



# PORT OF OAKLAND

## Permit Coordinator's Variance Report

FOR

**Oakland Airport Business Park  
Consideration of a Variance from the Lot Size Requirement  
8430 Edgewater Drive, Oakland, CA**

**Variance Hearing Purpose:** This hearing is for consideration of an Application for variance from the minimum lot size requirement of 1 acre pursuant to the Oakland Airport Business Park Land Use and Development Code (LUDC, Port Ordinance No. 3760), Section 3.3. The Variance is related to a subdivision action requested by the Applicant for a Parcel Map Waiver (PMW) to split the existing parcel into two. Granting of a variance does not constitute approval of the project, and the work may proceed only after the approval of the Parcel Map Waiver by the Port Land Surveyor.

**Project Applicant:** Jeff Neustadt for 8400 Edgewater, LLC

**Project Location:** The project is in the Oakland Airport Business Park in Oakland, California. The site is located on Edgewater Drive, west of Hegenberger Road. The proposed delineated parcel will be 8430 Edgewater Drive.

**Project Description:** Raising Cane's has been granted a permit to construct a fast-food drive-thru restaurant in the parking lot of the site formerly occupied by WalMart. The Project Applicant wishes to sell the portion of the parcel to be used by Raising Cane's to the restaurant chain. The original parcel (known as the Hegenberger Gateway Plaza) was previously subdivided into five parcels:

- 1: 1.04 Acres
- 2: 0.92 Acre
- 3: 12.33 Acres
- 4: 0.73 Acre
- 5: 1.04 Acres

Refer to Attachment 1 for the layout of the five parcels. One building occupies each parcel. The entire site appears as one site to the public with no visible divisions between the properties. The former Walmart building occupies Parcel 3, which contains the proposed Raising Cane's site. The PMW proposes to delineate a 0.952 acre parcel from Parcel 3 to be sold to the Raising Cane's restaurant chain and will be referenced as Parcel B. The remainder of Parcel 3 (11.378 acres) will become Parcel A and owned by the Project Applicant.

The proposed Parcel B is between the two driveways (east and west of the proposed Parcel B) from Edgewater Drive that serve all the tenants for the site (See Attachment 2). The east driveway is split between Parcels 3 & 4. The proposed Parcel B will include the portion of this east driveway and be bounded by Parcel 4. The west driveway will remain entirely within the proposed Parcel A. The north boundary of the proposed Parcel B will be the mid-line of the drive aisle accessing the row of parking designated for this site. The south boundary of Parcel B is the Edgewater Drive Right-of-Way (ROW).

**530 Water Street \* Jack London Square \* P.O. Box 2064 \* Oakland, California 94604-2064**

**Public Hearing:** A hearing will be held on Friday, December 17, 2021 at 1:00 pm (PST) via Zoom. A ten-day notice was posted on the Port of Oakland website at <https://www.portoakland.com/business/bids-rfps/bid-engineering/permits/> and sent to all property owners within 300 feet of the Project site. Meeting specifics are included in the notice.

**Analysis:** Section 3.3 of the Oakland Airport Business Park LUDC states:

*Except for existing legal non-conforming lots, no lot shall be less than one (1) acre in ground area. Any existing legal non-conforming lot shall have been lawfully created on or before the date of adoption of this Code.*

The Project Applicant states that the configuration of Parcel 3 is delineated by the location of the two driveways. The Project Applicant prefers to maintain the west driveway within the larger parcel for maintenance purposes. The north boundary is dictated by the parking configuration. For the proposed Parcel B to meet the minimum lot requirement, existing parking spaces from proposed Parcel A would have to be included in proposed Parcel B. This would create a jagged parcel line between the proposed Parcels A and B that could restrict development of proposed Parcel A. Proposed Parcel B has adequate parking as delineated; additional parking is not required.

Variances were approved for Parcels 2 & 4 in the original subdivision of Hegenberger Gateway Plaza to deviate from the 1-acre minimum requirement. These were granted in part because the parcel lines would not be visible to the public. As with the variances for Parcels 2 & 4, no fences or barriers will be placed between the proposed Parcels A and B.

**Special Conditions:**

1. No barriers or physical delineations shall be made to separate Parcels A and B.
2. Pavement and striping upgrades shall be coordinated with the other Parcel owners at the Hegenberger Shopping Center for consistency in the existing design and layout of the site.

**Environmental Determination:**

Article 8.2 of Port Ordinance 2124 provides for the waiver of the requirement for a Parcel Map for the purposes of creating a land division. As such, the decision by the Executive Director to subdivide a parcel and grant a Parcel Map Waiver is considered "ministerial". Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15369, a ministerial decision involves only the use of fixed standards or objective measurements and involving little to no personal judgment.

The Port has determined that the subdivision and Parcel Map Waiver is exempt from the requirements of CEQA pursuant to section 15268 of the CEQA Guidelines based on the determination of this as a ministerial project.

**Findings:**

1. *That because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the LUDC will deprive*

*such property of privileges enjoyed by other property in the Business Park within the same area of land use designation, as shown in Figure 2.1 in the LUDC.*

Granting of the variance does not undermine the intent of the LUDC to maintain large parcels because the delineated parcel will not be evident to the public. Granting of the variance will allow property ownership of a parcel sized consistent with the approved development as is allowed for other property owners.

2. *That granting of the variance will be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the Business Park within the same area of land use designation, as shown in Figure 2.1 in the LUDC.*

The Project Applicant agrees to coordinate improvements with the other owners on the "Hegenberger Plaza" site for consistency in the existing design and layout of the site.

3. *That granting of the variance will not authorize a use or activity, which is not otherwise allowed within the applicable land use designation of the Oakland Airport Business Park.*

The use and development of the site (Raising Cane's) has been approved under separate Port Development Permit (Permit #5309) and complies with the LUDC.

4. *The proposed variance will neither interfere with the operations of Oakland International Airport nor enable the establishment of uses that may be incompatible with the potential imposition of noise, light, smoke, air currents, electronic or other emissions, vibrations, discomfort, and/or inconvenience resulting from airport operations.*

Project Applicant will record an aviation easement in consideration of Oakland International Airport, which is a condition under the Port Development Permit.

5. *The Port has attached such conditions to approval of the variance as it deems reasonable or necessary to achieve the purposes of this Land Use and Development Code, to reduce or to mitigate environmental impacts, and to address the project's anticipated burden on the Business Park and the Port, and which otherwise promote the health, safety, and welfare of the surrounding community.*

Special Conditions 1 & 2 are included in addition to the standard Conditions of Approval to assure that the intent of the LUDC is maintained.

**For More Information:** Joe Marsh, Permit Coordinator, Port of Oakland, 2<sup>nd</sup> Floor, 530 Water Street, Oakland, CA 94607. [jmarsh@portoakland.com](mailto:jmarsh@portoakland.com)