

ACTION FORM BRYAN CITY COUNCIL

DATE OF COUNCIL MEETING: January 27, 2015		DATE SUBMITTED: December 12, 2014	
DEPARTMENT OF ORIGIN: Development Services		SUBMITTED BY: Randy Haynes	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:	STRATEGIC INITIATIVE:
<input type="checkbox"/> BCD	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING	<input type="checkbox"/> PUBLIC SAFETY
<input type="checkbox"/> SPECIAL	<input checked="" type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> 2ND READING	<input type="checkbox"/> SERVICE
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> STATUTORY		<input checked="" type="checkbox"/> ECONOMIC DEVELOP.
<input type="checkbox"/> WORKSHOP	<input type="checkbox"/> REGULAR		<input checked="" type="checkbox"/> INFRASTRUCTURE
			<input type="checkbox"/> QUALITY OF LIFE
AGENDA ITEM DESCRIPTION: A request to abandon a 0.07-acre portion of a 20-foot wide public alley right-of-way extending east-to-west between North Houston and North Texas Avenues in Block 43 of the Bryan Original Townsite, as well as a 12-foot wide portion of East 24 th Street and a 15-foot wide portion of North Houston Avenue rights-of-way cumulatively 0.13 acres in size, both lying adjacent to Block 43 of the Bryan Original Townsite between North Texas Avenue and North Houston Avenue and East 23rd and East 24th Streets, respectively, in Bryan, Brazos County, Texas (case no. RA14-01).			
SUMMARY STATEMENT: The applicant, Mr. Thomas Baber on behalf of Emmanuel Baptist Church, is requesting the official abandonment portions of public street rights-of-way for East 23 rd Street and North Houston Avenue, adjacent to Block 43 of the Bryan Original Townsite, to formally integrate this tract with the church's ownership of the adjoining land. The street rights-of-way requested to be abandoned are 0.13 acres in area and have never been improved as a driving surface. In addition, the church is requesting abandonment of a portion of the alley right-of-way that bisects Block 43 of the Bryan Original Townsite.			
Emmanuel Baptist Church was organized in 1950 and by 1952 was meeting at its current location at East 24 th Street and Houston Avenue. In 1958, the current sanctuary was constructed and the education building added a few years later. Recently, changes in one of the businesses in Block 43 that fronts Texas Avenue ("The Cut Above") has caused automobile traffic on an un-improved alley that extends between the church sanctuary and education building in the eastern half of this block.			
The applicant states that the introduction of traffic into the alley has created a hazardous condition to the extent that it warrants closure of this portion of the alley. In addition to closure of the portion of alley right-of-way adjacent to church property, the applicant is requesting abandonment of portions of adjacent street rights-of-way along East 24 th Street and North Houston Avenue, specifically a 12-foot wide portion of East 24 th Street and a 15-foot wide portion of North Houston Avenue.			
Acting on behalf of the general public, only Bryan's City Council is authorized to officially abandon all or portions of rights-of-way dedicated for public use. The Planning and Zoning Commission hears and makes a recommendation on proposals to abandon any such rights-of-way.			
STAFF ANALYSIS AND RECOMMENDATION: During its regular meeting on November 20, 2014, the Planning and Zoning Commission, by a vote of 7-0 with one Commissioner abstaining, concurred with staff and <u>recommended approving</u> the requested right-of-way abandonments, <u>subject to the condition</u> that a formal replat encompassing all property which the applicant owns or will own after abandonment of these rights-of-way is filed with the City for recording.			

Commissioners acknowledged that abandoning the alley right-of-way could interfere with the smooth circulation of vehicular traffic by eliminating an option for access and egress to two businesses along Texas Avenue. Commissioners, however, agreed with staff and concluded that not abandoning the alley right-of-way would interfere with the safe circulation of pedestrian traffic and that abandoning the rights-of-way, as requested, will allow this land to be integrated with adjacent lots and relieve the public from continued maintenance responsibilities and create a safer environment than that existing presently.

OPTIONS (In Suggested Order of Staff Preference):

1. approve the requested right-of-way abandonments;
2. approve the requested right-of-way abandonments with modifications, which may require consideration at a future City Council meeting; or
3. deny the requested right-of-way abandonments.

ATTACHMENTS:

1. location map;
2. draft ordinance and exhibits;
3. excerpt from Planning and Zoning Commission meeting minutes of November 20, 2014; and
4. staff report to the Planning and Zoning Commission.

FUNDING SOURCE: N/A

APPROVALS: Kevin Russell, 12-18-14; Joey Dunn, 12-18-14; Hugh R. Walker, 12/19/2014

APPROVED FOR SUBMITTAL: CITY MANAGER Kean Register, 12-23-2014

APPROVED FOR SUBMITTAL: CITY ATTORNEY Janis K. Hampton, 12-23-2014

LOCATION MAP:



ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE ABANDONMENT OF THE FOLLOWING PUBLIC RIGHT-OF-WAY, TO WIT: A 0.07-ACRE PORTION OF A 20-FOOT WIDE PUBLIC ALLEY RIGHT-OF-WAY EXTENDING EAST-TO-WEST BETWEEN NORTH HOUSTON AND NORTH TEXAS AVENUES IN BLOCK 43 OF THE BRYAN ORIGINAL TOWNSITE, AS WELL AS A 12-FOOT WIDE PORTION OF EAST 24TH STREET AND A 15-FOOT WIDE PORTION OF NORTH HOUSTON AVENUE RIGHTS-OF-WAY CUMULATIVELY 0.13 ACRES IN SIZE, BOTH LYING ADJACENT TO BLOCK 43 OF THE BRYAN ORIGINAL TOWNSITE BETWEEN NORTH TEXAS AVENUE AND NORTH HOUSTON AVENUE AND EAST 23RD AND EAST 24TH STREETS, RESPECTIVELY; AUTHORIZING THE CONVEYANCE THEREOF TO THE ABUTTING PROPERTY OWNER; PROVIDING FOR THE TERMS AND CONDITIONS OF ABANDONMENT AND CONVEYANCE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the owner of the east ½ of Lot 3, Lots 4 through 5, the east 12 feet of Lot 7 and Lots 8 through 10 in Block 43 of the Bryan Original Townsite has requested the abandonment of approximately 8,721 square-feet of public rights-of-way located adjacent to said lots; and

WHEREAS, during its regular meeting on November 20, 2014, the Bryan Planning and Zoning Commission recommended approving the request to abandon and close said portions of public right-of-way, subject to the condition that a formal replat encompassing all property which the applicant owns or will own after abandonment of these rights-of-way is filed with the City for recording; and

WHEREAS, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration a part of which being the discontinuance of the obligations of the City of Bryan to maintain said right-of-way portions; and

WHEREAS, said above recited considerations are of at least equal value to the appraised market value of these right-of-way portions; and

WHEREAS, the City Council of the City of Bryan, acting pursuant to law, deems it advisable to abandon and convey this tract of land to the abutting property owner and is of the opinion that said land is not needed for public use, and that same should be abandoned to the abutting property owner as hereinafter provided; and

WHEREAS, the City Council of the City of Bryan is of the opinion that the best interest and welfare of the public will be served by abandoning and conveying same to the abutting property owner;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRYAN:

1.

That all language contained in the preambles to this Ordinance shall be incorporated into the text of the Ordinance as if set forth verbatim herein.

2.

That the following described tract in the City of Bryan, Brazos County, Texas be and the same is hereby abandoned, vacated and closed insofar as the right and title of the public are concerned:

a 0.07-acre portion of a 20-foot wide public alley right-of-way extending east-to-west between North Houston and North Texas Avenues in Block 43 of the Bryan Original Townsite, as well as a 12-foot wide portion of East 24th Street and a 15-foot wide portion of North Houston Avenue rights-of-way cumulatively 0.13 acres in size, both lying adjacent to Block 43 of the Bryan Original Townsite between North Texas Avenue and North Houston Avenue and East 23rd and East 24th Streets, respectively, said tracts being described more particularly on attached Exhibit "A" and depicted on attached Exhibit "B".

3.

That the abandonment and conveyance provided for herein is made and accepted subject to all present zoning and deed restrictions, if the latter exist, and all existing easements, if any, whether apparent or non-apparent, aerial, surface, underground or otherwise.

4.

That the abandonment and conveyance provided for herein shall extend only to the public right, title, easement and interest and shall be construed to extend only to the interest which the governing body for the City of Bryan may legally and lawfully abandon and vacate.

5.

That the abandonment and conveyance provided for herein shall not be completed until the City of Bryan has approved and recorded a formal replat encompassing all property which the applicant owns and/or will own after abandonment of this public right-of-way.

6.

That this ordinance shall take effect immediately upon its second and final reading and passage.

PRESENTED AND GIVEN first reading the 13th day of January, 2015 at a regular meeting of the City Council of the City of Bryan, Texas; and given second reading, **PASSED AND APPROVED** on the 27th day of January, 2015 by a vote of ___ yeses and ___ noes at a regular meeting of the City Council of the City of Bryan, Texas.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Jason P. Bienski, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney

EXHIBIT "A":

15' Wide Right-of-way Abandonment of Houston Avenue &
12' Wide Right-of-way Abandonment of East 24th Street
Bryan Original Townsite
Volume "H", Page 721
S. F. Austin Survey, A-62
Bryan, Brazos County, Texas

Field notes of a 0.13 acre tract or parcel of land, lying and being situated in the S. F. Austin Survey, Abstract No. 62, Bryan, Brazos County, Texas, and being the west 15 feet of Houston Avenue – 80' wide right-of-way, and the north 12 feet of East 24th Street, adjoining Block 43, Bryan, Original Townsite, according to the plat recorded in Volume "H", Page 721, of the Deed Records of Brazos County, Texas, and said 0.13 acre tract being more particularly described as follows:

BEGINNING at a 60d nail set at the northeast corner of Lot 10, Block 43;

THENCE S 81° 30' 00" E along the south right-of-way line East 23rd Street – 80' wide right-of-way, for a distance of 15.00 feet to a ½" iron rod and cap set;

THENCE S 08° 30' 00" W parallel to and 15 feet east of the west right-of-way line of Houston Avenue – 80' wide right-of-way, for a distance of 262.00 feet to a ½" iron rod and cap set;

THENCE N 81° 30' 00" W parallel to and 12 feet south of the north right-of-way line of East 24th Street - 80' wide right-of-way, for a distance of 140.00 feet to a ½" iron rod and cap set;

THENCE N 08° 30' 00" E for a distance of 12.00 feet to a ½" iron rod and cap set at the common corner between the Emmanuel Baptist Church Tract, recorded in Volume 149, Page 124, of the Deed Records of Brazos County, Texas, and the Simon C. Zavala, Jr., tract recorded in Volume 9573, Page 68, of the Official Records of Brazos County, Texas;

THENCE S 81° 30' 00" E along the north right-of-way line of East 24th Street – 80' wide right-of-way, for a distance of 125.00 feet to a ½" iron rod and cap set at the southeast corner of Lot 5, Block 43;

THENCE N 08° 30' 00" E along the common line between the beforementioned Block 43 and Houston Avenue – 80' wide right-of-way, for a distance of 250.00 feet to the **PLACE OF BEGINNING**, containing 0.13 acre of land, more or less.

A Portion of the 20' Alley
Part of Block 43
Bryan Original Townsite
Volume "H", Page 721
S. F. Austin Survey, A-62
Bryan, Brazos County, Texas

Field notes of a 0.07 acre tract or parcel of land, lying and being situated in the S. F. Austin Survey, Abstract No. 62, Bryan, Brazos County, Texas, and being part of the 20 foot alley lying within Block 43, Bryan, Original Townsite, according to the plat recorded in Volume "H", Page 721, of the Deed Records of Brazos County, Texas, and said 0.07 acre tract being more particularly described as follows:

BEGINNING at a 60d nail set at the southeast corner of Lot 10, Block 43, and in the west right-of-way line of Houston Avenue – 80' wide right-of-way;

THENCE S 08° 30' 00" W along the west right-of-way line of the beforementioned Houston Avenue, for a distance of 20.00 feet to a 60d nail set at the northeast corner of Lot 5, Block 43;

THENCE N 81° 30' 00" W along the common line between the beforementioned 20' wide alley and the East ½ of Lot 3, Lot 4 and Lot 5, Block 43, for a distance of 125.00 feet to a 60d nail set at the common corner between the Emmanuel Baptist Church Tract, recorded in Volume 149, Page 124, of the Deed Records of Brazos County, Texas, and the Simon C. Zavala, Jr., tract recorded in Volume 9573, Page 68, of the Official Records of Brazos County, Texas;

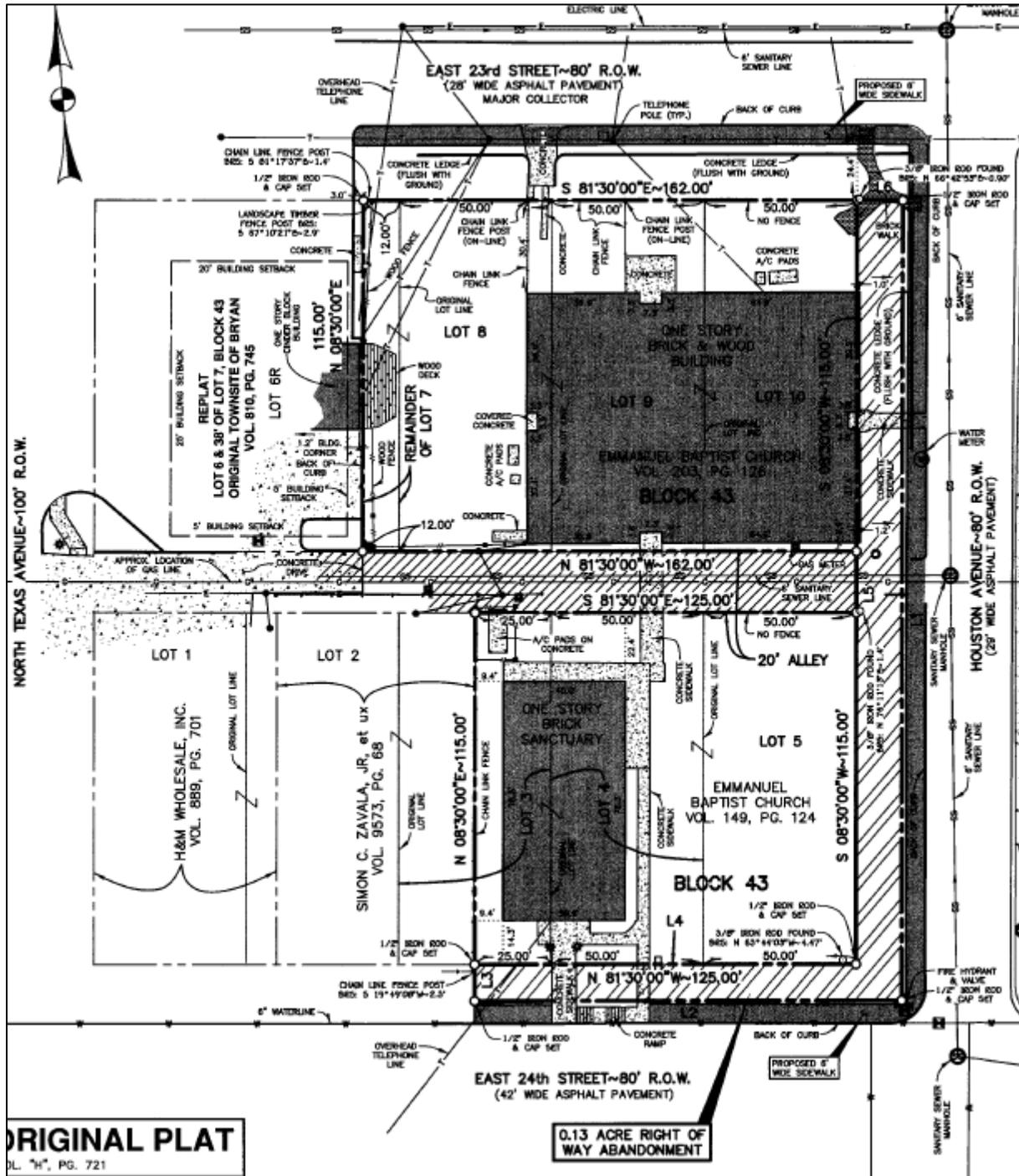
THENCE N 08° 30' 00" E for a distance of 10.00 feet to a ½" iron rod and cap set in the centerline of the beforementioned 20' wide alley;

THENCE N 81° 30' 00" W along the centerline of the beforementioned 20' wide alley, for a distance of 37.00 feet to a ½" iron rod and cap set;

THENCE N 08° 30' 00" E for a distance of 10.00 feet, pass the common corner between the Emmanuel Baptist Church Tract recorded in Volume 203, Page 128, of the Deed Records of Brazos County, Texas, and Lot 6R, as described in the Replat of Lot 6, and 38' of Lot 7, Block 43, Bryan Original Townsite, according to the plat recorded in Volume 810, Page 745, of the Official Records of Brazos County, Texas;

THENCE S 81° 30' 00" E along the common line between the beforementioned 20' wide alley and the east 12 feet of Lot 7, Lot 8, Lot 9 and Lot 10, for a distance of 162.00 feet to the **PLACE OF BEGINNING**, containing 0.07 acre of land, more or less.

EXHIBIT "B":



ORIGINAL PLAT
 PL. "H", PG. 721

0.13 ACRE RIGHT OF WAY ABANDONMENT

**EXCERPT FROM PLANNING AND ZONING COMMISSION REGULAR MEETING
MINUTES OF NOVEMBER 20TH, 2014:**

5. REQUESTS RELATED TO LAND IN AND ADJACENT TO BLOCK 43 OF THE BRYAN ORIGINAL TOWNSITE BOUNDED BY EAST 23RD STREET, NORTH HOUSTON AVENUE, AND EAST 24TH STREET - A PUBLIC HEARING WILL BE HELD FOR EACH ITEM (Commission makes recommendation and City Council has final approval regarding requests to abandon public rights-of-way; Commission has final approval of the replat).

a. Right-of-Way Abandonment RA14-01: Bryan Original Townsite – Block 43

A request to abandon a 0.07-acre portion of a 20-foot wide public alley right-of-way extending east-to-west between North Houston and North Texas Avenues in Block 43 of the Bryan Original Townsite, as well as a 12-foot wide portion of East 24th Street and a 15-foot wide portion of North Houston Avenue rights-of-way cumulatively 0.13 acres in size, both lying adjacent to Block 43 of the Bryan Original Townsite between North Texas Avenue and North Houston Avenue and East 23rd and East 24th Streets, respectively, in Bryan, Brazos County, Texas. (R. Haynes)

Mr. Randy Haynes presented the staff report (on file in the Development Services Department). Staff recommends approval of the request.

The public hearing was opened.

Ms. Mary Walker, 5352 Koppe Bridge Road, College Station, Texas, asked if the church could put up a fence to mitigate the problem. Mr. Haynes clarified that it was not legal to fence off a public right-of-way.

Mr. Thomas Baber, 6046 Straub Road, College Station, Texas, stated that the church had seen some dangerous circumstances with the alley. Mr. Baber also mentioned that there are underage children that traverse the property from day-to-day.

Mr. Matthew Gentry, 4900 Park Row, Bryan, Texas, stated that his two children have been in close calls with regards to traffic safety in the alley.

Ms. Meredith Elms, 515 Camp Court, College Station, Texas, stated that the church provides a safe environment for children and discussed close calls that she has experienced with kids in the alley.

Ms. Elizabeth Baber, 6046 Straub Road, College Station, Texas, came forward to explain an incident that she had witnessed in which a child was close to being hit by a car.

Ms. Rose Cazerez, 402 East 24th Street, Bryan, Texas, stated that the closure of the alley way would be safer for the children of the church and be safer for her family's property.

Mr. Glenn Jones, 307 South Main Street, Suite 206, Bryan, Texas, representative for J4 Engineering and Mr. and Ms. Duran, explained that the alley way is performing as it was intended. Mr. Jones asked that the right-of-way be left open to serve the business as intended.

Ms. Kim Gentry, 4900 Park Row, Bryan, Texas, stated that her two children were involved in a close call with a vehicle in the alley. Ms. Gentry stated that local businesses were notified of the danger that existed within the alley.

The public hearing was closed.

In response to questions from the Commission, Mr. Haynes stated that the small retention wall in the parking lot creates a difficult situation for large vehicles trying to get out of the parking lot.

Commissioners discussed:

- The safety of the church members
- The hardships to the hair salon that could result from the closing of the alley
- The difficulty of the decision

Commissioner Gonzalez moved to approve RA14-01 and to adopt the written staff report and analysis, as the report, findings and evaluation of this Commission. Commissioner Bienski seconded the motion. The motion passed with a vote of 7-0. Commissioner Hardeman abstained from the vote.

PLANNING AND ZONING COMMISSION
STAFF REPORT



November 20, 2014

Right-of-way Abandonment case no. RA 14-01: portions of East 24th Street, North Houston Avenue and the alley in Block 43 of the Bryan Original Townsite

SIZE AND LOCATION: a 0.07-acre portion of a 20-foot wide public alley right-of-way extending east-to-west between North Houston and North Texas Avenues in Block 43 of the Bryan Original Townsite, as well as a 12-foot wide portion of East 24th Street and a 15-foot wide portion of North Houston Avenue rights-of-way cumulatively 0.13 acres in size, both lying adjacent to Block 43 of the Bryan Original Townsite between North Texas Avenue and North Houston Avenue and East 23rd and East 24th Streets, respectively

APPLICANT(S): Emmanuel Baptist Church – Thomas Baber

STAFF CONTACT: Randy Haynes, Senior Planner

SUMMARY RECOMMENDATION: Staff recommends **approving** the requested right-of-way abandonments.



AREAS OF RIGHT-OF-WAY REQUESTED TO BE ABANDONED



RIGHT-OF-WAY REQUESTED TO BE ABANDONED:

The applicant, Thomas Baber on behalf of Emmanuel Baptist Church, is requesting the official abandonment portions of public street rights-of-way for East 23rd Street and North Houston Avenue, adjacent to Block 43 of the Bryan Original Townsite, to formally integrate this tract with the Church's ownership of the adjoining land. The street right-of-way requested to be abandoned is 0.13 acres in area and has never been improved as a driving surface. In addition, the Church is requesting abandonment of a portion of the alley right of way that bisects Block 43 of the Bryan Original Townsite. A request for replat (case no. RP14-25) of the subject property to integrate the rights-of-way that have been requested to be abandoned into the church property is scheduled for consideration by the Planning and Zoning Commission during their regular meeting, November 20, 2014.

Acting on behalf of the general public, only Bryan's City Council is authorized to officially abandon all or portions of rights of way dedicated for public use. The Planning and Zoning Commission hears and makes a recommendation on proposals to abandon any such rights-of-way.

ANALYSIS AND RECOMMENDATION:

The Emmanuel Baptist Church was organized in 1950 and by 1952 was meeting at its current location at East 24th Street and Houston Avenue. In 1958 the current sanctuary was constructed and the education building added a few years later. Recently, changes in one of the businesses in this block that fronts Texas Avenue ("The Cut Above") has caused automobile traffic on an un-improved alley that extends between the church sanctuary and education building in the eastern half of this block. The applicant states that the

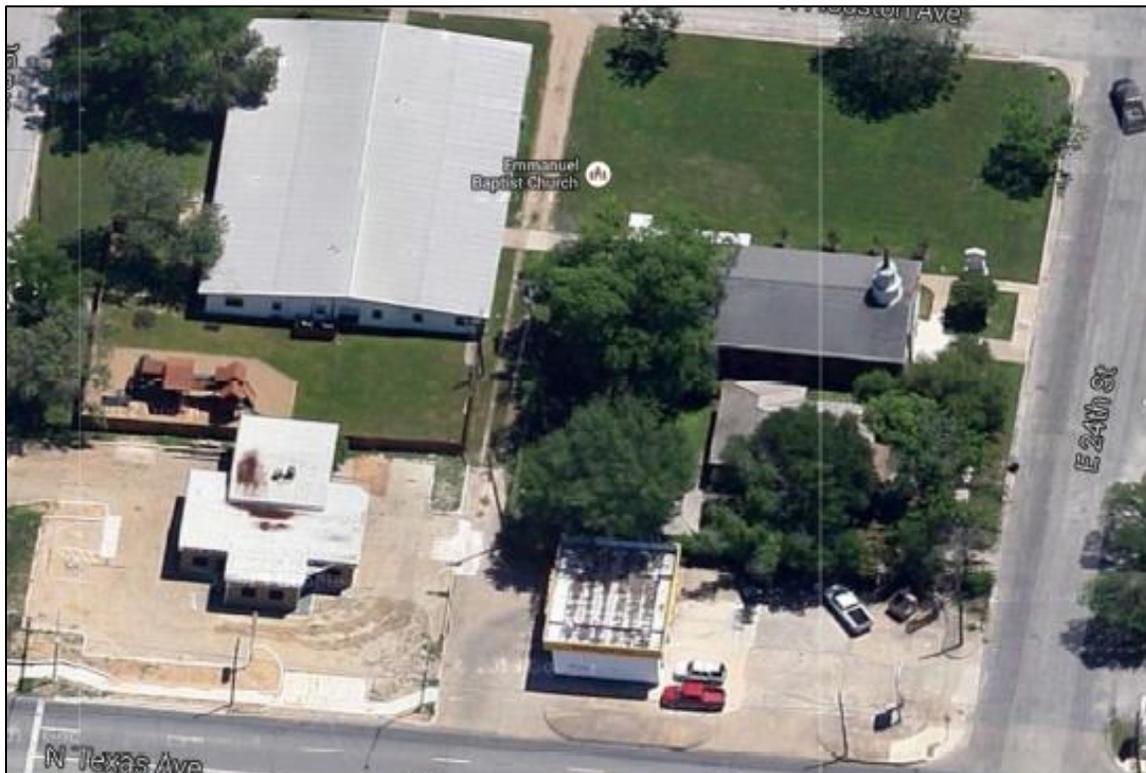
introduction of traffic into the alley has created a hazardous condition to the extent that it warrants closure of this portion of public right of way.

In addition to closure of the portion of alley right of way adjacent to church property, the applicant is requesting abandonment of portions of adjacent street right of way along East 24th Street and North Houston Avenue; specifically 12 feet along East 24th Street and 15 feet along North Houston Avenue. As part of the process, if all the requested abandonments are approved by the City Council, a replat of the entire property will be recorded establishing the new property boundaries and easements.

In the case of the street rights of way requested to be abandoned, excess right-of-way burdens the public with possible continued maintenance, liability concerns, and is an inefficient use of urban land. If approved, the abandoned street right of way will be functionally integrated with adjacent land and made available for development.

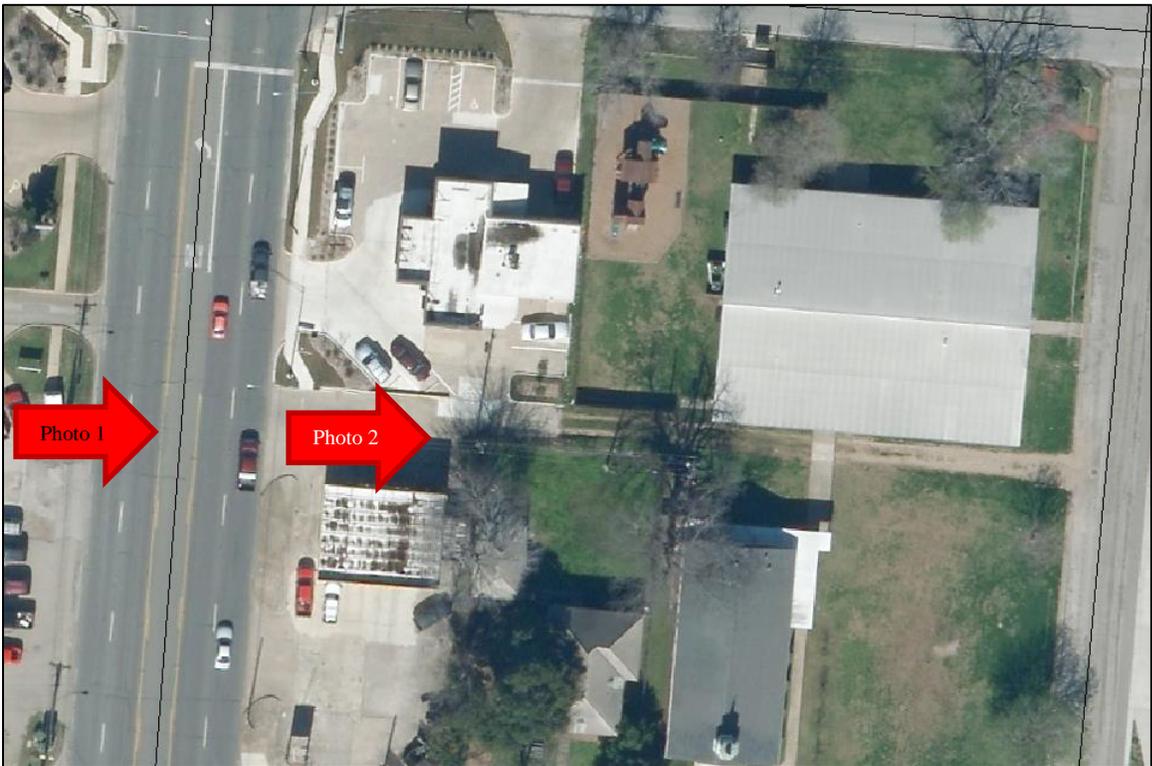
In the case of the alley right of way requested to be abandoned, staff recognizes the potential hazardous conditions created by the public use of this unimproved alley, however staff also feels constrained from recommending approval of any request to abandon public property that is currently in use by the public.

To compare and contrast the two sides of the issue, staff believes that abandoning the alley right of way could interfere with the smooth circulation of vehicular traffic by eliminating an option for access and egress to two businesses along Texas Avenue. Conversely, not abandoning the alley right of way will interfere with the safe circulation of pedestrian traffic. In the case of the existing hazard to pedestrian traffic, staff cannot envision a solution that could effectively mitigate the hazard other than eliminating the presence of traffic.





2008



2013



Photo 1



Photo 2



Photo 2 detail

In this specific case, based on the existing long established use and development patterns and the absence of a reasonable solution to mitigate the potential pedestrian hazards, staff contends that the preservation of safety carries greater weight than convenient access.

Staff recommends **approving** the request to abandon these portions of public right of way, **subject to the condition that a formal replat encompassing all property which the applicant owns or will own after abandonment of these rights-of-way is filed with the City for recording.** Abandoning the subject rights-of-way, as recommended, will allow this land to be integrated with adjacent lots and relieve the public from continued maintenance responsibilities and create a safer environment than that existing presently.