

MICHAEL C. SHANNON, PE, CFM
COUNTY ENGINEER



NANCY M. BAHER, PE
ASSISTANT COUNTY ENGINEER

NICOLE STELLY
FLOODPLAIN AND PERMIT MANAGER

THE COUNTY OF GALVESTON
Office of the County Engineer
722 Moody, Galveston, TX 77550
(409) 770-5399 (409) 770-5549 (281) 316-8300

January 28, 2025

Galveston County Commissioners Court

Re: 1426 8th Street, San Leon, TX
Floodplain Permit Variance Request

Honorable Judge and Commissioners:

We have received a request from Drew & Dr. Sarah Garner for a variance from the floodplain regulations for a structure that has been constructed at 1426 8th Street, San Leon Texas. The request is to allow livable space 4 feet below the base flood elevation (BFE).

Article 4, Section M of the Floodplain Management Regulations contain the variance procedures.

A floodplain permit was issued on October 14, 2022 for storage building with a finished floor elevation below the BFE. On December 8, 2022 the applicant requested that the structure change from storage to a "Tiny House". The County informed applicant that the finished floor would need to be above BFE of 14 feet. County supplied a copy of the "A-Zone Permit" that applicant signed stating that no habitable area is allowed below the BFE of 14 feet.

Attached is a request for a Variance Request dated November 2024 as well as correspondence from the applicant.

A listing of the Floodplain Variance requirements with our observations follows:

Article 4 Section M (6) - Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increase.

Applicant is requesting a variance after the structure has been built. A permit was issued for a storage building and now applicant is requesting to use as livable space.

There are structures in the vicinity and adjacent to applicant's property that are above the BFE.

Applicant has provided photographs of 3 structures below the BFE .

Structure at 1422 8th Street was built pre-FIRM and is grandfathered.

Photograph of structure at 1432 8th Street shows one structure below BFE and another above BFE. The structure below BFE is a non-compliant structure.

Structure at 1432 9th Street is a non-compliant structure.

Article 4 Section C (2) - Review permit application to determine whether proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.

Applicant has not demonstrated how the building site is reasonably safe from flooding. The site is approximately 100 feet from Galveston Bay and the structure is 4 feet below BFE.

Article 4 Section M (10) Prerequisites for granting variances:

- (a) Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.*
- (b) Variance shall only be issued upon, (I) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances*

Applicant has stated that failure to grant the variance would result in exceptional hardship but does not state what that hardship is. Applicant has stated that he has lost some sales of the property due to this issue.

We do not see that the variance request meets the requirements of Article 4, Section M and recommend Commissioners Court deny the request.

Sincerely,



Nicole Stelly, Floodplain and Permit Manager



Michael C. Shannon, PE, CFM
County Engineer



1426 8th Street
San Leon, Texas

**4' Elevation Variance Request
For 240 SF "Tiny House"**

GALVESTON COUNTY COMMISSIONERS' COURT
(BOARD OF ADJUSTMENTS AND APPEALS)

BY DREW & DR. SARAH EARNER

PROPERTY OWNERS

NOVEMBER, 2024

**1432 8th Street Adjacent
Property South**

**Ground Level “Structure”
(to Left)**





**1432 9th Street Adjacent
Property SouthWest
Corner**

**Ground Level “Structure”
(two more structures
behind large building)**

Aerial Photo of Subject Property, Adjacent “Structure(s)” and Unimproved Land on Adjacent Properties



1422 8th Street Adjacent Property North of Subject Property

Ground Floor Approx. 800 SF
Living Area View From
Exterior Entry Area



1422 8th Street North of Subject Property Ground Floor Interior (Zillow)



Living Room



Living Room



Kitchen

1422 8th Street Ground Floor Interior

(Zillow)



Bedroom 1



Bedroom 2



Bathroom

To: Permits <Permits@galvestoncountytx.gov>
Subject: Fwd: 1426 8th Street, San Leon, Tx Permit Variance

Ms. Stelly;

Please review the email below to Commissioner Apffel and your file (as necessary) regarding our request for a "Variance" for the subject property.

Should you wish to issue the permit as requested based on the additional Regulatory Variance Procedures information included in the email below prior to having the Variance request continued to be processed by the County Commissioners Court please let me know asap so I can cancel the ongoing Variance process.

Sincerely

Drew Garner

From: drewmgarnerjr@aol.com
To: darrell.aapffel@co.galveston.tx.us
Sent: 11/26/2024 1:05:47 PM Central Standard Time
Subject: 1426 8th Street, San Leon, Tx Permit Variance

Commissioner Apffel;
Pages)

November 26, 2024 (9

1426 8th Street San Leon Variance Update

Please refer to our September 25, 2023, letter with attachments (29 pages) and our October 30 & 31, 2023 Emails in which my wife and I requested assistance with granting a four-foot height "Variance" for our 240 square foot structure ("Tiny House") at the above address which is allowed per the Galveston County FloodPlain Management Regulations as indicated in the documentation attached to our letter submitted and additional information provided herein.

We have limited use of the subject property (RV storage, boat storage, etc.) due to the permit issue and have attempted to sell the property. We have lost two sales to buyers that wanted to build a house on the property due to the permit dilemma (Tiny House vs Storage Building). We are unable to rent the property due to this issue. Therefore, we conducted additional reviews of the permit issue to include an

in-depth review of the FloodPlain Regulations in which we discovered the following additional support information in Section M of the Regulations:

Section M. (6)

“Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level ...”.

The subject property is a total of .1530 acres (less than one-half acre). The adjacent property to the (North 1422 8th Street) is a two story with over 800 sq. ft. of living area at grade/ground level (below FloodPlain elevation). Refer to attached Zillow photos of living room, bedroom, kitchen, bathroom, additional enclosed first floor garage/storage, etc. at ground level. The adjacent property to the East across 8th street is unimproved (and probably not large enough currently to build on due to shoreline encroachment and easement size). The adjacent property to the South (1432 8th Street) has a “structure” at grade level (below floodplain elevation requirement) at the NorthWest corner of the property. The adjacent property Due West is vacant land with no improvements. Other properties “cattycorner” on the West side have a “structure” at grade level (below floodplain elevation) and/or is unimproved (NorthWest corner). These properties and structures can be viewed on Google maps, Zillow and in the attached photographs.

Per the Flood Plain Regulation, a “Structure – means a walled and roofed building ...”.

Based on the above and other documentation submitted we should beyond doubt receive a “Variance” as requested!

Please keep in mind that we originally made numerous adjustments that meet and/or exceed the intent of the FloodPlain Regulation requirements of concern to Ms. Nicole Stelly, FloodPlain Manager (potable water backflow preventers, sanitary sewer backflow preventer, raised the HVAC unit to above FloodPlain requirement, raised the electrical panel to above FloodPlain requirement, etc. at an additional cost to us. We are unsure why our original modifications to ensure compliance with the intent of the Regulation were not accepted by Ms. Stelly. However, there should be no reason why she would not accept and approve a “Variance” based on Section M. (6) of the Regulation as stated herein.

Based on the Floodplain Variance Procedures stated above and with the previous documentation submitted it is obvious that a “Variance” can and should be allowed as requested. It has been over two years since Ms. Nicole Stelly indicated our file is on her desk for review and evaluation. We should not be required to waste any more of our time and loss of income nor do we want to waste your time and the taxpayer’s money in taking this to court. However, we have been and are still losing money and our patients with this issue. We have exhausted all efforts to resolve this issue without assistance from others. However, if not resolved soon we feel that we have no alternative but to resort to legal action as necessary. Based on your published education, background and experience we know that you will understand the regulatory variance stipulations, our compliance adjustments and the legitimacy of our request. Therefore, **please let us know if you will assist in obtaining a “Variance” at your earliest convenience.**

Thank You For Your Assistance!

Drew & Dr. Betsy Garner

Attachments: Photographs of Subject Property and Adjacent Properties with "Structures" (7 Pages)

C: Nicole Stelly, Floodplain & Permit Manager

Stelly, Nicole

From: BuildingPermits
Sent: Monday, September 11, 2023 2:54 PM
To: Stelly, Nicole
Subject: FW: 1426 8th Street San Leon Tx "Tiny Home" Permit Final

Melissa Moss, Permit Technician
Building Department
COUNTY OF GALVESTON
722 Moody (21st St) / Galveston, TX 77550 / 409-770-5552
Melissa.moss@galvestoncountytexas.gov
<https://www.galvestoncountytexas.gov/county-offices/engineering-right-of-way>



From: Drew Garner <drewmgarnerjr@aol.com>
Sent: Friday, September 8, 2023 5:02 PM
To: BuildingPermits <BuildingPermits@co.galveston.tx.us>
Cc: BuildingPermits <BuildingPermits@co.galveston.tx.us>; Shannon, Michael <Michael.Shannon@co.galveston.tx.us>; drewmgarnerjr@aol.com
Subject: Re: 1426 8th Street San Leon Tx "Tiny Home" Permit Final

Nicole;

I am so sorry you could not evaluate, understand and approve my request based on all of my very positive support information/documentation. Therefore, I will start the appeals process and request a meeting with the Commissioner, etc. ASAP. I will start with the Appeals process and assistance from the Commissioner hoping that it is not necessary to get an Attorney involved (at this time).

Thanks!
Drew Garner

In a message dated 9/8/2023 1:09:31 PM Central Daylight Time, BuildingPermits@co.galveston.tx.us writes:

Mr. Garner,

Stelly, Nicole

From: BuildingPermits
Sent: Friday, September 8, 2023 1:09 PM
To: drewmgarnerjr@aol.com
Cc: BuildingPermits; Shannon, Michael
Subject: RE: 1426 8th Street San Leon Tx "Tiny Home" Permit Final

Mr. Garner,

I apologize for any confusion you feel my department has caused. This could be in part because your preferred use of the building has gone back and forth between being a storage/workshop vs a "tiny home".

From the beginning of this process my department has explained the floodplain regulation requirements for each type of use.

For the structure to be in compliance as habitable space or a "tiny home" the top of the bottom floor needs to be above the base flood elevation. We would need an original finished construction elevation certificate showing the structure and all electrical, plumbing and mechanical to it are above the base flood elevation.

For the structure to be in compliance as a storage building we would need in writing from you a request to change the permit to storage only, no habitable area, not a "tiny home". There can be no finished walls, no mechanical or plumbing in or to the structure. If you need electricity, only minimal plugs and switches are permissible and they'd have to be connected to a GFCI breaker in the breaker box. We would need an original finished construction elevation certificate showing the breaker box is above the base flood elevation.

NICOLE STELLY | Floodplain & Permitting Manager
Galveston County Engineering | 722 Moody Ave. | Galveston, TX 77550
409.770.5552 (Office) 409-770-5559 (Fax)
<https://www.galvestoncountytexas.gov/county-offices/engineering-right-of-way/building-permits>



From: BuildingPermits
Sent: Thursday, September 7, 2023 8:38 AM
To: Drew Garner <drewmgarnerjr@aol.com>
Subject: RE: 1426 8th Street San Leon Tx "Tiny Home" Permit Final

Received.

Per your email you are wanting a reply by Friday. Nicole plans to have a response by then.

Have a nice day

Melissa Moss, Permit Technician
Building Department

COUNTY OF GALVESTON

722 Moody (21st St) / Galveston, TX 77550 / 409-770-5552

Melissa.moss@galvestoncountytexas.gov

<https://www.galvestoncountytexas.gov/county-offices/engineering-right-of-way>



From: Drew Garner <drewmgarnerjr@aol.com>

Sent: Wednesday, September 6, 2023 4:55 PM

To: drewmgarnerjr@aol.com; BuildingPermits <BuildingPermits@co.galveston.tx.us>

Subject: Re: 1426 8th Street San Leon Tx "Tiny Home" Permit Final

Nicole Stelly; I have not received acknowledgement of receipt of my Sept. 1, 2023, E-mail below. Therefore, please acknowledge receipt of this and my 9/1/23 email upon receipt of this email.

Also, please see attached additional support for our request to include additional Galveston County Tax document which indicates that we are being taxed for a "Residential" "Building" "A1" and proof of Flood Insurance availability by quote.

Thanks! Drew Garner

In a message dated 9/1/2023 3:46:20 PM Central Daylight Time, drewmgarnerjr@aol.com writes:

Nicole Stelly: **PLEASE ACKNOWLEDGE RECEIPT OF THIS DOCUMENT UPON RECEIPT!**

Re: 1426 8th Street, San Leon, Texas – "Tiny Home" Permit Final Closeout

Per our telephone conversation Monday, July 24, 2023, and numerous previous conversations, please approve our request for the 240 Square Foot building on the subject property originally permitted for "storage" to be converted to "Tiny Home" as specified in the Galveston County 2023 Tax Records (Re: my December 8, 2022, e-mail herein).

I have overwhelming undisputable documentation of our conversations and meetings that we have all agreed that this can be done and was in the process of being done approximately nine months ago. We have made all requested revisions to meet the requirements or the intent of the requirements that would allow this small building to be occupied as a "Tiny Home" as specified in the

Galveston County Tax Records. We understand, based on our conversations with Melissa Moss of your office, that we will need to pay \$40 for this requested change.

My wife and I purchased the above referenced property in August, 2022 with the intent to put our 30 foot motor home on it and later build a small house for family recreation. We had hoped that our paraplegic daughter could utilize the building for recovery during periods of medical treatments.

My wife and I visited the Galveston County Permit Office several times and had numerous telephone conversations with Permit Office personnel before we purchased two small buildings to move to the subject property to get an understanding of Galveston County requirements. As explained numerous times to Permit Officials we originally permitted two small buildings (one 240 Sq Ft. and other 96 Sq Ft) for storage, shop, etc.

During the initial planning process for purchasing and moving the buildings to the property we discovered that if we raise the larger of the two buildings to 14' above sea level we could use it as occupiable space for our Handicap Daughter to use as a getaway. We visited the Permit Office again and discussed ways to meet the 14' requirement. On October 11, 2022 my wife and I left the Permit Office with the understanding that our San Leon area is 10' above sea level and that we would only be required to set the building up 4' to comply with occupied building requirements. Therefore, we purchased the 240 SF building the same afternoon and a few days later moved it to our property and set it up to a little more than 4' above adjacent grade (Re: Original Elevation Survey submitted to you) assuming that we met the elevation requirements for an occupied building.

In one of our telephone conversations with Melissa Moss, there was some confusion about the elevation that we placed the 240 SF building. Therefore, I started to get concerned by some information that we were receiving from the Permit Office so I started documenting my conversations (in a manner that could not be disputed) in an effort for me to understand and comply with County requirements.

On November 9, 2022, Melissa Moss told me she discussed the elevation issues with you. Melissa indicated; "She (you) said that you can put the breaker box to the base foot elevation that it is supposed be and have an Elevation Certificate stating that the breaker box is at base foot elevation and she will come by look at it". My wife and I both were in on this conversation.

You inspected the buildings on November 16, 2022. Again, I thoroughly documented this conversation. I showed you the buildings inside and out to include the revised location of the breaker box (that was moved up 4' per your request), sanitary sewer backflow preventer, water supply backflow preventers, etc. I showed you photographs of numerous Sanitary Sewer manholes on 8th street that are approx. 1' to 2' above adjacent grade that had holes in the manhole covers, not sealed, no backflow preventers, etc. You were very professional and indicated that there should not be a problem with the elevation now that we moved the breaker box up four more feet to what we now understand is 14' above sea level and other considerations stated herein. You indicated that you would need to run it by your boss and said "it should not be a problem". You said "I will go back to the County Engineer and run it by him ... "I don't see a problem with it". I ask if I should hold off on having my guys install the sanitary sewer pipe the next day and continue other work as scheduled, You said, "If I call you back and say no we are going to close it out as storage ... what you do after I am not coming back ... nobody should come back".

At the end of your inspection, I ask you “what do I need from you”, you indicated; “Nothing, we will contact the electrical company so you can get connected.”

In our telephone conversation Monday, July 24, 2023, you indicated that you were busy and could not look up my file and assist me at that time. You also stated that you have about forty files (two from 2008) on your desk and that you respond to them in the order you receive them. However, after additional discussion you indicated that you would call me that afternoon or the next day to update me on the status of our request. **It has been over one-month and I have not received a call from you to date. Therefore, I contacted County Commissioner Apffel’s Office and discussed the situation and requested a meeting with the Commissioner to provide additional detailed information and assistance to resolve this issue if it is not resolved soon. The Commissioners Office indicated that they will set up a meeting with me as necessary to resolve the issue.**

I am a former Section Chief in Engineering and Building Code Analyst with the City of Houston, former National Building Codes Certified Building Codes Plans Examiner, Code and Regulatory Compliance Consultant and former lead Instructor with the Texas A&M University System TEEEX (Building Codes, Regulations, Construction law, Environmental, etc. for over thirty years). I am currently a semi-retired local business owner. I have extensive experience as an “Expert Witness” in Building Codes and Regulations in State and Federal Court cases. I also served on the “Board of Adjustments” (for Code and Regulation Variances) with the City of Bellaire, Texas.

Based on my experience and background I am very confident that we can resolve this issue based on the following brief summary:

- **Our 2023 Galveston County Property Tax Appraisal (Re: Attached copy) indicates that our taxes for improvements has been raised from”0” to \$63,840 for new building improvements “Tiny Home” (Re: Attached Galveston County Appraisal District Information Document). An unoccupied building of this size would be assessed at or below \$20,000 which is approximately what we paid for it.**
- As stipulated in the Galveston County Flood Management Regulations; Section M. (6), **“Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C (2) of this article have been fully considered.”**. The subject building is on two lots that in combined total are significantly less than one-half acre. There will be no cost to the public as addressed in Section C (2). There are numerous existing occupied structures in the area that are below our current elevation and/or the base flood elevation. One house immediately adjacent to our property has occupied space at the ground elevation level. Failure to grant this requested variance would result in exceptional hardship to us. The requested variance will not result in increased flood heights nor threats to public safety. We understand that the cost of flood insurance (if ever requested) will be commensurate with the increased risk resulting from the reduced lowest floor elevation (as indicated in the Flood Management Regulations).

- As discussed, and shown to you during your inspection, in an effort to meet the intent of the requirements for an occupy building we moved the electrical panel up an additional 4' per your request (Re: Revised Elevation Survey submitted to you).
- As discussed, and shown to you during your inspection, our Plumber installed a "Backflow Preventer" on the Sanitary Sewer line (Re: Attached Photos). Note; the elevation of Galveston County Sanitary Sewer Manholes in the area are far below the required elevation and even have unsealed openings/holes in the covers (Re: Attached Photos that I reviewed with you on site).
- As discussed and observed with you at the property during your inspection, our Plumber installed "Backflow Preventers" on the water line (Re: Attached Photo) and all "hose bib" connections.
- The Mini HVAC unit was installed above 14' as requested.
- It would be unreasonable and/or unsafe to raise this small building up an additional 4 feet (eye sore, wind hazard, hazard to adjacent properties, normal and handicap access obstruction, etc.).

There are numerous existing occupied buildings in the area with similar or lower occupied elevations. The adjacent house to the North of our property has occupied space lower than our base floor elevation. The property across the street and behind us is vacant land with no improvements. The Galveston County Flood Regulations utilizes criteria similar to this situation as criteria for a "Variance" (Re: below).•

After your inspection and prior to leaving the property, I ask your opinion of the above request and issues discussed and observed during your inspection. The last thing you said to me upon leaving the property after your inspection is "I don't see a problem". Also, at the end of your Inspection, I ask what we need from you. You indicated: "nothing, we will send a release to the electrical company and they will come out and get you connected." **I can provide much more specific details on this conversation and other conversations that support our request as necessary.**

As discussed, we are currently in the process of selling the subject property (due to my health and our paraplegic daughter's current negative health issues) to a retired couple that plans to permit and build a house on the property. Although they currently own property with a house they are selling on the water in Bay Cliff, they wish to utilize the "Tiny House" as necessary while they are building their home on the main area of our property.

I will provide additional detail documentation to include undisputable meeting notes with statements made by all parties involved, etc. as necessary.

Please approve this request ASAP in an effort for us all to move forward without additional effort, delay and/or cost to all parties involved to include potential legal fees.

Please respond to this request before or by no later than September 8, 2023, so that we can proceed accordingly and/or as necessary with the variance process and assistance from the County Commissioners Office.

Thanks!

Drew Garner

Attachments: 2023 Galveston County Tax "Tiny Home" Appraised Value Information

8th Street four Sanitary Sewer Manholes and cover photographs (more photos available)

Sanitary Sewer Backflow Preventer photographs

Water Line Backflow Preventer photograph

In a message dated 12/8/2022 3:36:54 PM Central Standard Time, BuildingPermits@co.galveston.tx.us writes:

Received.

It is on Nicole's desk for review.

Thank you

Melissa Moss, Permit Technician

Building Department

COUNTY OF GALVESTON

722 Moody (21st St) / Galveston, TX 77550 / 409-770-5552

Melissa.moss@galvestoncountytx.gov

<https://www.galvestoncountytx.gov/county-offices/engineering-right-of-way>

From: Drew Garner <drewmgarnerjr@aol.com>

Sent: Thursday, December 8, 2022 2:22 PM

To: BuildingPermits <BuildingPermits@co.galveston.tx.us>

Subject: 1426 8th Street San Leon Tx Elevation Survey 14 ft

Melisa;

Per our discussions attached is the "Revised" Elevation Survey for the subject property "Tiny House". We moved the Electrical Panel up to 14 foot per Nicole's request (it is actually at 14'7", as indicated) and installed "Backflow Preventers" on the sewer line and all "Hose Bib" connections.

Per our numerous telephone conversations we would like to change the permitted use from "Storage" to "Tiny House" or whatever suitable title you wish so that we can legally occupy the small 240 SF building as a playhouse. This is not our residence, it is only intended to be used for recreation.

It is understood, per Nicole's site visit and our modifications, that we should be able to get approval as requested. Please let us know once this is approved.

Thank You Again For All The Time You Have Exhausted on this Matter!

Drew & Betsy Garner