



**NOTICE OF MEETING**  
**ZONING BOARD OF ADJUSTMENT**  
**Wednesday, October 9, 2019 – 12:00 noon**

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Notice is hereby given that a meeting of the Zoning Board of Adjustments of the City of Marble Falls, Texas, will be held on **Wednesday, October 9, 2019, at 12:00 noon** in the City Hall Council Chambers located at 800 Third Street, Marble Falls, Texas, at which time the following subject will be discussed:

- 1. Call to order and announce presence of quorum.**
- 2. Citizen/visitor comments:** This is an opportunity for citizens to address the Zoning Board of Adjustment members concerning an issue of community interest that is not on the agenda. Comments on a specific agenda item must be made when the agenda item comes before the commission. The chair may place a time limit on all comments. Any deliberation of an issue raised during citizen comments is limited to a proposal to place it on the agenda for a later meeting.
- 3. Approval of Minutes:** Minutes from the regular meeting on September 17, 2019. (*Sabrina Smith, Board Secretary*)
- 4. Public Hearing, Discussion, and Action** regarding a request for Zoning Variances to the following sections of Appendix B, Development Code, City of Marble Falls Code of Ordinances, on Lot 15-A, Block 4, Marble Falls Original Township:
  1. Section 4.3.1, Nonresidential and Mixed-Use Lot and Building Standards, regarding front and side lot line build-to requirements;
  2. Section 4.3.4.B, Special Setbacks in the Downtown (DN) and Downtown Transition (DT) Districts, regarding front and side lot line build-to requirements;
  3. Section 4.3.4.H, Construction of Public Improvements, regarding construction of downtown related public improvements adjacent to development; and
  4. Section 8.2.4, Parking Dimensions and Parking Lot Design, regarding parking lot dimensional requirements.
- 5. Announcements and future agenda items.**
- 6. Adjournment.**



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"The Zoning Board of Adjustments reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any matters listed on the agenda, as authorized by the Texas Government Code, including but not limited to, Sections: 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) 551.087 (Economic Development), 418.183 (Deliberations about Homeland Security Issues), and as authorized by the Texas Tax Code including but not limited to, Section 321.3022 (Sales Tax Information)."

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In compliance with the Americans for Disabilities Act, the City of Marble Falls will provide for reasonable accommodations for persons attending the Board Meetings. To better serve you, requests should be received 24 hours prior to the meeting, by contacting Sabrina Smith, Planning Technician, at 830-798-7095.

**Certificate of Posting**

I, Valerie Kreger, Development Services Director for the City of Marble Falls, Texas, certify this Meeting Notice was posted at the Marble Falls City Hall in a place readily accessible to the general public, by the 6<sup>th</sup> day of October, 2019, at 12:00 p.m., posted thereafter for at least 72 continuous hours before the scheduled time of said meeting.

  
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Valerie Kreger, AICP, Development Services Director



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- Item 3. Approval of Minutes:** Minutes from the regular meeting on September 17, 2019.  
*(Sabrina Smith, Board Secretary)*

**STATE OF TEXAS  
COUNTY OF BURNET  
CITY OF MARBLE FALLS**

On this 17<sup>th</sup> day of September, 2019 the Zoning Board of Adjustments convened at the regular meeting place having been posted as prescribed by law, with the following members present in accordance to-wit:

**MEMBERS PRESENT:**

Jerry Fuller	Chairman
Steve Hurst	Vice-Chairman
Cyrus Barcus	Board Member
Zak Elgamal	Board Member
Thomas Oostermeyer	Board Member

**MEMBERS ABSENT:**

None

**STAFF PRESENT:**

Mike Hodge	City Manager
Valerie Kreger	Development Services Director
Scarlet Moreno	Planner
Sabrina Smith	Board Secretary
Christina McDonald	City Secretary
Patty Akers	City Attorney

**VISITORS:**

None

**1. CALL TO ORDER AND ANNOUNCE PRESENCE OF QUORUM:** Board Secretary Sabrina Smith called the meeting to order at 12:04 pm and declared a quorum of the Commission is present to conduct the meeting.

**2. Citizens/Visitors comments to be heard for items not on the agenda:** This is an opportunity for citizens to address the Planning and Zoning Commission concerning an issue of community interest that is not on the agenda. Comments on a specific agenda item must be made when the agenda item comes before the Commission. The Chair may place a time limit on all comments. Any deliberation of an issue raised during Citizen Comments is limited to a proposal to place it on the agenda for a later meeting. There were no citizen/visitor comments.

**3. Administration and Oaths of Office:** City Secretary Christina McDonald administered the oaths of office.

**4. Discussion and action:** on appointment of chair and vice-chair. Board Member Barcus nominated Board Member Fuller for Chairman. Board Member Elgamal seconded the motion. The motion carried with a vote of 5-0. Chairman Fuller nominated Board Member Hurst as vice-chair. Board Member Hurst seconded the motion. The motion carried with a vote of 5-0.

**5. Introduction, Presentation, and discussion:** regarding the role, background, and requirements in establishing the Zoning Board of Adjustment (ZBA). City Attorney Patty Akers went over Open Meetings Act; Public Information Act; Conflicts of Interest; Powers, Procedures, and Responsibilities; and Order Granting/ Denying Zoning Variances. There was a discussion about Executive Discussions. Development Services Director Kreger discussed different types of zoning variances that may be brought before the Board.

**6. Discussion and Action:** approval of the board bylaws. Board Member Barcus motioned to approve the bylaws and Board Member Elgamal seconded the motion. The motion carried with a vote of 5-0.

**7. Discussion and Action:** on a meeting schedule. Development Services Director Valerie Kreger discussed meeting opportunities. Board Member Elgamal motioned that the second Wednesday of the month would be the regular scheduled meeting date as needed. Board Member Oostermeyer seconded the motion. The motion carried with a vote of 5-0.

**8. Announcements and Future Agenda Items:** Development Services Director Valerie Kreger addressed the Board regarding the following items:

- Variance application has been received; the next meeting will be set for October 9<sup>th</sup> to hear the variance caser.

- The Board has two open places to serve on the board as alternatives and asked the Board Members to share that information with others that may be possibly interested in serving on the Board.
- Future meetings will use computer access to view the agenda and other items.

**9. Adjournment:** Board Member Oostermeyer motioned to adjourn at 12:51 pm. That motion was seconded by Board Member Elgamal. The motion carried with a vote of 5-0.

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Jerry Fuller- Chairman

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Sabrina Smith- Board Secretary



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- Item 4. Public Hearing, Discussion, and Action** regarding a request for Zoning Variances to the following sections of Appendix B, Development Code, City of Marble Falls Code of Ordinances, on Lot 15-A, Block 4, Marble Falls Original Township:
- A.** Section 4.3.1, Nonresidential and Mixed- Use Lot and Building Standards regarding front and side lot line build-to requirements;
  - B.** Section 4.3.4.B, Special Setbacks in the Downtown (DN) and Downtown Transition (DT) Districts, regarding front and side lot line build-to requirements;
  - C.** Section 4.3.4.H, Construction of Public Improvements, regarding construction of downtown related public improvements adjacent to development; and
  - D.** Section 8.2.4, Parking Dimensions and Parking Lot Design, regarding parking lot dimensional requirements.

**Subject Area:** Lot 15-A, Block 4, Marble Falls Original Township, City of Marble Falls, Burnet County, Texas

**Requestor:** Robert Darden, applicant; John Darden, owner

### APPLICANT'S REQUEST

#### Summary:

This request is for consideration of Zoning Variances to the following Sections of the Development Code:

1. Section 4.3.1, Nonresidential and Mixed- Use Lot and Building Standards, regarding front and side lot line build-to requirements;
2. Section 4.3.4.B, Special Setbacks in the Downtown (DN) and Downtown Transition (DT) Districts, regarding front and side lot line build-to requirements;
3. Section 4.3.4.H, Construction of Public Improvements, regarding construction of downtown related public improvements adjacent to development; and
4. Section 8.2.4, Parking Dimensions and Parking Lot Design, regarding parking lot dimensional requirements.

#### Proposed Project:

The applicant proposes to develop the property with an approximately 2,000 square foot sports bar with pool tables, darts, shuffleboard, electronic games, and six televisions to view sporting events. The building will measure 49 feet wide by 41 feet deep with a stucco exterior and metal roof and be setback 24 feet from the front property line. At the front of the building will be an approximately 700 square foot outdoor deck measuring about 35 feet wide by 20 feet deep for patrons of the business. The deck is proposed to be located four feet from the front property line. A parking lot is proposed at the rear of the property that will be accessed from the adjacent alley. The parking lot will consist of sixteen parking spaces, all eight feet wide by eighteen feet deep,



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with two designated as handicap, and a 21-foot 6-inch drive aisle in the center. The entrance of the building is proposed to be at the northeast corner, accessed from either the front of the property via stairs or from the rear of the building via a sidewalk from the parking lot. Refer to the attached site plan and architectural elevations for more detail.

### **Applicant's Stated Justification:**

The applicant has submitted a statement detailing his request for a variance. As his justification for the variance, he identifies 1) the degree of difficulty in building a structure that is ADA compliant and still cost effective; 2) the street level being in the floodplain; 3) maintaining setback appearance with the adjacent properties; and 4) rental rates in the downtown area. Although he identified it as a request, the building materials are no longer applicable in this situation.

### **PROPERTY INFORMATION**

The subject property is located at 211 Avenue J on the east side of Avenue J between Second Street and Third Street, approximately 130 feet south of Third Street. The 0.20-acre lot measures approximately 61 feet wide by 140 feet deep. No business or building is located on the property; however, the rear 85 feet of the property is paved. The property drops in elevation approximately four feet from the rear property line to the edge of the paving and drops an additional six feet to the front property line. The right-of-way in front of the property drops seven feet to the Avenue J street pavement, which is approximately 35 feet from the lot's front property line. The street nor the property are in the floodplain. Avenue J is classified as a Minor Collector on the City's 2016 Thoroughfare Plan and is 100 feet wide at this location. The rear of the property backs up to a twenty-foot-wide paved alley.

The zoning for the subject property is Downtown (DN) District. The proposed sports bar use, which falls under the specific land use category of Bar or Night Club, is an allowed use within the DN district. The DN district is intended to serve the central core of the downtown area and is envisioned to be developed with a higher intensity urban character, which means high lot coverages, build-to lines and limited setbacks, low to no landscaping, and a focus on on-street parking.

The Comprehensive Plan's Future Land Use Map designates this property as Downtown. The Downtown future land use classification envisions a walkable, dense urban area where developments are subject to a build-to requirement, should be a minimum of two stories and designed to allow awnings and porches, and should provide prominent building entrances and adequate sidewalks.

The property is also located in the Downtown Core district on the City's Downtown Master Plan. The Downtown Core district calls for minimal setbacks, multiple stories where possible, pedestrian interface, and rear parking, if any. Avenue J is classified as a movement-focused street within the Downtown Master Plan. Movement focused streets provide sidewalks to accommodate pedestrians, two lanes of traffic, and angled parking where appropriate.

Surrounding properties include The Wallace House to the north, Frontier Communications to the south, city-owned property across Avenue J, and the Main Street businesses across the alley to



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the rear. These properties are all also zoned DN, designated as Downtown on Comprehensive Plan's Future Land Use Map, and Downtown Core on the City's Downtown Master Plan

### DEVELOPMENT CODE STANDARDS

#### **Section 4.3.1, Nonresidential and Mixed-Use Lot and Building Standards, and Section 4.3.4.B, Special Setbacks in the Downtown (DN) and Downtown Transition (DT) Districts:**

The DN district does not require buildings be setback from the property lines. Instead, to create the dense, walkable, urban environment envisioned by the Comprehensive Plan and the Downtown Master Plan, the DN district instead requires buildings to be built-to the front property line. Per Section 4.3.4.B, a minimum of 80% of any building façade facing a public street shall be built to that property line abutting the street. The Code allows for the building to be built further back from the property line, up to twenty feet, only when providing a designated public plaza or similar outdoor area that functions as an extension of the public sidewalk environment that is accessible to the public at any time.

#### **Section 4.3.4.H, Construction of Public Improvements:**

When new development or redevelopment occurs in the DN district, the developer is required to also construct any streetscape improvements identified in the Downtown Master Plan in the adjacent public right-of-way. As this property is located within the Core District as part of the Downtown Master Plan, sidewalks, angled parking, and regularly spaced tree wells within a landscaped edge are requirements within the adjacent right-of way.

#### **Section 8.2.4, Parking Dimensions and Parking Lot Design:**

Section 8.2.4 of the Development Code requires that standard parking spaces be a minimum of nine feet in width and eighteen feet deep. Up to fifteen percent (15%) of the required parking spaces may be designed and designated as compact, which measure eight feet wide and sixteen feet deep. Additionally, drive aisles in parking lots designed for two-way traffic are required to be a minimum of 26 feet wide.

### REVIEW CRITERIA AND FINDINGS

Section 11.3.6, Zoning Variance, of the Development Code identifies the purpose and grounds for granting variances to the zoning provisions as well as review criteria. The Zoning Variance is intended to provide relief from the terms of the zoning regulations when, because of special circumstances applicable to the property, the strict application of the zoning regulations deprives such property of privileges enjoyed by other property in the vicinity under identical zoning classification to ensure that any adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity in the district in which such property is situated. A Zoning Variance shall only be authorized for relief of zoning regulations that directly impact the undue hardship.

Conditions that do not constitute sufficient grounds for a Zoning Variance include a) the property being used for its highest and best use; b) a financial or economic hardship; c) self-created hardships; and d) the development regulations are an inconvenience. The criteria under which a Zoning Variance may be approved require that due to unique conditions of the property (e.g., size,



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shape, or topography), compliance with the requirements would create an undue hardship, not otherwise self-created by the owner/operator, and effectively prohibit or unreasonably restrict the use of the property. Additionally, the Zoning Variance shall be compatible with the City's Comprehensive Plan, the City's other long-range plans, abutting land uses, and the purpose and intent of the Code. The Zoning Board of Adjustment shall take into account the nature of the existing or proposed use of the subject property, existing uses in the surrounding vicinity of the subject property, and the probable effect the Zoning Variance will have upon traffic conditions and upon the health, safety, and welfare of the public.

**Staff finds there is no support to grant the Zoning Variances to Sections 4.3.1 and 4.3.4.B to allow the building to be built 24 feet from the front property line instead of built-to the property line:**

- Although there is some topography at this location, the change in elevation to the property line is not severe enough to prevent the building from being built to the property line.
- The issue is self-created in that the deck placement on the front of the property creates the need for the variance, and the development regulations are an inconvenience to this placement.
- The fact that it would be more costly and the anticipated rents cannot be factor in granting or denying the variance.
- The application of the build-to requirement does not prohibit or unreasonably restrict the use of the property.
- The requested variance is not consistent with the City's Comprehensive Plan, the Downtown Master Plan, and the purpose and intent of the DN district.

**Staff finds there is no support to grant the Zoning Variances to Section 4.3.4.H to not require the construction of the downtown improvements in the adjacent right-of-way:**

- There is not just cause for this requirement to be met. The development regulations appear to be an inconvenience in this situation.
- The fact that it would be more costly and the anticipated rents cannot be factor in granting or denying the variance.
- The requested variance is not consistent with the City's Comprehensive Plan, the Downtown Master Plan, and the purpose and intent of the DN district.

**Staff finds there is no support to grant the Zoning Variances to Section 8.2.4 to reduce the minimum required parking space dimensions and to reduce the drive aisle width from 26 feet to 21 ½ feet.**

- The proposed width of the drive aisle coupled with the reduced parking space width does not provide adequate vehicle maneuverability within the property.
- The applicant's proposed parking exceeds the minimum spaces required by the Development Code. The Code requires one space per 1,000 square feet of gross floor area of the building, which would require a total of three spaces. The need for adjusted dimensions is self-imposed due to the proposed additional spaces.



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- Due to the minimal parking requirements downtown, the application of the parking design dimensions does not prohibit or unreasonably restrict the use of the property.

**PUBLIC NOTIFICATION AND COMMENT**

A total of fifteen (15) property owners within two hundred feet (200') of the subject property were mailed notification letters, including the public hearing dates and a pre-paid comment card for response supporting/opposing the proposed variance. At the time of packet distribution, no responses had been received.

**RECOMMENDATION**

Based on staff's findings as identified above, staff recommend denial of all three Zoning Variance requests.

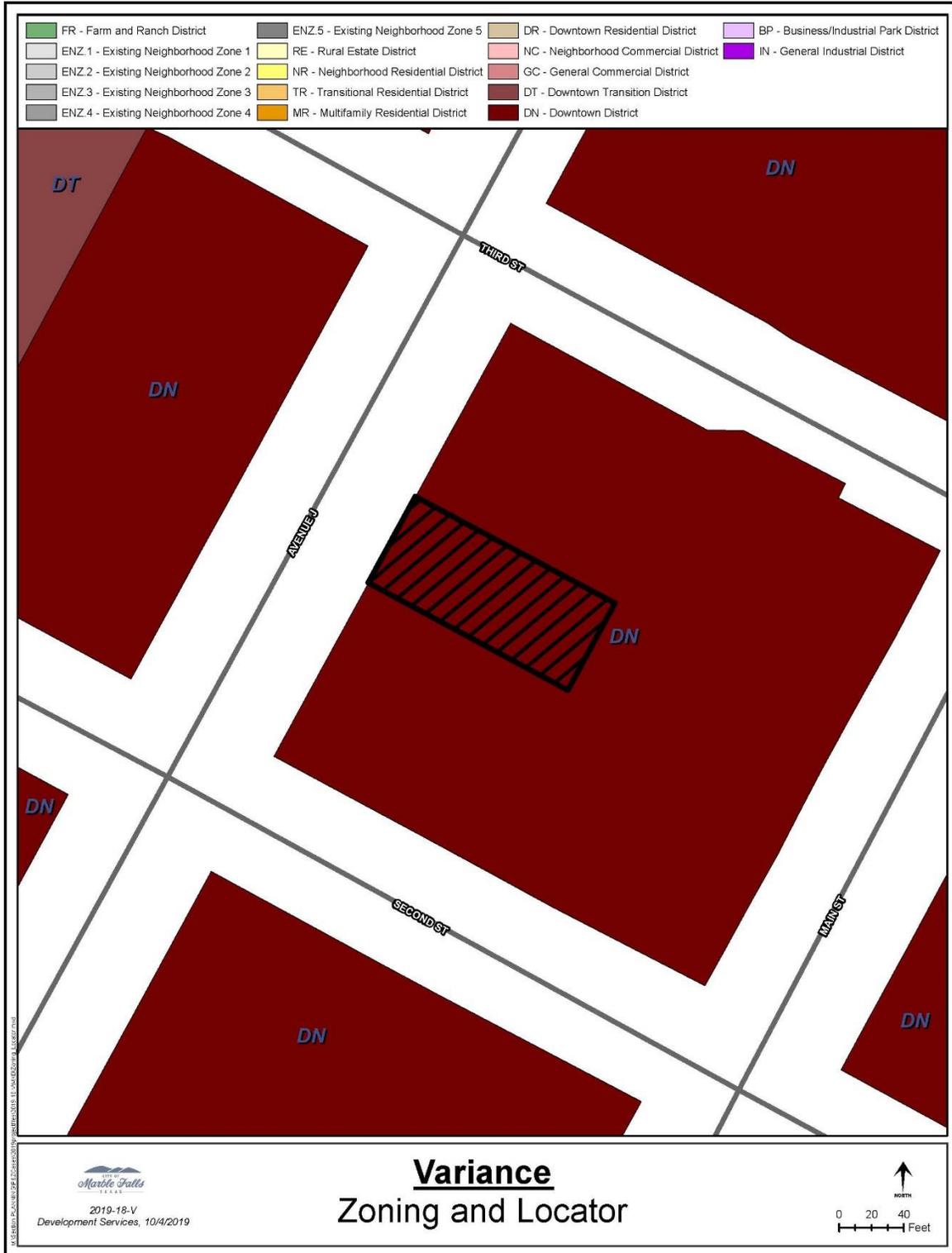
**Attachments:**

- |   |              |
|---|--------------|
| • Informational maps produced by City Staff | <b>Pages</b> |
| • Applicant Statement                       | <b>Pages</b> |
| • Survey                                    | <b>Page</b>  |
| • Site Plan                                 | <b>Page</b>  |
| • Proposed Building Elevations              | <b>Pages</b> |
| • Property Pictures                         | <b>Pages</b> |

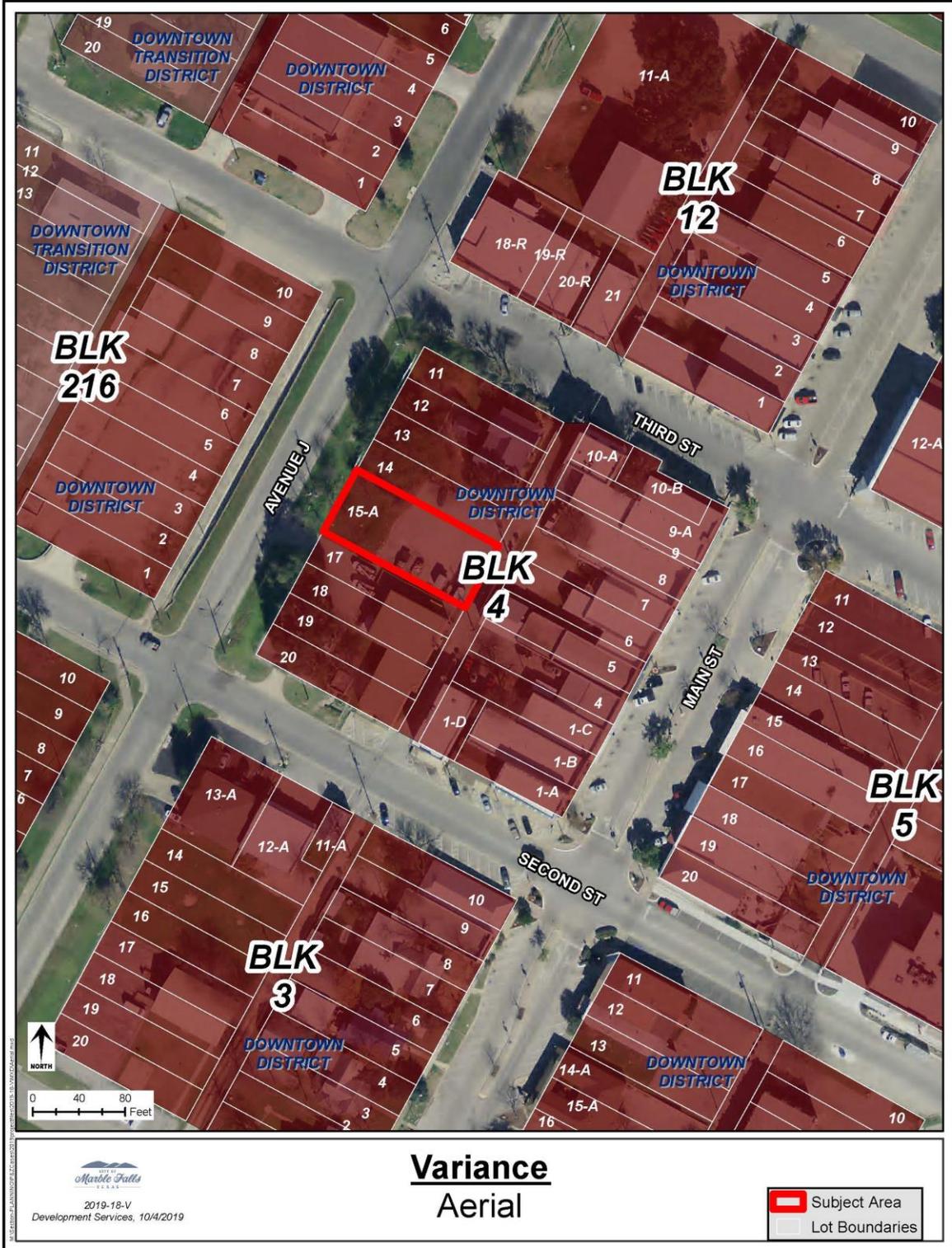


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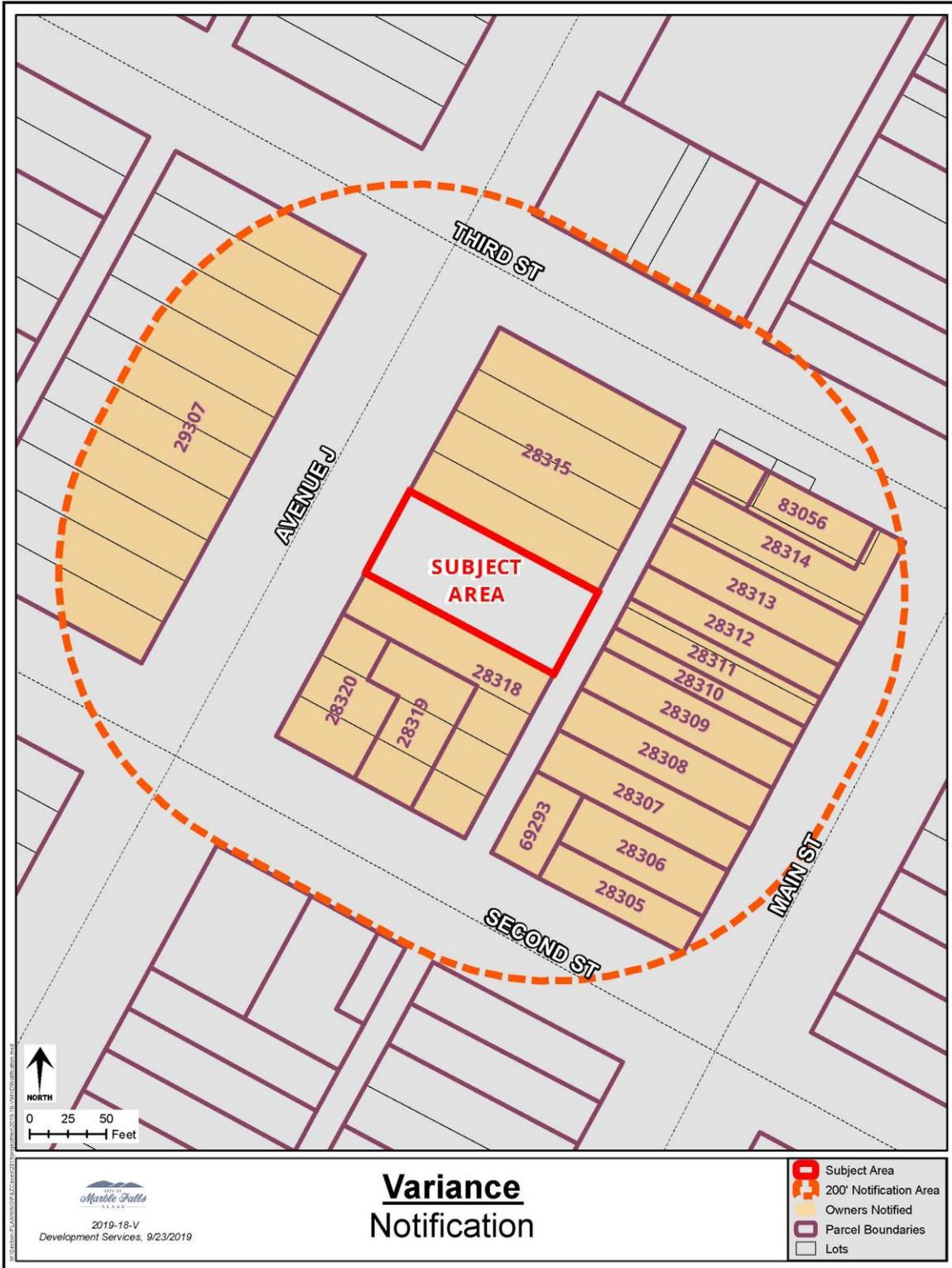
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**Variance**  
**Notification**

-  Subject Area
-  200' Notification Area
-  Owners Notified
-  Parcel Boundaries
-  Lots



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**Tavern on J**  
**Variance Statements**  
**211 Ave J Marble Falls**

Tavern on J will be located at 211 Ave J . It is a Sports bar with Pool Tables , Darts , Shuffleboard table , Electronic Games and 6 TV's to view the current sporting events.

Currently the majority of patrons use the public parking and walk to the current establishment ( Mr B's ). Since the new establishment will also be in the Downtown area we do not expect this to change.

The Variance is needed for several reasons to start the lot at 211 Ave J adds quite a degree of difficulty in regards to building a structure that is ADA compliant and still cost effective not to mention street level is in a food plain. If we were to cut into the lot to lower the building the ramp would be too steep and if we were to raise the building at the property line we would need a bridge for the handicap access. There is no viable cost effective way to put the building at the front property line.

As far as meeting with the appearance of the block both neighbors Frontier Communication and The Wallace House Both Sit 60+ Feet from their property lines on Ave J. If our building were to be on the property line it would look odd and extremely out of place for that block on Ave J.

We also designed the building with 80% masonry stucco with 2 different textures and 2 different colors which was the requirement at the time. I would like to point out that more than 1/3 of the downtown area buildings are stucco and most of them are single texture and color. I am certain that our building would complement the downtown area.

This will be an attractive building and will add to the tax rolls however we cannot invest money that we will never recoup. There is a limit to what people will pay to rent in the downtown area which leaves 3 choices 1 rent at a loss, 2 have your property sit empty or 3 don't build it at all.

And last the most disturbing part of all this is that we were in the council meetings in August, September and October and in all 3 of those meetings we were told " if our project is in the works it will be OK " our project has been in the works since February 2018. As you can see what you stated on multiple occasions was not the truth .

I trust that you will approve these Variances for this building so we may move ahead and begin construction as soon as possible. I would like to point out that we were able to move the building forward so the patio is 4' from the property line and still maintain a handicap ramp.

Sincerely,

  
\_\_\_\_\_  
Robert Darden

5-28-19  
Date



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**DARDEN HOMES Inc.**

716 Newport Dr.  
Spicewood, TX 78669  
512-669-2513  
[rwdarden@yahoo.com](mailto:rwdarden@yahoo.com)

Parking Notes for 211 Ave J  
Marble Falls Tx.

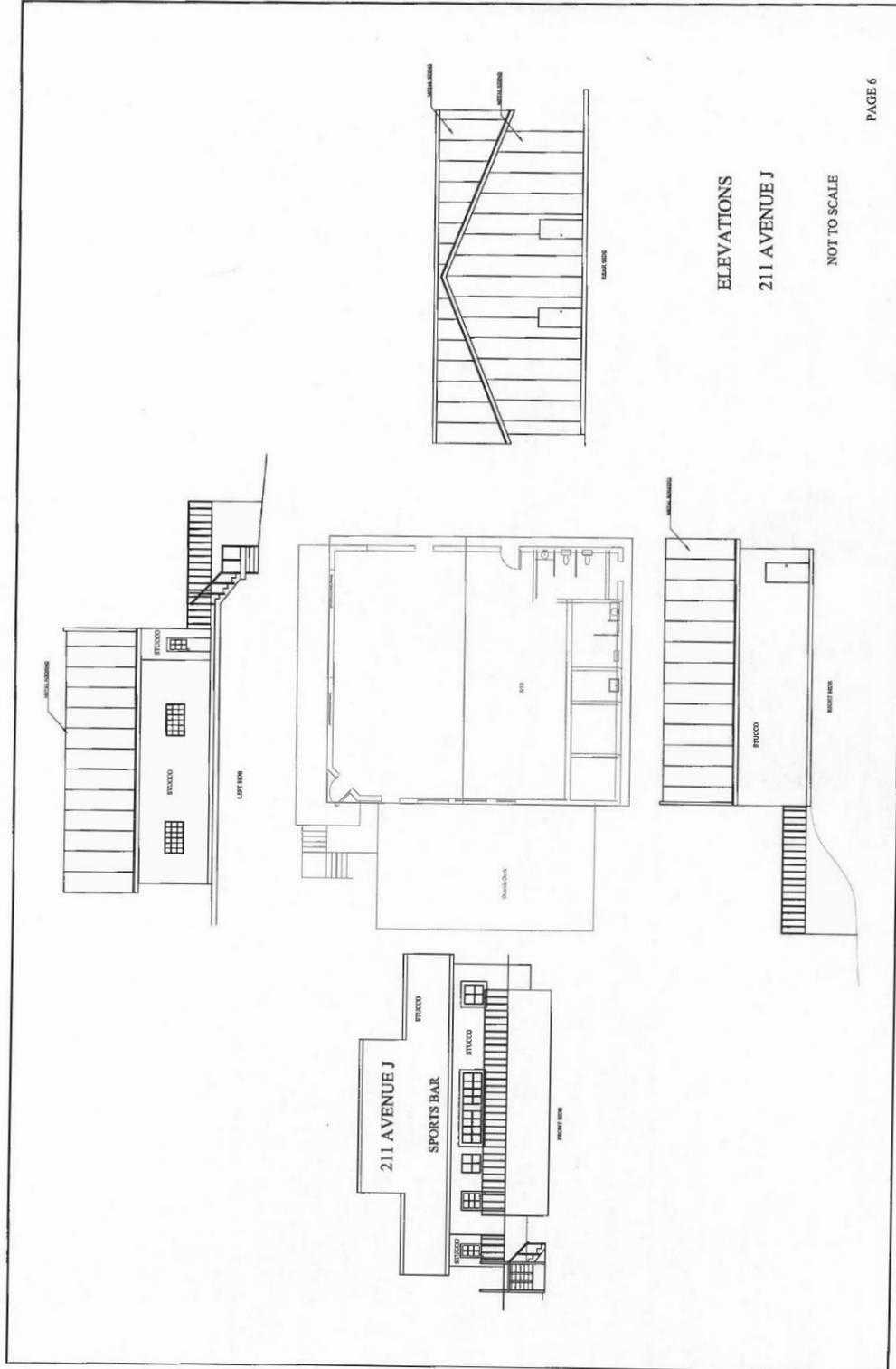
We have moved the building to where the patio is now 4' from the property line and this does make the handicapp ramp steeper however it is still within ADA guidelines between the handicap parking and the front door of the establishment.

There will be 2 handicap parking spaces one of which will be van accessible with an additional 14 regular parking spaces bringing the total number of spaces to sixteen. These spaces will be adequate for this establishment.





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**View of Property from Across Avenue J**





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**View of Property from Across Avenue J in Front of Frontier Communications**





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**View of Property from the Front of The Wallace House**





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7. Announcements and future agenda items.
8. Adjournment.