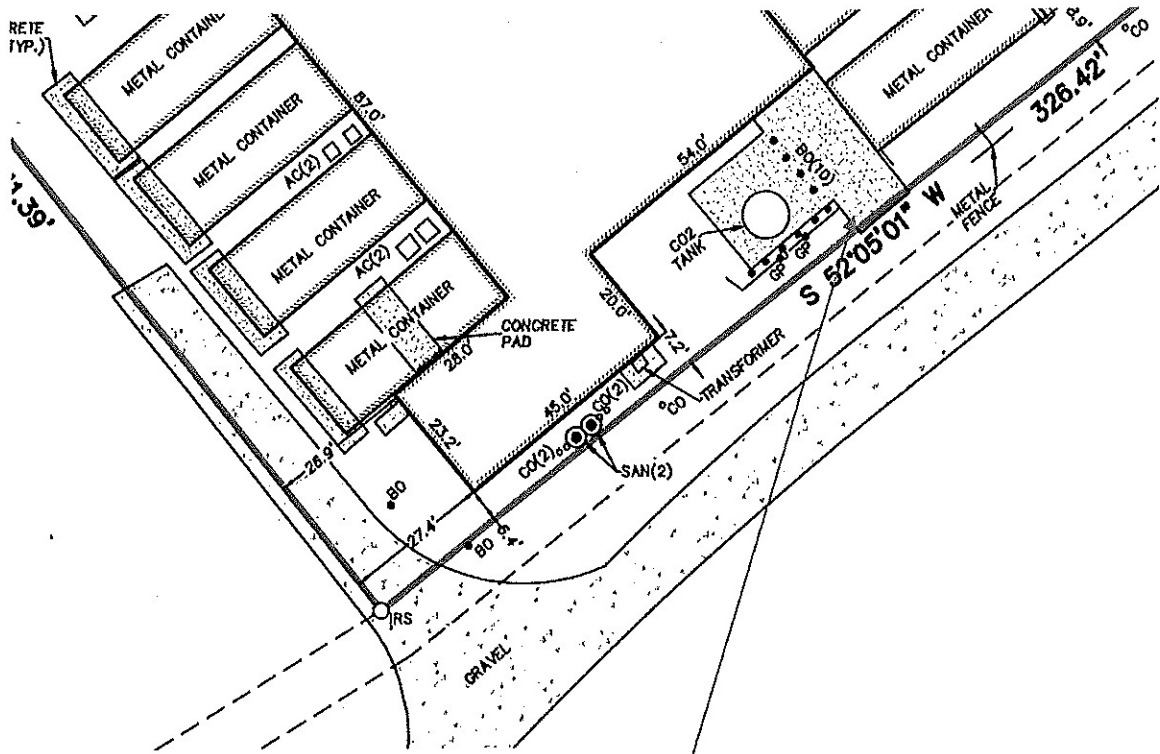
Thence North 51 degrees 39 minutes 49 seconds east along a northwest line of this tract and the highway right-of-way, and passing a concrete monument at 135.49 feet, and continuing for a total distance of 192.31 feet to a 1/2" rod set at the beginning of a curve to the left;

Thence along a curve in the highway right-of-way which has a radius of 5,789.65 feet, a central angle of 01 degrees 01 minutes 46 seconds, a tangent of 52.01 feet, a Long Chord of North 50 degrees 40 minutes 19 seconds east 104.02 feet, and an arc angle of 104.02 feet to the place of beginning and containing 1.88 acres of land.

EXHIBIT "C"

Easement Area

(Attached)



Easement Area – being the area in which the concrete pad for the CO2 tank encroaches – as shown above