

**ORDINANCE NO. 2024-647**

**AN ORDINANCE OF THE CITY OF SMITHVILLE, TEXAS APPROVING A VARIANCE FOR A REAR YARD SETBACK TO BE 8 FEET INSTEAD OF 10 FEET, A MASONRY WALL ADDITIONAL DESIGN STANDARDS TO USE A WOODEN FENCE AS AN EQUIVALENT NOISE ATTENUATING BARRIER, CHAPTER 14, PART 2 §2.2.10.D.3, AND FOR OFF-STREET PARKING AND LOADING, PARKING IN THE FRONT YARD SETBACK LINE, CHAPTER 14, PART 3, §3.5.1.H.2, CITY OF SMITHVILLE CODE OF ORDINANCES FOR PROPERTY LOCATED AT BURLESON ADDITION BLOCK 30, LOT 7 (E86' OF S ½), 8 (E 86'), AND THE NORTH HALF OF LOT 7, 0.096 ACRES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Pivot Edeavors, LLC has filed an Application for Variance, attached hereto as Exhibit A and incorporated herein for all purposes (the "*Application*"), related to the property located at Burleson Addition Block 30, Lot 7 (E 86' of S ½), 8 (E 86'), and the North half of Lot 7, 0.096 acres, seeking a variance for a rear yard setback to be 8 feet instead of 10 feet, masonry wall additional design standards to use a wooden fence as an equivalent noise attenuating barrier, Chapter 14, part 2 §2.2.10.D.3, for off-street parking and loading, parking in the front yard setback line, Chapter 14, part 3, §3.5.1.H.2, of the City of Smithville Code of Ordinances (the "*Ordinance*") to the extent and for the reasons set forth in the Application (the "*Variance*");

**WHEREAS**, pursuant to Texas Local Government Code § 211.009(a)(3), the City Council of the City of Smithville, sitting as the Board of Adjustment, has the authority to grant a variance from the terms of the Ordinance if the City Council determines that the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of the Ordinance is observed and substantial justice is done;

**WHEREAS**, the concurring vote of 75 percent of the members of the City Council is necessary to authorize a variance pursuant to Texas Local Government Code § 211.009(c);

**WHEREAS**, the City Council has received the recommendation regarding the Variance from the Planning and Zoning Commission;

**WHEREAS**, the City Council has taken into account the nature of the proposed land use, existing uses of land in the vicinity, the number of persons who will reside or work in the area, and the probable effect of such variance upon traffic conditions and upon the public health, safety convenience and welfare in the vicinity;

**WHEREAS**, the above considerations and the facts contained in the Application and presented during a public hearing, the City Council makes affirmative findings as to all of the following:

- (1) the variances will not be contrary to the public interest;
- (2) there are special conditions;
- (3) because of the special conditions, literal enforcement of the Ordinance would result in unnecessary hardship;
- (4) the spirit of the ordinance will be observed; and
- (5) substantial justice is done;

**WHEREAS**, the following conditions are desirable in the public interest (the “*Conditions*”):

- (1) The Property may only be developed substantially in accordance with the plan included in Exhibit A; and
- (2) Granting the Variance does not constitute approval of any other variances or other matters which may be depicted in the Application;

**WHEREAS**, the Planning and Zoning Commission of the City of Smithville, Texas, and the City Council of the City of Smithville, Texas, in compliance with State law with reference to the zoning ordinance of the City of Smithville, Texas, have given requisite notices by publication and otherwise; and

**WHEREAS**, the City Council finds and determines that the meeting at which this Ordinance was passed was open to the public, that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Chapter 551, Texas Government Code;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SMITHVILLE, TEXAS THAT:**


1. **Findings of Fact.** The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.
2. **Enactment.** Based on the above findings of fact, the City Council hereby GRANTS the Variances subject to the Conditions.
3. **Severability.** Should any section, subsection, sentence, provision, clause, or phrase be held to be invalid for any reason, such holding shall not render invalid any other section, subsection, sentence, provision, clause, or phrase of this ordinance, and the same are deemed severable for

this purpose.

4. **Effective Date.** This Ordinance shall be effective as of the date of adoption.

**PASSED, APPROVED AND ADOPTED THIS 8<sup>th</sup> DAY OF APRIL, 2024.**

**APPROVED:**

  
Sharon Foerster, Mayor

**ATTEST:**

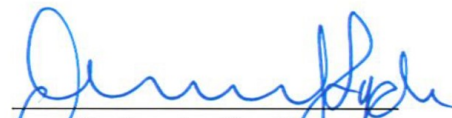
  
Jennifer Lynch, City Secretary

EXHIBIT "A"  
CITY OF SMITHVILLE

PLANNING & ZONING APPLICATION

APPLICATION TYPE

- Zoning Change Request:
- Change in Zoning Class
  - Change in Ordinance
  - Variance
  - Special Use Permit
  - Minor Plat/Subdivision
  - Other \_\_\_\_\_

- Number of Requests:
- Single
  - Multiple

PROPERTY IDENTIFICATION

Street Address 301 Bishop Street

\*\*\* Applicant must submit an accurate location map and site plan for application to be considered \*\*\*

- Legal description
- Platted Land (please provide subdivision, block and lot information below)
  - Unplatted Land (please submit the metes and bounds description from deed)

Subdivision Name: Burleson BIK

Property Tax Code: \_\_\_\_\_ Block Number: 30 Lot Number: 748

Property Owner (as listed on Deed): Pivot Endeavors LLC

Property Owner Mailing Address: 205 Fawcett St

Owner's Phone No: \_\_\_\_\_ Owner's Email: \_\_\_\_\_

Agent's Name (if applicable): \_\_\_\_\_

Agent's Mailing Address: \_\_\_\_\_

Agent's Phone No: \_\_\_\_\_ Agent's Email: \_\_\_\_\_

# DESCRIPTION OF VARIANCE / EXCEPTION REQUEST

Current Zone Class:	SF-1 <input checked="" type="checkbox"/>	SF-2 <input type="checkbox"/>	Proposed Zone Class:	SF-1 <input type="checkbox"/>	SF-2 <input type="checkbox"/>
	MR <input type="checkbox"/>	C-1 <input type="checkbox"/>		MR <input type="checkbox"/>	C-1 <input type="checkbox"/>
	C-2 <input type="checkbox"/>	C-3 <input checked="" type="checkbox"/>		C-2 <input type="checkbox"/>	C-3 <input checked="" type="checkbox"/>
	MHS <input type="checkbox"/>	MF <input type="checkbox"/>		MHS <input type="checkbox"/>	MF <input type="checkbox"/>
	CF <input type="checkbox"/>	PD <input type="checkbox"/>		CF <input type="checkbox"/>	PD <input type="checkbox"/>
	PD-Z <input type="checkbox"/>	I <input type="checkbox"/>		PD-Z <input type="checkbox"/>	I <input type="checkbox"/>
	CBD <input type="checkbox"/>	PD-Z <input type="checkbox"/>		CBD <input type="checkbox"/>	PD-Z <input type="checkbox"/>

Describe variance requested:

*See attached*

Describe special use requested:

Reason for Request:  
(explain why special exception is sought or why a variance has been requested)

*See attached*

## PETITION

As Owner/Agent, I hereby petition the City of Smithville for approval of the above described request as provided by the laws of the State of Texas and Ordinances of the City. I understand and agree that the Petition fee is non-refundable and that I must attend the Planning & Zoning meeting and subsequent City Council meeting in order for my application to be considered for approval.

Signature: \_\_\_\_\_

*[Handwritten Signature]*

Date: \_\_\_\_\_

*2/27/24*

### OFFICE USE ONLY:

Fee Amount: \_\_\_\_\_

*775*

Fee Payment: \_\_\_\_\_

*775*

P&Z Date: \_\_\_\_\_

*April 2, 2024*

Council Date: \_\_\_\_\_

*April 8, 2024*

Accepted By: \_\_\_\_\_

*Vitenowski*

Date Submitted: \_\_\_\_\_

*3-4-24*

Notice sent to property owners within 200 feet of proposed property

*3-8-24*





Please provide detailed information for consideration by the P&Z and City Council.  
Use additional pages if necessary:

1. Is the variance request contrary to the public interest?

YES  NO

2. Are there any special condition(s) affecting the property.

YES  NO

3. Explain the unnecessary hardship caused by the special condition(s).

4. Will the spirit of the ordinance be observed and substantial justice be done if the variance is granted? Please explain.

YES  NO

5. Is this land being used or developed for a reason other than a homeowner building or improving the homeowner's residence?

YES  NO

6. If YES checked above, do any of the unnecessary hardships in Section B apply to your variance request? Please explain.

NO

7. I affirm that I have read, Chapter 14, Part 5, §5.5.4, Lapse of Variance.

YES

A. Any rights authorized by a variance which are not exercised within **one (1) year** from the date of granting such variance shall lapse and may be reestablished only after a new application, notice and hearing pursuant to Section 5.5.

B. The City Council may waive the requirement for the payment of fees for such variance renewal application if there has been no material change of conditions pertaining to the property since the granting of the first variance.

APPLICANT SIGNATURE: \_\_\_\_\_



DATE: \_\_\_\_\_

2/27/24



1. Approval of rear yard setback reduced to 8' from 10'.
  - a. Due to the unusual division and layout of the lots on this corner our rear yard is drastically reduced in depth by approximately 40 feet. We're requesting a reduction of 2' for the setback for a covered patio.
  
2. Approval of a wooden fence as an equivalent noise attenuating barrier.
  - a. We feel, along with the resident abutting our lot, a wooden fence will be adequate in providing the separation needed to satisfy any anticipated issues. The abutting resident has also expressed to us that he does not want a masonry type wall separating the lots. You'll also see that directly on the property line is a large oak tree. Constructing a masonry wall would present issues in regards to this tree that could be overcome with the construction of a wooden fence instead.
  
3. Approval to allow parking to extend into the front yard setback on lot 7 ½ N.
  - a. We are trying to maximize the parking on the property. If allowed to utilize the front yard setback we would be able to add at least 2 additional parking spots. The neighbor abutting this lot has no issue with this variance being issued.

I think it's worth noting that we have a right of first refusal on the abutting residential property mentioned above (R15832). We have been working diligently with Mr. Knippa, the owner, during this whole process keeping him up to date with all the details of our upcoming project. Our reason for acquiring this right of first refusal is to be able to add additional parking if need be in the future. By securing the right of first refusal now we are proactively looking into the future as we see the growth potential of our business.