

MICHAEL C. SHANNON, PE, CFM  
COUNTY ENGINEER

NICOLE STELLY  
FLOODPLAIN AND PERMIT MANAGER



NANCY M. BAHER, PE  
ASSISTANT COUNTY ENGINEER

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 8<sup>th</sup> 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 8<sup>th</sup> 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 8<sup>th</sup> Street was built pre-FIRM and is grandfathered.

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

Structure at 1432 9<sup>th</sup> 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 8<sup>th</sup> 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 8<sup>th</sup> Street Adjacent Property South

Ground Level "Structure"  
(to Left)

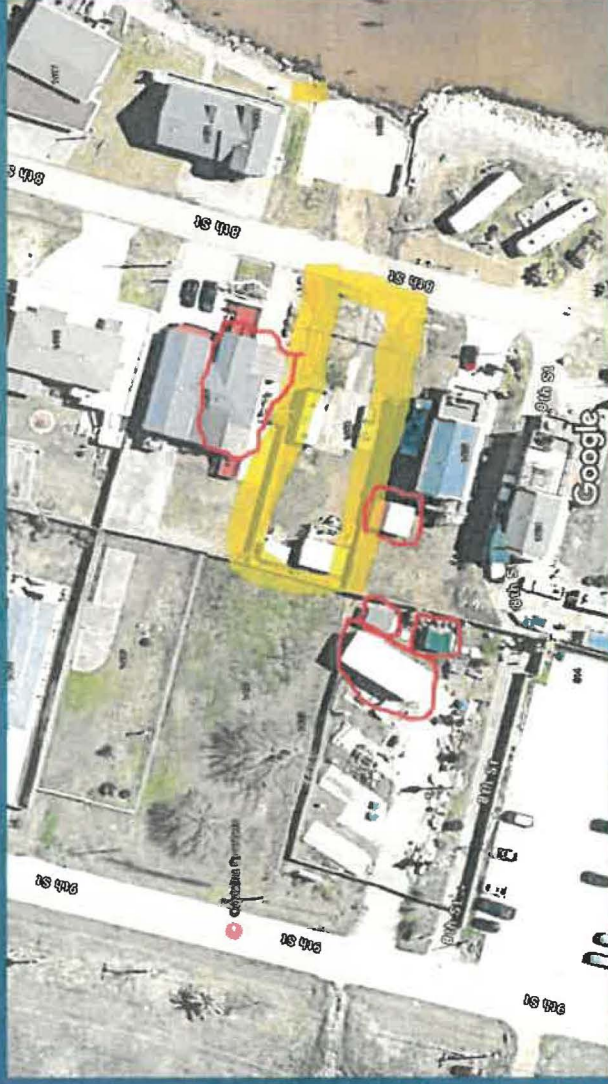


# 1432 9<sup>th</sup> Street Adjacent Property Southwest Corner

Ground Level "Structure"  
(two more structures  
behind large building)



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





# 1422 8<sup>th</sup> Street Adjacent Property North of Subject Property

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

# 1422 8<sup>th</sup> Street North of Subject Property Ground Floor Interior

(Zillow)



Living Room



Living Room



Kitchen

# 1422 8<sup>th</sup> Street Ground Floor Interior

(Zillow)



Bedroom 1



Bedroom 2



Bathroom

To: Permits <Permits@galvestoncountytexas.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

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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 8<sup>th</sup> 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 8<sup>th</sup> 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 8<sup>th</sup> 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 8<sup>th</sup> 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**

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**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 (21<sup>st</sup> St) / Galveston, TX 77550 / 409-770-5552  
[Melissa.moss@galvestoncountytx.gov](mailto:Melissa.moss@galvestoncountytx.gov)  
<https://www.galvestoncountytx.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

Nicloe;

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](mailto:BuildingPermits@co.galveston.tx.us) writes:

Mr. Garner,

**Stelly, Nicole**

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**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.galvestoncountytx.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 (21<sup>st</sup> St) / Galveston, TX 77550 / 409-770-5552

[Melissa.moss@galvestoncountytexas.gov](mailto:Melissa.moss@galvestoncountytexas.gov)

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



**From:** Drew Garner <[drewmgarnerjr@aol.com](mailto:drewmgarnerjr@aol.com)>

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

**To:** [drewmgarnerjr@aol.com](mailto:drewmgarnerjr@aol.com); BuildingPermits <[BuildingPermits@co.galveston.tx.us](mailto: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](mailto:drewmgarnerjr@aol.com) writes:

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

**Re: 1426 8<sup>th</sup> 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 8<sup>th</sup> 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 Appfel'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 TEEX (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

8<sup>th</sup> 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](mailto: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 (21<sup>st</sup> St) / Galveston, TX 77550 / 409-770-5552

[Melissa.moss@galvestoncountytx.gov](mailto:Melissa.moss@galvestoncountytx.gov)

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

**From:** Drew Garner <[drewmgarnerjr@aol.com](mailto:drewmgarnerjr@aol.com)>

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

**To:** BuildingPermits <[BuildingPermits@co.galveston.tx.us](mailto: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

**Galveston County Commissioners Court**

**January 3, 2025**

**Via: Hand Delivery**

**722 Moody, 1<sup>st</sup> Floor, Galveston, Texas 77550**

**Re: 1426 8<sup>th</sup> Street, San Leon, Tx. – Four Foot Height Variance for “Livable Space”  
February 3, 2025, 9:30 AM Commissioner Court Meeting**

**Prepared by & Submitted by Drew Garner, Jr. & Dr. Sarah (Betsy) Garner**

Drew Garner, Jr and Dr. Sarah (Betsy) Garner are requesting a four-foot elevation Variance at the subject property as allowed in the Flood Plain Regulations Variance Section M (6).

**BRIEF BACKGROUND:**

I was informed that this matter had been scheduled Monday, February 3, 2025, 9:30 AM, by your Attorney on Tuesday, January 28, 2025, at 4:23 PM (Received Wednesday, January 29, 2025, AM). Therefore, due to the short notice and outpatient medical treatments/surgery last Thursday and Friday that I could not reschedule, **I have only had a very limited amount of time to prepare this document. Therefore, I apologize in advance for any errors that may be discovered herein. Also, I discovered Friday afternoon that I only have three minutes of your time therefore, I will paraphrase and “speed-read” highlights of this document starting with Ms. Stelly and Mr. Shannon’s letter, specifically items that address their frivolous reasoning for recommending that you “deny” our request.**

**After being misinformed about elevation stipulations, originally we were told to designed and move the proposed building up four feet for compliance with the Flood Management Regulations. In an effort to meet and/or exceed the Flood Plain Regulation discovered concerns, we moved the small electrical panel up an to more than fourteen feet above the newly discovered sea level (as defined by Ms. Stelly), we installed a small “split-unit” HVAC more than fourteen feet above the newly discovered sea level and installed “Back Flow Preventers on the plumbing ater and sewer. This addressed all four issues Ms. Stelly expressed concern over (electrical, water, sewer and HVAC). Ms. Stelly inspected all but the HVAC unit at the time of her November 16, 2022, site inspection.**

It is disappointing that only selected e-mails were submitted to you that do not include at least the most resent summary of activities nor the complete file that supports our valid request for a Variance. Without the facts I have included in numerous e-mails and letters I have submitted to the Flood Plain Manager over the past two and half years and

numerous documents that address the discrepancies encountered (some included in responding e-mails) with the Flood Plain Manager (Ms. Nocolle Stelly) and the extreme difficulty she has caused us over the last two-and-a-half-year period, you have and will be misinformed. These documents were suspiciously not provided to you. I highly recommend that you review the entire document prior to making a ruling on this matter (and correspondence over the past two and half years, if possible). If you do not, you have and will be misinformed.

**Drew Garner's brief background as extracted from a recent publication includes, but is not limited to, the following:**

Mr. Garner is semi-retired and was an Adjunct Instructor for Texas A&M University TEEK for over thirty years (Environmental, Construction, Codes & Ordinances, Contracts, Legal, etc. Mr. Garner also Lectured at the Texas A&M University School of Public Health. He is a Registered Professional Building Designer, a former Texas Board of Architecture Registered Interior Designer, a Certified International Code Council Building Code Plans Examiner. Mr. Garner was a member of the City of Bellaire, Board of Adjustments (Variances) in the 1980's. Mr. Garner was employed by the City of Houston as a Building Official/Inspector, Section Chief in the Engineering Department, Facilities Construction Project Manager, Building Code Plans Examiner. He provided Building Code and City Ordinance Compliance evaluations and Inspections in the late 1980's. At the City of Houston, Mr. Garner developed and conducted the "Constructability Review" Program for review of all proposed City of Houston construction projects. This program was later adopted by Houston METRO. Mr. Garner was employed by the City of Bellaire as a Building Official/Inspector providing Building Code and City Ordinance Compliance evaluations and Inspections in the 1980's. Mr. Garner is also the first Licensed Asbestos Consultant in the State of Texas. Mr. Garner has a Civil Engineering Degree amongst his numerous Professional Certifications. Mr. Garner has provided "Expert Testimony" in Building Codes and Environmental Regulations nationwide in Federal Court, State and Local Court for over forty years. Mr. Garner's Clients have included the Federal Government, US Department of Defense, State of Texas (over twenty-five years), City of Houston (over twenty-five years), Brazos River Authority, Clear Creek ISD (over ten years & ongoing), Battle ship of Texas restoration, and numerous national private Clients over his career to include PB North America nationwide, Walmart, AMC Theatres (over twenty years), Time Warner, Walt Disney (World & Land), Habitat for Humanity, in addition to numerous other nationwide Clients.

Mr. Garner has provided "Expert Testimony" in numerous Court Cases nationwide, He has never lost a Case he has testified in.

**Dr. Sarah (Betsy) Garner's brief background includes, but is not limited to, the following:**

Dr. Garner (Retired) was an Interior Designer (B.S., University of Texas), Construction Manager, Licensed Real Estate Broker and a Public School Teacher with HISD for over thirty years. Dr. Garner received her Doctorate Degree from the University of Houston. Dr. Garner has provided instruction in an ongoing "English as a Second Language" program at Second Mile Ministry in Sugar Land, Texas.

**REBUTTAL TO MS. STELLY, FLOOD PLAIN MANAGER & MR. SHANNONS  
JANUARY 28, 2025, LETTER:**

**Our rebuttal to Ms. Stelly & Mr. Shannon comments included in their letter submitted to the Commissioners Court are as follows (in "bold" – Ms. Stelly & Mr. Shannon's comments are "italic"):**

*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. After Ms. Mellisa Moss of the Permit Office informed us on August 17, 2022, and again on October 11, 2022 that San Leon was at an elevation of "10" feet and we would be required to have the "floor level" at 14 feet which we understood to be four feet more up from grade, we went back to the builder/owner and purchased the subject building that afternoon (our check is available for verification). 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. The County did not provide the subject document to us. Please provide us with a copy of signed document.*

*Attached is a request for a Variance Request dated November 2024 as well as correspondence from the applicant. Only three e-mails were submitted to the Commissioners' Court by the "County". As stipulated herein, numerous E-mails and/or documents that support the validity of our request were not submitted to the Court.*

*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. We started converting the structure to "livable Space" after we met with Ms. Melissa Moss at the Permit Office on August 17, 2022 and another conversation on October 11, 2022 in which we were informed that we could convert the structure to "Livable Space" if we move it up and that San Leon is ten feet above sea level so we would only be required to move the structure up four feet from grade to comply with "Livable Space" requirements of fourteen feet above sea level. Please see my rough notes for verification. On November 16, 2022, Ms. Stelly, told me during her inspection at the site "I don't see a problem" with converting it since I have made modifications that meet the intent (with modifications made that accomplished the same objective) of the regulation. I asked Ms. Stelly if we could continue with the scheduled residential renovation the next day, she did not object. This was before I discovered and brought to her attention the fact that we meet the requirements for a Flood Plain Regulation Variance based on existing adjacent properties with "livable space" at ground level (below Flood Plain Regulation minimum requirements) as stipulated in the Flood Plain Regulation Variance Section. She also stated that she would meet with her boss and get final approval (which she said would be no problem) and convert the Permit to "alteration from storage to "livable space". Later before she left the site she indicated, "I don't care what you do after I leave here" ... "we don't come out unless we are called". Ms. Stelly's statements were "documented" for my record in an effort to ensure compliance, in a manner that cannot be disputed.*

The subject property is a total of 0.1530 acres (less than one-half acre). The adjacent property to the North 1422 8<sup>th</sup> Street is a two story with over 800 sq. ft. of living area at grade/ground level (below Flood Plain elevation). Refer to Zillow photos of living room, bedroom, kitchen, bathroom, additional partial enclosed first floor garage/storage, etc. at ground level. The adjacent property to the East across 8<sup>th</sup> 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 8<sup>th</sup> 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 and Zillow.

As admitted by Ms. Stelly during her November 16, 2022, inspection of the subject structure there are numerous structures in noncompliance with the Flood Plain Regulation located in Galveston County especially in San Leon ("documented").

*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. **Actually, seven photographs were included in the subject letter. A photo of non-compliant (slightly above grade) Galveston County sanitary sewer manhole covers with numerous holes in the manhole covers was not submitted to you by the County. The County failed to inform you that the properties East and West are unimproved that can be observed in photograph No. 4.***

*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. **The subject "building" is "reasonably safe" from flooding at the current elevation. We installed extra structural reinforced and high strength filled steel reinforced concrete block piers and a "break away" louver below the structure. We also installed numerous heavy duty stainless steel "tie-down" straps, more than required by the County. I showed these upgrades to Ms. Stelly at the site during her inspection of the building.***

On November 11, 2022, in a telephone with Ms. Melissia Moss of the Flood Plain Management office she indicated that after I moved the electrical breaker box up four more feet Ms. Stelly told her that I should be able to get approval for a "Livable Space" Permit and that Ms. Stelly will look at it when she conducts her inspection. This conversation was documented in a manner that cannot be disputed. We moved the small electrical panel

**We were told by the County that we could not insure the structure at four feet above grade. This is not true. As stipulated in County documents it may cost more. We can provide an insurance quote that indicates the "building" can be insured.**

*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. **The Variance requested is the minimum necessary considering all of the facts submitted to the County by the Applicant.***

*(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. **It is very unfortunate that the County did not provide you with a complete file that explains our sufficient "hardship" or at least my brief summary recently submitted. One reason to keep the building at the current elevation was for our adult Handicap daughter to be able to use the "tiny House" (she loves the beach). However, if raised an additional four feet the ADA ramp required would be at an impossible length. I made this clear to Ms. Stelly and Ms. Moss. Unfortunately, our daughter may never be able to use the house because of her deteriorating health. That's one of the reasons why we are considering selling the property. We have provided a "good and sufficient cause", we have proven "that failure to grant the variance would result in exceptional hardship to the applicant in documents submitted to the County. We also have proven that 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. **I am outraged that Ms. Selly & Mr. Shannon would include this statement in their letter after numerous documents were submitted to them that address and explain in detail our "hardship". Again, it is extremely disturbing that you were not provided with all of the documents that clearly support our side of the issue. We have not only lost sales but we have also lost income from potential rent (from \$36,000 to \$43,200 over a two-year period according to a local Realtor. We have paid additional taxes for a "Tiny House" for over two years as stipulated in County and/or our tax records, etc.***

*We do not see that the variance request meets the requirements of Article 4, Section M and recommend Commissioners Court "deny" the request. **I find it hard to believe that Mr. Shannon a (Professional Engineer) made the request to deny our request based***

on all documents submitted to the Flood Plain Office. It appears that he did not review and evaluate the entire file in this matter prior to signing the January 28, 2025, letter submitted to the Court. This recommendation is baseless and weak and unsupported by the County! The Variance request does meet the requirements of Article 4 Section M and the requirements of Article 4 Section C. The structure was converted to "Livable Space" (after the Flood Plain Manager (FPM)/Inspector (Ms. Stelly) indicated "there should be no problem" (at the site during her site inspection.

**CLOSING:**

If the Commissioners' Court is considering denying our request for a Variance based on the limited information included in Ms. Stelly and Mr. Shannon's January 28, 2025, letter to you, you will not have all of the pertinent information to make a valid decision.

Should we receive a ruling that does not fulfill our request we will have no other alternative but to utilize this and all other support documentation omitted in a higher Civil Court as necessary. It would be a terrible waste of the Taxpayers' funds to have this settled in a Civil Court.

**With God as my witness, I have provided the truth in this document! I know our Variance request is valid and allowed by the Flood Plain Regulation, meets the intent (with modifications made that accomplished the same objective) of the regulation and worthy of approval.**

**We respectfully request Approval of the requested Variance based on the Variance stipulations in the Flood Plain Regulation and evidence herein and evidence presented to the Ms. Stelly ("Flood Plain Manager") over the past two and half years.**

**Romans 13:1-7 "Government is accountable to God"!**

Sincerely, Signed Electronically, Drew M. Garner, Jr.

**C:** Attorney At Law, Blind Copy (to be announced upon formal retention)

**ATTACHMENT TO DREW GARNER, JR AND DR. SARAH (BETSY) GARNER'S  
FEBUARY 3, 2025 REBUTTAL:**

**Additional Background Information Extracted From Previous E-Mails to Ms. Stelly:**

**It is very unfortunate that that this matter has been dump on the Commissioners Court and not been settled in our favor based on the documentation and evidence submitted to the Flood Plain Manager/Inspector and the Variance stipulations allowed in the Flood Plain Regulation.**

Please request and review **All** of my numerous letters, E-mail correspondence and documents submitted that support our request for complete information regarding the subject matter over the past two years. **Also, if you are contemplating a decision that would not result in our favor then I request that you "defer" your decision until you receive all documentation to include my January 24, 2025 latest letter to Ms. Stelly (not provided to you by Ms. Stelly and Mr. Shannon or your Attorney) which summarizes the matter and offers a plausible explanation why you should favor my request. The letter was probably not presented to you because it has facts that addresses and question Ms. Stelly's competence and unprofessional behavior. I know based on my experience and all documentation provided to the Flood Plain Management Manager, that a trial by jury will rule in our favor.**

**We have had proven substantial financial damages and mental anguish over this issue for over two years which can be proven if this issue ends up in Civil Court. We have not been able to sell the property due to the Permit not being finalized and/or issued. It would not be legal to rent the property due to the Permit issue. We have paid taxes for over two years for use as a "Tiny Home and/or Residential" as stipulated and required by the Galveston Central Appraisal District. These three issues along add up to a lot of financial loss and there is much more. Per the January 1, 2023, Galveston Central Appraisal District the appraised value was raised to include what was stated as "ADD NEW IMPS (TINY HOME) AND FUB AND WD" which substantially increased our taxes (PAID) for this improvement for a "livable space" (document previously submitted to the FPM). In addition, our current 2024, Property Tax documents obtained from the Appraisal District indicate "Residential Living Area 240 sqft". I think you would agree that the County cannot have it both ways (tax for Residential but not allow/approve use of it).**

**A Variance should be approved based on my November 26, 2024, E-Mail to Ms. Stelly and the Galveston County Flood Plain Regulation Section that specifically allows for a Variance based on the elevation of adjacent "structures" and/ or "Livable Spaces" (at grade/ground level) and adjacent unimproved properties. As mentioned in my last E-mail, the photographs of adjacent properties I sent for confirmation can simply be verified on Zillow and Google.**

There should be no reason for the County to decline our request for a Variance and Permit for "Livable Space", "Residential" use.

*When I first approached Ms. Stelly regarding the amount of time was taking to resolve this issue, she told me she had files in her inbox that go back eight months ("documented"). She made it clear that she was overwhelmed with her workload and behind on other work. It became obvious that she was "in over her head" and inexperienced for the position she holds. As an experienced former government Building Code Official, Section Chief of Engineering and "Expert Witness" in building Codes and Ordinances in Federal and local Courts nationwide (never lost a case), I assure you that a trial by jury (which we plan to have) will side with us based on the facts, not even considering the public's current lack of confidence and distrust of government officials and documented government dissatisfaction.*

It is obvious that by Ms. Stelly's unwillingness to comply with the Variance Sections of the Regulation that allow our request to be approved, unresponsive responses, delaying our request for over two years, etc., that she is retaliating against me because I have questioned her competence and knowledge of the Flood Plain Regulations and Variance stipulations in the past.

Ms. Stelly has forced me to question her competence in the position she currently holds. Initially In my July 24, 2023, we were told by Melissa Moss of Ms. Stelly's office that "there is no Variance process".

My July 24, 2023, telephone conversation with Ms. Stelly she first indicated; "I have about forty files on my desk and a couple of things from 2008. After I expressed frustration with her during the conversation she indicated that she would call me "today or tomorrow" with results. I never received that call. Based on her past lack of response and/or negative response I have started an investigation into her and her past negative actions with other citizens. I already have several citizens that have indicated their willingness to testify against her for "improper interpretations", "improper use of her authority", "abuse of her authority", "incompetence", "unnecessarily delaying projects", "lack of education (High School only), lack of knowledge and experience for the position she holds" (Flood Plain Manager), etc. I will be conducting an "Open Records" request, or I will have my Attorney subpoena Ms. Stelly to provide past applications for permits (with a deadline due date).

This was sent to Ms. Stelly in my last E-Mail; Please do not continue to punish us because of our willingness to attempt follow the law and obtain a Permit and comply with the intent of Rules and Regulations. It is understood by many of the noncompliant citizens that I have encountered that it is more trouble to deal with the County than doing what they want, they say the County doesn't care anyway and there are no consequences. How many obvious structures that are not in compliance has the County inspected, requested compliance from the citizens, etc. As stated by Ms. Stelly "I only come out if called" (documented in a manner that cannot be disputed). Once I discovered that Ms. Stelly and

her office personnel were not well versed in the Flood Plain Regulation, especially the Variance stipulations, I started documenting all conversations in a manner that cannot be disputed for my records to make sure I understood their interpretation of the Regulation in an effort to comply.