



**CITY OF NEW BRAUNFELS, TEXAS  
ZONING BOARD OF ADJUSTMENT MEETING**



**CITY HALL - COUNCIL CHAMBERS  
550 LANDA STREET**

**THURSDAY, OCTOBER 26, 2023 at 6:00 PM**

**AGENDA- amended 10/23/2023**

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF MINUTES**
  - A) Approval of the August 24, 2023 Regular Meeting [23-1304](#) Minutes.
4. **ELECTION OF OFFICERS**
5. **INDIVIDUAL ITEMS FOR CONSIDERATION**
  - A) ZB23-0011 Hold a public hearing and consider a request [23-1384](#) for a variance to Section 144-5.4(d) to allow an accessory structure to be located within the minimum side setback required in the "R-2" Single and Two-family District, addressed at 1062 Mulberry Ave.  
Applicant / Owner: Cecil M. Gregg III
  - B) ZB23-0014 Hold a public hearing and consider a request [23-1386](#) for a variance to Section 144-5.1-3(c) to allow a reduction in the minimum required parking from 19 to 14 spaces in the "C-3" Commercial District, addressed at 879 State Highway 46 South.  
Applicant / Owner: Alvin G. Peters / Sohail Khan
6. **STAFF REPORT**

No items
7. **ADJOURNMENT**

**CERTIFICATION**

I hereby certify the above Notice of Meeting was posted on the bulletin board at the New Braunfels City Hall.

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Board Liaison

NOTE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at 221-4010 at least two (2) work days prior to the meeting so that appropriate arrangements can be made.





## Zoning Board of Adjustment Agenda Item Report

550 Landa Street  
New Braunfels, TX

**10/26/2023**

Agenda Item No. A)

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**ZONING BOARD OF ADJUSTMENT**  
**Regular Meeting Minutes**  
**August 24, 2023**

**MEMBERS PRESENT**

Vice Chair Brandon Mund  
Bobby Avary  
Jenny Wilson  
Steve Quidley

**STAFF PRESENT**

Frank Onion, Assistant City Attorney  
Jean Drew, Assistant Director  
Matthew Simmont, Planning Manager  
Mary Lovell, Senior Planner  
Colton Barker, Assistant Planner  
Evin Wilson, Assistant Planner

**Members Absent**

Chair John Coker

**1. CALL TO ORDER**

Vice Chair Mund called the meeting to order at 6:00 pm.

**2. ROLL CALL**

Vice Chair Mund announced that only four members were present.

Mund then presented the applicant with either the option to postpone, or to proceed with the understanding that any potential for approval will rely on a unanimous vote, as there were only four members present.

The applicant, Cecil Gregg, stated that he wanted to postpone the public hearing to a later, undecided, date.

Roll was called.

**3. APPROVAL OF MINUTES**

Motion by Member Quidley, seconded by Member Avary to approve the July minutes.

**4. Election of Officers**

Election was postponed due to the absence of Chair John Coker.

**5. INDIVIDUAL ITEMS FOR CONSIDERATION**

**A) ZB23-0011 Hold a public hearing and consider a request for a variance to Section 144-5.4(d) to allow an accessory structure to be located within the minimum side setback required in the “R-2” Single and Two-family District, addressed at 1062 Mulberry Ave. (Applicant/Owner: Cecil M. Gregg III; Case Manager: Laure Middleton)**

Due to the applicants request for postponement, no staff report was presented, and a public hearing for this item did not take place.

**6. STAFF REPORT**

No items.

**7. ADJOURNMENT**

Vice Chair Mund adjourned the meeting at 6:05 pm.

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**Chair**

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**Date**

10/26/2023

Agenda Item No. A)

**PRESENTER:**

Applicant / Owner: Cecil M. Gregg III

**SUBJECT:**

ZB23-0011 Hold a public hearing and consider a request for a variance to Section 144-5.4(d) to allow an accessory structure to be located within the minimum side setback required in the “R-2” Single and Two-family District, addressed at 1062 Mulberry Ave.

**BACKGROUND RATIONAL:**

Case #: ZB23-0011

**Applicant:** Cecil M. Gregg III  
37 N. Bay Blvd.  
Spring, TX 77380  
(281) 755 - 1320 | [agregg3@me.com](mailto:agregg3@me.com)

**Staff Contact:** Laure Middleton  
(830) 221 - 4054 | [Lmiddleton@newbraunfels.gov](mailto:Lmiddleton@newbraunfels.gov)

The subject property is located approximately 128 feet from the corner of Edgewater Terrace and Mulberry Avenue and is a combination of the original Lots 23, 24, & 25, Block 8 of the Landa Park Estates Subdivision, recorded in 1933. The subject property is approximately 7,500 square feet in area with a lot depth of 100 feet, and a lot width of 75 feet. The property is zoned “R-2” single and two-family district. There is one 4,318 square-foot 2-story dwelling, built in 1935, with a 238-square-foot attached covered porch, a 238-square-foot balcony, and a 742 square-foot storage area attached to the residence.

The applicant is requesting a variance to allow an accessory structure to encroach 1’9” into the side setback, prescribed by the zoning ordinance to be a minimum of 5 feet. The applicant also has another non-conforming structure in the northern corner of the property, and they are working with the Building Division to resolve the issues with that structure.

The applicant has built a storage shed on an existing slab in the rear of the property at a distance of 3’3” from the side property line and 3’8” from the rear property line. This structure is built upon the foundation of an old, dilapidated gazebo that was removed. The property owner utilized the existing slab for the new structure.

Chapter 144-5.4(d) of the New Braunfels Code of Ordinances requires accessory structures to have a minimum side setback of 5 feet, and a minimum rear setback of 3 feet.

Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding all of the following facts:

**1) That there are special circumstances or conditions affecting the land involved such that the strict**

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**application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states that the existing home was built in the 1930's with an addition in the 1980's. The footprint leaves a small L-shaped backyard with no outdoor storage or garage. The storage shed is intended to be used for a golf cart, river floats, yard equipment, etc. Placing the shed at the end of the driveway, behind the existing gate is the most logical location to maximize outdoor space in the backyard and replaces an old gazebo on the same foundation,) **and**

**2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states that the placement of the shed is aesthetically pleasing from the street as it is centered on the gate. This placement also increases its functionality to pull heavy items directly out and down the driveway, and being located in the corner allows for maximum usage of the backyard area for entertaining and recreation.) **and**

**3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states that granting the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. Staff acknowledges that the property owner will be required to retrofit the structure to meet the fire code standards for a structure less than 5 feet from the side property line.) **and**

**4) Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant states that the variance will not prevent the orderly use of other land within the area.) **and**

**5) That an undue hardship exists;** (The applicant states that the existing improvements dictate the size and configuration of the rear yard. The existing structure has no outdoor storage or garage. The home is located in a water recreation district, but lacks any storage for canoes, kayaks, pool floats, tubes, etc. which are frequently pilfered if left in the open. They are also unsightly and a haven for mosquitoes and vermin. Thus a shed or garage is needed. Placing the shed in the corner at the terminus of the driveway maximizes the space for recreation and entertaining.) **and**

**6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states granting of the variance will be in harmony with the spirit and purpose of the City's regulations. The neighbors have noted that the lack of outdoor storage has long been an issue at this location causing unsightly clutter and unsafe hazards as former owners have resorted to running extension cords over the open driveway to charge their golf carts. Allowing residents to recreate and entertain friends and family is part of the cultural traditions of New Braunfels.)

Per Section 2.2-3 of the Zoning Ordinance, a variance shall not be granted to relieve a self-created or personal hardship, nor based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

#### **GENERAL INFORMATION:**

##### **Size:**

Lot area: 7,500 square feet

Lot depth: 100 feet

Lot width: 75 feet

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**Variance Request Due to Notice of Violation:**

Yes

**Surrounding Zoning and Land Use:**

North - R-2 / Single-family Residential

South - Across Mulberry Ave, R-2 / Single-family Residential

East - R-2 / Single-family Residential

West - R-2 / Single-family Residential

**Notification**

Public hearing notices were sent to 32 owners of property within 200 feet of the subject property. Staff has received 13 responses in favor from properties 1, 3, 7, 8, 10, 17, 18, 20, 25, 26, 27, 31, and 32, and 2 responses in objection from properties 11 and 14 on the notification map.





**ZB23-0011**  
**Setback Encroachment Variance**

0 90 180  
 Feet



Path:  
 Y:\ZBA\2023 Cases\ZB23-0011 - Gregg - 1062 Mulberry Ave\NPH\ZB23-0011.aprx

Source: City of New Braunfels Planning  
 Date: 7/3/2023

DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of New Braunfels. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of New Braunfels, its officials or employees for any discrepancies, errors, or variances which may exist.





**Planning & Development Services Department**  
 550 Landa Street  
 New Braunfels, Texas 78130  
 (830) 221-4050 [www.newbraunfels.gov](http://www.newbraunfels.gov)

## Variance Application (Zoning Board of Adjustment)

**Any application that is missing information will be considered incomplete and will not be processed.**

The applicant bears the burden of proof in establishing the facts that may justify a variance, a special exception, an appeal, or any other action in his/her favor by the ZBA.

### General:

1	Name of Applicant/Agent:						
2	Subject Property Address:						
3	Legal Description of Subject Property	Lot Number	<b>23,24,25</b>	Block Number		Subdivision	<b>Landa Park Estates</b>
4	Present Use of Property				Zoning		
5	Describe Variance Request(s)						
	1) To place a storage building encroaching in the rear and side setbacks (being 3'10" from the rear property line and 2'11" from the NE side property line. 2) to place a patio cover over an outdoor kitchen encroaching the rear and side setbacks, being 18" from the rear property line and 12" from the NW side property line.						

### Required Attachments:

City	Applicant	Attachment
<b>NAME DIGITAL DOCUMENT FILES AS THE ARE LISTED IN BOLD BELOW</b>		
		Email a digital copy(.pdf) of all documents included in application to <a href="mailto:plats@newbraunfels.gov">plats@newbraunfels.gov</a>
	<b>X</b>	<b>Application</b> (completed and signed by applicant)
	<b>X</b>	<b>Deed</b> showing current ownership
	N/A	<b>Homestead Verification</b> (if applicable)
	N/A	<b>Letter of Authorization</b> (if an agent is acting on behalf of the property owner)
	<b>x</b>	<b>Site Plan</b> drawn to scale no larger than 11"x17" if submitted on paper, showing all existing and proposed improvements, setbacks from the property lines, and building elevations (if applicable)
	<b>X</b>	<b>Photos Of Subject Property</b> taken from each corner of the lot where it meets the street

### Required Fees:

Application Fees	
	Application Fee (Homestead) (\$350 + \$10 Technology Fee (3%) = Total <b>\$360</b> )
	Application Fee (Non-Homestead) (\$700 + \$21 Technology Fee (3%) = Total <b>\$721</b> )
	Each Additional Variance (\$50 + \$1 Technology Fee (3%) = Total <b>\$51</b> )
Technology Fee	
	3% technology fee applied to total application fee
Public Hearing Notice Fees	
	Please Note: Public hearing mail notification fees are invoiced <b>at a later date than when the application is submitted.</b> You will be contacted with your fee total.
	Public Hearing Mailed Notices ( <b>\$2.15</b> per mailed notice)
	Public Hearing Signs ( <b>\$15</b> per sign)

### **ZBA Criteria for Approval of a Variance**

In order for the Zoning Board of Adjustment to grant a variance, the applicant must prove that the 6 required criteria below have been met. You will be asked to describe your property's unique circumstances based on the below criteria in the questions. **Please answer the following questions to establish how the criteria to approve a variance is met.** The answers provided will be reported to the Zoning Board of Adjustment with staff comments. You may use additional pages if necessary.

**1. What are the special circumstances or conditions affecting the land that warrant the variance?**

A special circumstance must be a condition or issue of the land that is unique to the subject property and is not a circumstance that is shared by other properties. Variances are granted to property that has special circumstances that are so unique they are not reasonably considered within the development standards of the zoning ordinance; circumstances that are shared by multiple properties are considered in the zoning ordinance regulations to ensure orderly development.

The existing home on the property is believed to have been built by the Henne family in the 1930s. It was renovated/enlarged in the 1980s. The footprint of the house leaves only a small L- shaped backyard with no outdoor storage or garage.

The storage shed is intended to be used for a golf cart, river floats, yard equipment, etc. Due to the size and location of the house, the driveway runs along and abuts the NE property line. Placing the shed at the end of the driveway, behind the existing gate is the most logical location to maximize outdoor space in the backyard.

**2. Why is the variance necessary to preserve a substantial property right of the applicant?**

A substantial property right is the ability to use the land as its zoning intended. Property owners in residential zoning districts have a substantial property right to use and enjoy their property for dwelling. Please note that not all improvements intended for the enjoyment of a property are protected as substantial property rights. The reasonable use of the land can include, but is not limited to, adequate living space, open yard area, access to light and air, and so on.

Placement of the shed is aesthetically pleasing from the street as it is centered on the gate. This placement also increases its functionality to pull heavy items directly out and down the driveway. and being located in the corner allows for maximum usage of backyard area for entertaining and recreation.

**3. Will the granting of the variance be detrimental to the public health, safety or welfare, or injurious to other properties within the surrounding area?**

A variance that is detrimental to public health, safety or welfare, or injurious to property within the area may not be granted. A variance may not be granted if it deprives another property owner of the use or enjoyment of their property. A variance may not be granted if it will create an unsafe condition, such as a variance to allow construction that limits visibility for drivers.

NO

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<b>4. Would granting the variance prevent the orderly use of other properties within the area?</b> A variance cannot be granted if it will prevent another property from complying with a regulation or ordinance.
NO

<b>5. Does an undue hardship to the land exist that is not self-created, personal or financial?</b> An undue hardship is a hardship of the <u>land</u> itself. The hardship cannot be personal. Examples of what <i>is</i> an undue hardship: topography, lot configuration and size, the location of heritage trees on a lot, and so on. Examples of what <i>is not</i> an undue hardship: financial constraints, personal preferences, aesthetic choices. Hardships may not be self-created by the applicant. A self-created hardship can include performing construction work without city approval or permitting.
The existing improvements (1930's) dictate the size and configuration of the rear yard. The existing structure has <del>NO outdoor storage or garage</del> . The home is located in a water recreation district, but lacks any storage for canoes, kayaks, pool floats, tubes, etc. which are frequently pilfered if left in the open. They are also unsightly and a haven for mosquitos and vermin. Thus, a shed or garage is needed. Placing the shed in the corner at the terminus of the driveway maximizes the space for recreation and entertaining.

<b>6. Will granting the variance be in harmony with the spirit and purpose of the City's regulations?</b> The purpose of the zoning ordinance is to ensure adopted development standards promote the health, safety, and the general welfare of the public. Development standards have been established with reasonable consideration for the character of the zoning districts and impacts created by various land uses. Variances may not conflict the intent of the zoning ordinance regulations or the goals of the Comprehensive Plan.
Yes. The neighbors have noted that the lack of outdoor storage has long been an issue at this location causing unsightly clutter and unsafe hazards as former owners have resorted to running extension cords over the open driveway to charge their golf carts. Allowing residents to recreate and entertain friends and family is part of the cultural traditions of New Braunfels.

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**Additional Items of consideration**

If any of the following questions apply to the circumstances of your variance request(s), you may answer them. If a question does not apply to the reasoning for your request(s), you may skip it or answer N/A. These questions are supplementary to the Board's decision in addition to the required 6 criteria on the previous pages.

<b>1. Is the financial cost of compliance with the zoning ordinance greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code?</b>
N/A

<b>2. Would compliance with the zoning ordinance result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur?</b>
N/A

<b>3. Would compliance with the zoning ordinance result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement?</b>
N/A

<b>4. Would compliance with the zoning ordinance result in the unreasonable encroachment on an adjacent property or easement?</b>
N/A

<b>5. Does the city consider the structure to be nonconforming?</b> See <a href="#">Section 144-2.3(a)</a> regarding nonconforming structures.
The existing home is nonconforming as it encroaches on the NW property line. The new structure would be conforming, except as to the requested encroachments.

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**Applicant Contact Information:**

Applicant Name		Date	
E-Mail		Phone #	
Mailing Address (City, State, Zip)			

**Please read and initial the following important reminders:**

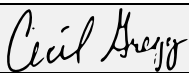
CD3 **Appearance at Meetings.**

It is strongly advised that the applicant be represented at the hearing. The Board may deny requests for which the applicant or an agent do not appear.

CD3 **Notification Signs.**

The applicant shall post the public hearing notification sign(s) at least 15 days prior to the hearing date and maintain said sign(s) in good condition. One sign shall be required for the first 100 feet of frontage of the tract, and one additional sign for every 200 feet of frontage thereafter, or fraction thereof, except that no more than three (3) signs shall be required on each roadway frontage. If the tract has less than 200 feet of frontage per roadway, then only one sign is required per road.

**Please Note: Your signature indicates that the owner or an authorized agent has reviewed the requirements of this application and attached checklist, and all items on this checklist have been addressed and complied with. The owner/authorized agent understands that an incomplete application will not be accepted.**

Applicant Signature		Date	
Applicant Name (Printed)			

## **Sec. 144-2.2. - Zoning Board of Adjustment (ZBA)**

**2.2-1. Power and duty.** The zoning board of adjustment (ZBA) may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions and variances to the terms of this chapter, and decide appeals from decisions of administrative officials, in harmony with its general purpose and intent and in accordance with general or specific rules herein contained.

**2.2-2. ZBA procedures.** The ZBA shall operate in accordance with V.T.C.A., Local Government Code §§ 211.008—211.011 and shall adopt rules in accordance with the provisions of this chapter. Meetings of the ZBA shall be held at the call of the chairman and at such times as the ZBA may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the ZBA shall be open to the public. The ZBA shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the ZBA and shall be a public record. The concurring vote of four members (or 75 percent) of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in this chapter.

### **2.2-3. Variances.**

**(a) Authority.** The ZBA may authorize a variance from these regulations only upon finding:

- (1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of land;
- (2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
- (3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
- (4) That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this chapter;
- (5) That an undue hardship exists; and
- (6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.

**A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely upon economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by this chapter to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.**

### **(b) Procedures for variance.**

- (1) Application for variance shall be made by the owner of real property (or authorized agent) to the planning department on forms provided by the planning department.
- (2) Fee and sign. The fee for variance requests and related signs shall be per appendix D of this Code (see subsection 144-2.2-5).
- (3) No variance shall be granted without first having given public notice and having held a public hearing on the variance request in accordance with section 144-2.2-5. The deliberations and determinations of the ZBA, together with the specific facts upon which such determinations are based, shall be incorporated into the official minutes of the ZBA meeting at which the variance application is decided.

### **2.2-5. Variance and special exception notice.**

- (a) Notice and public hearing. The ZBA shall hold a public hearing for consideration of the variance or special exception request no later than 45 calendar days after the date the application for action is filed. Written notice of the public hearing for a variance or special exception shall be provided to all property owners, via U.S. mail, within 200 feet of the affected property at least ten calendar days prior to the public hearing. The applicant may appear at the hearing in person or by agent or attorney.
- (b) Sign. In addition to the mailed notification, a variance or special exception sign shall be placed adjacent to each public street or right-of-way, abutting the subject property, or if the property does not front a public street or right-of-way, to the closest public street or right-of-way, located in the middle of the frontage, and within three feet of the curb or the pavement, or as prescribed by the planning and community development department at the time of application. One sign shall be required for the first 100 feet of frontage of the tract, and, thereafter, one additional sign for every 200 feet of frontage, or fraction thereof, except that no more than three signs shall be required on each roadway frontage. If the tract has less than 200 feet of frontage per roadway, then only one sign is required per road. All signs shall be clearly visible to the public from the adjacent public streets. The applicant shall post the sign(s) at least 15 days prior to the ZBA meeting and maintain said sign(s) in good condition and in place until final action. If the sign(s) is not posted 15 days prior to the ZBA meeting, the applicant's case shall be withdrawn and rescheduled. In the event that a sign(s) is removed from the property or damaged, the applicant shall be responsible for purchasing a replacement sign(s) and installing it immediately. The sign(s) shall be furnished by the city and a fee shall be charged the applicant per appendix D of this Code.

**INFORMATION SECTION**  
**KEEP THIS SECTION FOR YOUR RECORDS**

**2.2-6. Appeals.** Appeals to the ZBA may be taken by any person aggrieved, or by any officer, department, board or bureau of the city affected by any decision of the building official or other administrative officer concerning the interpretation or implementation of this chapter.

- (a) Stays of proceedings. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the ZBA, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the officer from whom the appeal is taken and due cause shown.
- (b) Procedure for appeal. The appellant must file with the planning and community development department a written notice of appeal specifying the grounds for the appeal and pay a fee per appendix D of this Code. The notice of appeal shall be filed within 45 calendar days after the decision has been rendered. Upon receiving the notice, the official from whom the appeal is taken shall immediately transmit to the ZBA all papers constituting the record of action that is appealed. The chair of the ZBA or any two members may call a special meeting to consider appeals.
- (c) Action by the ZBA. The ZBA shall decide the appeal within 30 calendar days after the written request (i.e., notice of appeal) was received. The ZBA may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision or determination from which an appeal is taken, and may make the correct order, requirement, decision or determination, and for that purpose the ZBA has the same authority as the administrative official.

**2.2-7. Burden of proof.** The applicant bears the burden of proof in establishing the facts that may justify a variance, a special exception, an appeal, or any other action in his/her favor by the ZBA.

**2.2-8. Waiting period.** No application to the ZBA for the same or a related variance, or special exception, or appeal on the same piece of property shall be allowed for a waiting period of 180 calendar days following denial of an application by the ZBA unless other property in the immediate vicinity has, within the 180-day waiting period, been changed or acted upon by the ZBA or the city council so as to alter the facts and conditions upon which the previous denial was based. Such changes of circumstances shall permit the re-hearing of a variance, or special exception, or appeal request by the ZBA, but such circumstances shall in no way have any force in law to compel the ZBA, after a hearing on the matter, to grant a subsequent variance, or special exception or appeal request. Any subsequent variance, or special exception or appeal request shall be considered entirely on its own merits and on the specific circumstances related to the subject property.

**2.2-9. Petition to a court of record.** Any person or persons jointly or severally aggrieved by any decision of the ZBA, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is unlawful, in whole or in part, specifying the unlawful grounds. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the ZBA.

- (a) Writ of certiorari. Upon the presentation of such petition the court may allow a writ of certiorari directed to the ZBA to review such decision of the ZBA and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.
- (b) Certified or sworn copies. The ZBA shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.
- (c) Testimony. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.
- (d) Costs. Costs shall not be allowed against the ZBA unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.
- (e) Preference. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.



**2023  
ZONING BOARD OF ADJUSTMENT MEETING  
CALENDAR  
Council Chambers  
6:00 p.m.**

Meeting Date (Thursday unless otherwise noted)	Application Submittal Deadline	Last Date Variance Signs Must Be Placed on Property	Mail Notices to Property Owners & Applicant	Send Agendas to Board Members
January 26, 2023	December 30, 2022	January 11, 2023	January 13, 2023	January 20, 2023
February 23, 2023	January 27, 2023	February 8, 2023	February 10, 2023	February 17, 2023
March 23, 2023	February 24, 2023	March 8, 2023	March 10, 2023	March 17, 2023
April 27, 2023	March 31, 2023	April 12, 2023	April 14, 2023	April 21, 2023
May 25, 2023	April 28, 2023	May 10, 2023	May 12, 2023	May 19, 2023
June 22, 2023	May 26, 2023	June 7, 2023	June 9, 2023	June 16, 2023
July 27, 2023	June 30, 2023	July 12, 2023	July 14, 2023	July 21, 2023
August 24, 2023	July 28, 2023	August 9, 2023	August 11, 2023	August 18, 2023
September 21, 2023*	August 25, 2023	September 6, 2023	September 8, 2023	September 15, 2023
October 26, 2023	September 28, 2023**	October 11, 2023	October 13, 2023	October 20, 2023
November 16, 2023***	October 20, 2023	November 1, 2023	November 3, 2023	November 9, 2023****
December 21, 2023	November 22, 2023*****	December 6, 2023	December 8, 2023	December 15, 2023
January 25, 2024	December 29, 2023	January 10, 2024	January 12, 2024	January 19, 2024

- 
- \* September meeting is one week earlier due to Comal County Fair
  - \*\* October meeting application deadline is one day earlier due to Comal County Fair
  - \*\*\* November meeting is one week earlier due to Thanksgiving
  - \*\*\*\* November agenda mailed out one day earlier due to Veteran's Day

## **INSTRUCTIONS FOR SUBMITTING THIS APPLICATION**

This application can be submitted online using the City of New Braunfels permit portal. For instructions on how to submit this permit application, please read below.

1. Access the online permit portal at <https://nbpermits.nbtexas.org/publicaccess>. Once you arrive at the Portal Login Page you will need to create a username and password.
  - a. The username will need to be a valid email address and you will be informed of the status of your application via email.
  - b. Password Requirements are: Minimum of 8 characters and must include at least one uppercase, one lowercase, and a number. Passwords cannot match your email address, first, or last name.
2. Select the Create Application button at the top center of the page and click on the Planning/Zoning folder.
3. Navigate to the desired application on the following pages. The application will be titled the same as it is on page 1 of this document.
4. Once you have found the correct application type, click on it once and select the Begin Application button.
5. Enter the application information:
  - a. Main: Subject property location (if applicable) and description of the request.
  - b. People: Your contact information. The email address provided will receive status updates on the application as it proceeds through the review process. You can add additional email addresses to receive status updates, but the provided email addresses must have a permit portal account.
  - c. App Form: Questions relating to the application.
  - d. Attachments: Upload a digital copy of this application and all required documents listed on page (1). Attachments must be .pdf format and named as they are listed on this application. **ALL REQUIRED DOCUMENTS LISTED ON THE APPLICATION MUST BE ATTACHED OR THE APPLICATION IS CONSIDERED INCOMPLETE.**
  - e. Payment: The required fee to submit. Please note: all credit/debit card transactions will incur a 2.75% processing fee. We encourage you to utilize one of our free options which include cash, check or e-Check.

You will receive a confirmation email once the application is submitted. If the application is incomplete or requires corrections, you will be emailed by a staff member requesting the information that is necessary to continue review. **AN INCOMPLETE APPLICATION WILL NOT CONTINUE TO BE REVIEWED AND CAN DELAY THE PROCESS.** Communication from the portal system will originate from [cwmessenger@newbraunfels.gov](mailto:cwmessenger@newbraunfels.gov).

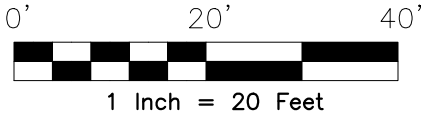
*If you have any questions, please contact Development Planning Division Staff at [planning@newbraunfels.gov](mailto:planning@newbraunfels.gov) or (830) 221-4050.*



The survey is hereby accepted with the discrepancies, conflicts, or shortages in area or boundary lines, encroachments, protrusions, or overlapping of improvements shown.

X \_\_\_\_\_  
X \_\_\_\_\_

GRAPHIC SCALE



BRENT C. PFEIFFER &  
HOLLIE H. PFEIFFER  
(DOC. NO. 202106001266)  
(A.K.A. LOT 18A)

MULBERRY AVE.  
(40' R.O.W. - PER PLAT)

TWO STORY  
STONE, STUCCO  
& SIDING  
LOTS 23-25  
BLOCK 8  
7537 SQ. FT.  
0.17 ACRE

LEGEND

These standard symbols will be found in the drawing.

- BOUNDARY LINE
- METAL FENCE
- PLATTED LOT LINE
- SET IRON ROD
- FOUND IRON ROD
- FOUND MAG SPINDLE
- WATER METER
- ELECTRIC METER
- GAS METER
- (PLAT) RECORDED ON PLAT
- (F.M.) FIELD MEASURED

SURVEYOR'S NOTE(S):

BASIS OF BEARING, TEXAS SOUTH CENTRAL ZONE, NAD 83.

THIS SURVEY IS PRODUCED WITHOUT THE ADDITION OF RESEARCH FROM A TITLE OR A TITLE ABSTRACT COMPANY. THEREFORE, ADDITIONAL DEED OR REAL PROPERTY RESTRICTIONS, SUCH AS EASEMENTS OR SETBACKS, MAY APPLY THAT ARE NOT GRAPHICALLY OR OTHERWISE SHOWN, AND/OR LISTED ON THIS SURVEY. ANY RESTRICTIONS, ADDRESSED HEREON, ARE AS ALREADY KNOWN TO THE UNDERSIGNED, TO AFFECT THIS SUBDIVISION. THEIR DEPICTIONS ARE NOT MEANT TO REPRESENT ALL POSSIBLE ESMTS. AND SETBACKS THAT MAY APPLY TO THIS LOT.

At date of this survey, the property is in FEMA designated ZONE X SHADED, as verified by FEMA map Panel No: 48091C 0435 F effective date of SEPTEMBER 02, 2009. Exact designations can only be determined by a Elevation Certificate. This information is subject to change as a result of future FEMA map revisions and/or amendments.

I, RACHEL LYNN HANSEN, a Registered Professional Land Surveyor in the State of Texas, do hereby certify to \_\_\_\_\_ and \_\_\_\_\_

that the above map is true and correct according to an actual field survey, made by me on the ground or under my supervision, of the property shown hereon. I further certify that all easements and rights-of-way of which I have been advised are shown hereon and that, except as shown, there are no visible encroachments, no visible overlapping of improvements and no apparent discrepancies or conflicts in the boundary lines, and no visible physical evidence of easements or rights-of-way as of the date of the field survey. I further certify that this survey meets or exceeds the minimum standards established by the Texas Board of Professional Engineers and Land Surveyors (Section 138.89).

Borrower/Owner: CECIL M. GREGG III & ALICIA L. GREGG  
Address: 1062 MULBERRY AVE. GF No. \_\_\_\_\_

**Legal Description of the Land:**  
Lots 23, 24 and 25, Block 8 of LANDA PARK ESTATES, a subdivision in the city of New Braunfels, Comal County, Texas, according to the plat recorded in Volume 62, Pages 463-464 of the Deed Records of Comal County, Texas.

SUBJECT TO RESTRICTIVE COVENANTS AND/OR EASEMENTS RECORDED IN: VOLUME 62, PAGES 463-464, DEED RECORDS, COMAL COUNTY, TEXAS

PROPERTY PHOTOGRAPH:



FINAL "AS-BUILT" SURVEY

JOB NO.:	2306095738	NO.	REVISION	DATE
DATE:	06/12/23	01.	LOT STAKED AND	06/20/23
DRAWN BY:	JD/RM/JC		UPDATED SURVEY	
APPROVED BY:	RLH	02.	REM. PUMP/ADD DIST.	06/22/23
(REFER JOB NO. 2306095662)				



RACHEL LYNN HANSEN, R.P.L.S.  
Registered Professional Land Surveyor  
Registration No. 6358



P.O. BOX 160369  
SAN ANTONIO, TEXAS 78280  
PHONE: (210) 572-1995  
WEB: WWW.AMERISURVEYORS.COM













Old Gazebo



10/26/2023

Agenda Item No. B)

**PRESENTER:**

Applicant / Owner: Alvin G. Peters / Sohail Khan

**SUBJECT:**

ZB23-0014 Hold a public hearing and consider a request for a variance to Section 144-5.1-3(c) to allow a reduction in the minimum required parking from 19 to 14 spaces in the “C-3” Commercial District, addressed at 879 State Highway 46 South.

**BACKGROUND RATIONAL:**

Case #: ZB23-0014

**Applicant:** Alvin G. Peters  
1016 SH 46 E  
Boerne, TX 78006  
(210) 986 - 0218 | alvin.apa@gmail.com

**Staff Contact:** Laure Middleton  
(830) 221 - 4054 | LMiddleton@newbraunfels.gov

The subject property is located at the northwest corner of Caddell Lane and State Highway 46 South and is platted in the Caddell Subdivision, Lot 21, Block 2, recorded in 1973. The subject property is approximately 14,680 square feet in area with a lot depth of approximately 135 feet, and a lot width of approximately 110 feet. The property is zoned “C-3 AH” Commercial District with Airport Hazard overlay for building height limitations, and is currently undeveloped.

The applicant is proposing to develop a retail building with a total gross floor area of 3,731 square feet. Chapter 144-5.1-3(c) of the New Braunfels Code of Ordinances requires a minimum of 1 parking space for each 200 square feet of gross floor area for retail establishments under 100,000 square feet, for a total of 19 spaces. The applicant is requesting a variance to allow a reduction in the required minimum parking from 19 spaces to a total of 14 spaces.

Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding all of the following facts:

**1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states: “Located at a corner lot 14,391 sf. (small commercial lot) with building setbacks, dumpster access and fire department access the resulting building pad area is small. The type of business is mercantile- specific tobacco product. Customer shopping time within the building is very limited in browsing time.” Staff notes that the building setbacks do not apply to the development of parking,) **and**

**2) That the variance is necessary for the preservation and enjoyment of a substantial property right of**

---

**the applicant;** (The applicant states: “The small lot will limit development potential.” Staff notes that the lot size will determine the building size on the property,) **and**

**3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;** (The applicant states: “No.” Staff notes that a revision to the parking standards is being considered for adoption possibly by the end of next year. Once adopted, it is likely that this development would no longer require a variance for reduced minimum parking in order to be in compliance with the standards set forth in the zoning ordinance.) **and**

**4) Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;** (The applicant states:” No.” Staff notes that the current parking requirements are likely outdated,) **and**

**5) That an undue hardship exists;** (The applicant states: “Yes - Lot is small.”) **and**

**6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states: “Yes.”)

Per Section 2.2-3 of the Zoning Ordinance, a variance shall not be granted to relieve a self-created or personal hardship, nor based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

#### **GENERAL INFORMATION:**

##### **Size:**

Lot area: 14,680 square feet

Lot depth: 135 feet

Lot width: 110 feet

##### **Variance Request Due to Notice of Violation:**

No

##### **Surrounding Zoning and Land Use:**

North - R-2 AH / Single-family residence

South - Across SH 46, M-1 AH / Industrial - manufacturing

East - Across Caddell Lane, C-3 AH / Commercial - convenience store w/ fuel sales

West - C-3 AH / Commercial - vacant building

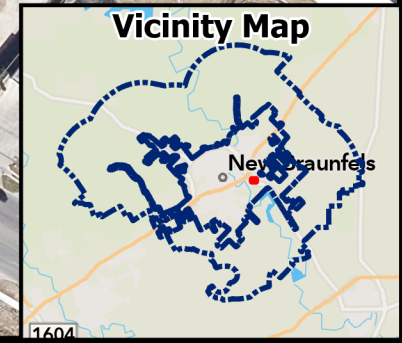
##### **Notification**

Public hearing notices were sent to 18 owners of property within 200 feet of the subject property. Staff has received no responses in favor or in objection.





Aerial Exhibit





ZBA VARDTL :	ZBA Variance Request Details	Group Sum	Sum Flag
<b>Is the subject property currently a designated Homestead?</b> Non-Homestead			
<b>how many variance requests are included in this application:</b>			
Qty:	1.00	Rate: 1.0000	Value: 1.0000
<b>Description of Variance request in detail</b>			
Comment:	REQUEST REDUCTION OF PARKING FROM 18 TO 14		
<b>What are the special circumstances or conditions affecting the LAND that warrant the Variance?</b>			
Comment:	LOCATED AT A CORNER LOT 14,391 SF. (SMALL COMMERCIAL LOT) WITH BUILDING SETBACKS, DUMPSTER ACCESS AND FIRE DEPARTMENT ACCESS THR RESULTING BUILDING PAD AREA IS SMALL. THE TYPE OF BUSINESS IS MERCANTILE- SPECIFIC TOBACCO PRODUCT. CUSTOMER SHOPPING TIME WITHIN THE BUILDING IS VERY LIMITED IN BROWSING TIME.		
<b>Why is the variance necessary to preserve a substantial PROPERTY RIGHT of the applicant?</b>			
Comment:	THE SMALL LOT WILL LIMIT DEVELOPMENT POTENTIAL		
<b>Will the granting of the Variance be detrimental to the public health, safety or welfare, or injurious to OTHER PROPERTIES within the surrounding area?</b>			
Comment:	NO		
<b>Would granting the variance prevent the orderly use of other properties within the area?</b>			
Comment:	NO		
<b>Does an undue hardship TO THE LAND exist that is not self-created, personal or financial?</b>			
Comment:	YES - LOT IS SMALL		
<b>Will granting the variance be in harmony with the spirit and purpose of the Citys regulations?</b>			
Comment:	YES		
<b>Present Use of property</b> Vacant			
<b>Current Zoning of property</b> C-3 AH			
<b>ACKNOWLEDGEMENTS: APPEARANCE AT MEETINGS- It is strongly advised that the Applicant be represented at the hearing. The Board may deny requests for which the Applicant or an agent do not appear.</b>			Y
<b>NOTIFICATION SIGNS- The Applicant shall post the public hearing notification signs at least 15 days prior to the hearing date and maintain said signs in good condition. (see help for more details)</b>			Y
<b>The Applicant is responsible for: purchasing required mail notifications, purchasing, properly placing and maintaining notice signage prior to and throughout the duration of the variance process.</b>			Y
<b>I hereby certify that the information provided is true and correct to the best of my knowledge (If signed by an agent, a letter of authorization must be furnished by the property owner)</b>			Y



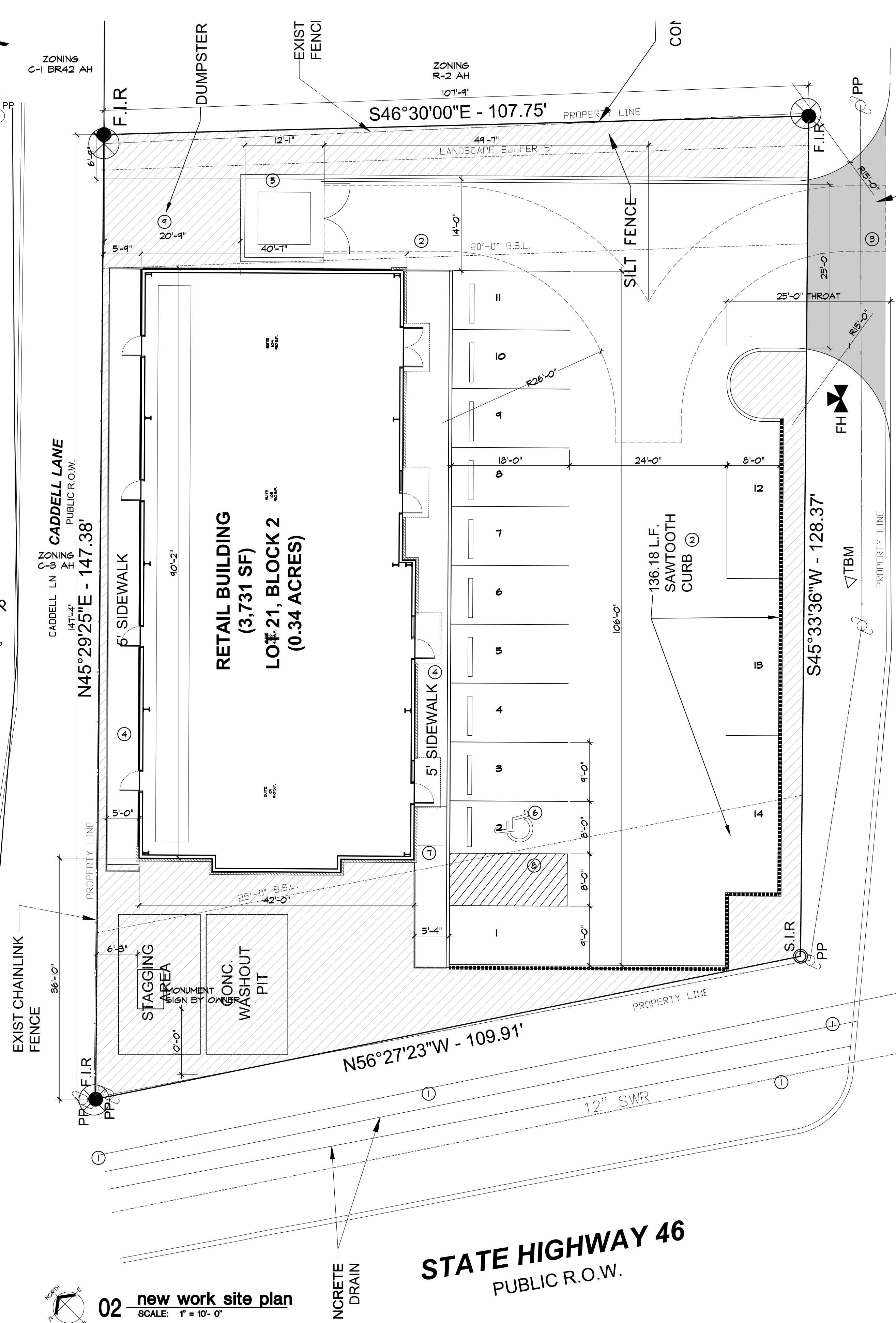
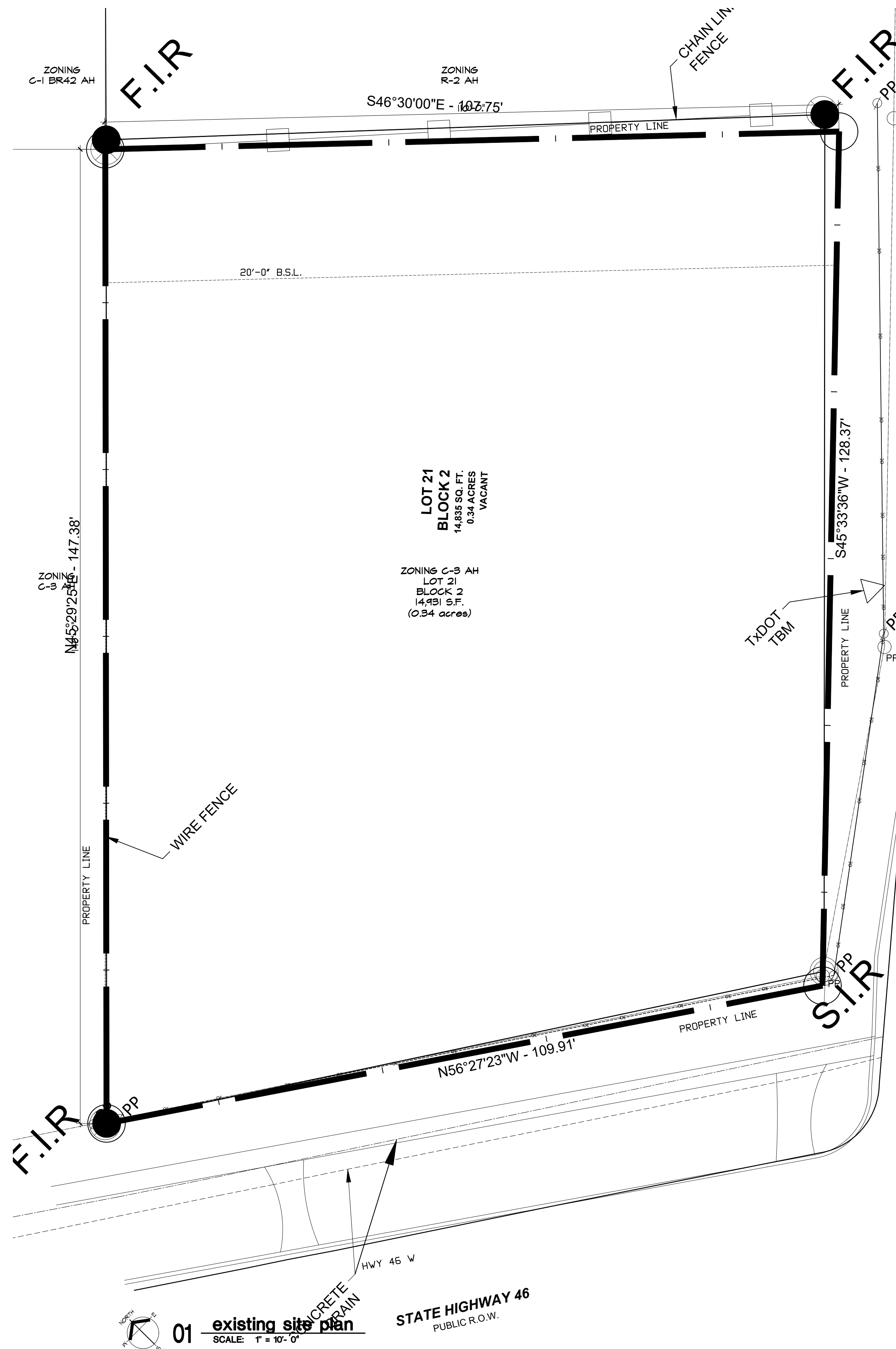
ZBA VARDL2 :	Variance Addtl Items of Consideration	Group Sum	Sum Flag <input type="checkbox"/>
	<p><b>Is the financial cost of compliance with the zoning ordinance over 50% of the appraised value of the structure as shown on the most recent appraisal roll under Section 26.01, Tax Code?</b></p> <p>Comment:</p>		
	<p><b>Would compliance with the zoning ordinance result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur?</b></p> <p>Comment:</p>		
	<p><b>Would compliance with the zoning ordinance result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement?</b></p> <p>Comment:</p>		
	<p><b>Would compliance with the zoning ordinance result in the unreasonable encroachment on an adjacent property or easement?</b></p> <p>Comment:</p>		
	<p><b>Does the city consider the structure to be nonconforming? See Section 144-2.3(a) regarding nonconforming structures.</b></p> <p>Comment:</p>		

▼ Type/Subtype: P ZBA - VARIANCE

Number: ZB23-0014

Sta

People			
	Role Code ▼	<input type="text"/>	
<input type="checkbox"/> 	Role Code	Name ^	City - +
<input type="checkbox"/> 	APPLICANT	ALVIN G PETERS	Boerne
<input type="checkbox"/> 	OWN_AGNT	ALVIN G PETERS	San Antonio
<input type="checkbox"/> 	PROP_OWNER	Sohail Khan	new braunfels
Size: 10 <input type="button" value="Go"/>		  <input type="text" value="1"/>  	
		Found: 3	Displaying 1 to 3



- PARKING REQUIREMENT CALCULATIONS:
- PROPOSED BUILDING = 3,731 S.F.  
2,500/250 SF PARKING SPACES MIN. = 10 SPACES MIN.
- TOTAL SITE PARKING REQUIRED = 10 SPACES  
TOTAL SITE PARKING PROVIDED = 14 SPACES
- KEY NOTES
- EXISTING CONCRETE SIDEWALK TO REMAIN.
  - ASPHALT PAVED PARKING LOT
  - CONCRETE ENTRY APRON.
  - 7'-0" WIDE CONCRETE SIDEWALK - 3000 PSI CONC
  - 3000 PSI 8" THICK CONCRETE WITH DOUBLE MATT REINFORCING #4 REBAR @ 12" O.C.E.M.
  - ACCESSIBLE PARKING SPACE.
  - ACCESSIBLE PARKING SIGNAGE TO BE WALL MTD.
  - PAINT STRIPE ACCESSIBLE ACCESS AISLE.
  - DUMPSTER ON 12'-0"x 12'-0" 3000 PSI 5' CONCRETE SLAB REINFORCED W/ #3 @ 12" O.C.E.M. AND 6'-0" HIGH DOG EAR CEDAR SIDING ON TREATED 2X4 WITH TREATED 4X4 POSTS AT 5'-0" O.C. MAX
  - CONCRETE SIDEWALK - 3000 PSI CONC

**AP**  
architects

architecture  
planning  
project management

1016 State Highway 46 East  
Boerne, Texas 78006  
www.aparchitects.weebly.com  
210.986.0218

Alvin G. Peters, Architect #15199

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10.25.2022

**Pinnacle Plaza**

879 TX-46  
New Braunfels, TX 78130

construction set

REVISIONS:	DATE
ENTIRE SHEET REVISED	08.24.2023

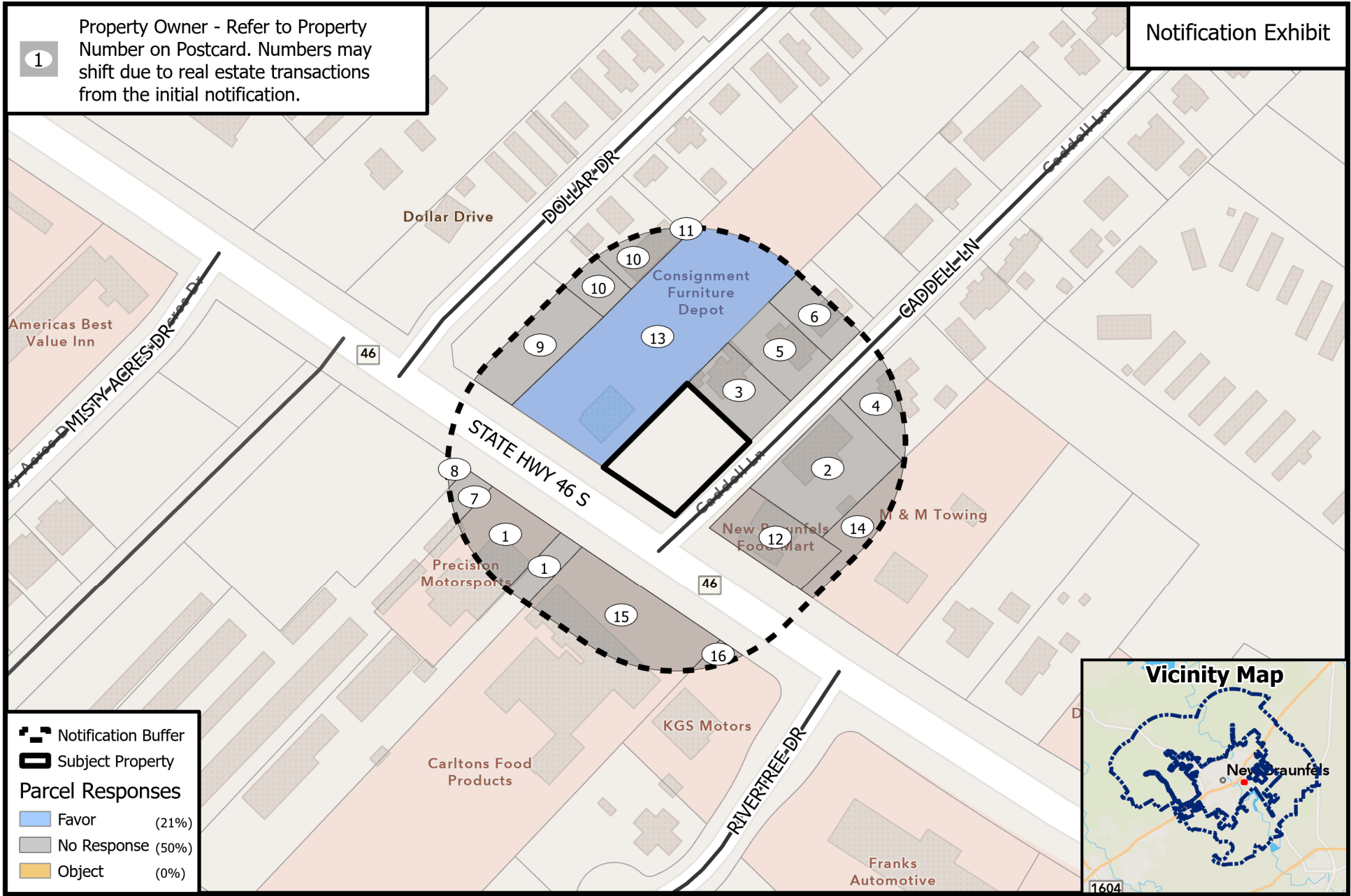
PROJECT No:	2022.078
DATE:	10.25.2022
SHEET:	of

existing & new  
work site plans

**A1.1**







LEHR LARRY B  
39 STONECREST CIR  
NEW BRAUNFELS TX 78132  
Property #: 13  
ZB23-0014  
Case Manager: LM

FAVOR ☒

OPPOSE ☐

COMMENTS

*Do owners realize that Hwy 46 will be widened in the near future. It will most likely affect their property.*