



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



**ZOOM
550 LANDA STREET**

THURSDAY, JANUARY 28, 2021 at 6:00 PM

TO PROTECT THE HEALTH OF THE PUBLIC AND LIMIT THE POTENTIAL SPREAD OF COVID-19, NO IN-PERSON PUBLIC ACCESS TO THIS MEETING IS AVAILABLE. READ BELOW FOR WAYS TO PARTICIPATE IN THE MEETING.

To participate via zoom use the link: <https://us02web.zoom.us/j/87870782379> or call (833) 926-2300 with 878 7078 2379

Instructions for participation, use link
<http://nbtexas.org/2727/ZBA-Online-Meeting-Guide>

AGENDA

1. CALL TO ORDER

Request all phones and other devices be turned off, except emergency on-call personnel.

2. ROLL CALL

3. APPROVAL OF MINUTES

- A) Approval of the December 17, 2020 Regular Meeting [21-111](#) Minutes.

4. STAFF REPORT

- A) Z-20-019 Hold a public hearing and consider a request [21-57](#) for a variance to Section 3.3-2(b)(1)(iii) to allow a proposed single-family home to encroach 10 feet into the required 25-foot corner side setback, addressed at 120 E. Edgewater Terrace.
- B) Z-20-022 Hold a public hearing and consider a request [21-58](#) for a variance to Section 3.3-2(b)(1)(i) to allow the height of a single-family dwelling to exceed the maximum 35-foot height by approximately 21 feet in the "R-2" Single and Two-Family District, addressed at 204 Rio Drive.
- C) Z-20-023 Hold a public hearing and consider a request [21-60](#) for a variance to Section 3.3-9(b)(1)(v) to allow an existing commercial structure to encroach up to 15 feet

into the required 20-foot residential setback, addressed at 177 E. Faust Street.

5. **INDIVIDUAL ITEMS FOR CONSIDERATION**

- A) Updates regarding recommended code amendments [21-112](#) made by the Zoning Board of Adjustment for the City Council's consideration.

6. **ADJOURNMENT**

CERTIFICATION

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

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

1/28/2021

Agenda Item No. A)

ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
December 17, 2020

MEMBERS PRESENT

Chair John Coker
Vice Chair Brandon Mund
Bonnie Leitch
Steve Quidley
Cynthia Foster

STAFF PRESENT

Chris Looney, Planning & Development Services Director
Frank Onion, First Assistant City Attorney
Maddison O'Kelley, Assistant Planner
Sam Hunter, Planning Technician

MEMBERS ABSENT

None

Chair Coker called the meeting to order at 6:00 p.m. Roll was called, and a quorum declared.

APPROVAL OF MINUTES

Motion by Vice Chair Mund, seconded by Member Leitch, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of November 19, 2020. The motion carried (5-0-0).

PUBLIC HEARINGS

(A) Z-20-017 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(v) and Section 5.4(c) to allow a proposed single-family home to encroach 2 feet into both of the required 5-foot side setbacks addressed at 674 W. Edgewater Terrace. (Applicant: David Mills; Case Manager: Maddison O'Kelley)

Ms. O'Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding 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 the subject property is smaller than a typical lot within the City limits. The applicant further states the existing home is set back 1 foot from the side property and the proposed home would increase the setback by 2 to 3 feet if the variance is approved. Staff acknowledges the 50-foot width of the lot is smaller than the minimum lot width of 60 feet required within the "R-2" District, however, it is not an uncommon lot width in New Braunfels with other single-family zoning districts that allow a 50-foot lot width or narrower to accommodate newly built homes. Furthermore, staff has not identified a special circumstance of the property that is not shared with adjacent properties in the neighborhood.) **and**
- 2) *That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant states the variance is necessary to preserve an aesthetic front elevation by allowing the garage to shift over to show the front building façade. Staff does not recognize the substantial property right to a residential use of the property has been removed due to the setback requirements for main and accessory structures within the Zoning Ordinance.) **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 granting of the variance will not be detrimental to the public health, safety or welfare or injurious to other property within the area as the applicant has built other homes where encroachment variances of similar nature were approved. Staff acknowledges the impact to the surrounding area is likely minimal, however, the ZBA is not authorized or obligated to grant a variance due to a similar variance having been granted in the past.) **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 the variance should not prevent orderly use of other land nor set an unusual precedent. Staff notes all neighboring properties are still required to comply with the setback requirements for any new construction.) **and**
- 5) *That an undue hardship exists;*** (The applicant states an undue hardship of the land does not exist. The ZBA may only authorize a variance upon finding an undue hardship of the land itself that is not self-created, personal, or financial.) **and**

6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. (Side setbacks are intended to preserve open area on residential property.)

Chair Coker asked if there were any questions for staff.

Chair Coker requested the applicant address the Board.

Evy Washburn, 674 W Edgewater Terrace, stated she is the property owner and elaborated on the request.

Chair Coker asked if there were any questions for the applicant.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion or discussion from the Board.

Motion by Vice Chair Mund, seconded by Member Leitch to approve the proposed request for a variance to Section 3.3-2(b)(v) and Section 5.4(c) to allow a proposed single-family home to encroach 2 feet into both of the required 5-foot side setbacks addressed at 674 W. Edgewater Terrace. Motion carried (4-0-1) with Member Foster in opposition.

(B) Z-20-019 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(iii) to allow a proposed single-family home to encroach 10 feet into the required 25-foot corner side setback, addressed at 120 E. Edgewater Terrace. (Applicant: Melvin Nolte & Chad Nolte; Case Manager: Maddison O'Kelley)

Ms. O'Kelley stated this item has been postponed to the January 28, 2021 meeting.

(C) Z-20-020 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(iii) and Section 3.3-2(b)(v) to allow a proposed addition to a single-family home to 1. encroach up to 2.3 feet into the required 5-foot side setback and 2. encroach up to 13 feet into the required 20-foot rear setback, addressed at 307 N. Guenther. (Applicant: Greg Williams; Case Manager: Maddison O'Kelley)

Ms. O'Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding 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 the special circumstances affecting the property is the limited space available to construct the addition due to the existing structures on the property. The applicant cites the location of an accessory structure, labeled as "brick BBQ" on the provided survey. The applicant further states the driveway side of the property would be the least obtrusive location to construct and addition onto the historically designated home. Staff notes the existing side setback of the house is 21.3 feet from the side property line and a special circumstance of the property that does not affect other properties with historic structures has not identified.) **and**

2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; (The applicant states the variance is necessary because due to the lack of area to construct on the property, the addition could not reasonably be constructed on any other part of the property. The applicant further states the proposed addition would allow for closet, utility, and bathroom space that is more consistent with a modern standard of living. Staff does not believe the substantial property right to

a single-family residence has been removed due to compliance with the setback requirements within the Zoning ordinance.) **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. The applicant further states there is already a current detached garage encroaching the same distance into the side setback and that the proposed addition would make a natural connection in line with the existing garage. Staff notes the existing detached garage encroaches 2.3 feet into the side setback for a distance 20.1 feet. The addition as proposed will reduce the rear setback for a two-story structure to 7 feet where code requires a minimum 20-foot setback. At 76.25 feet, the proposed addition increases the length of the encroachment into the side yard by 261%.) **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 the variance should not prevent orderly use of other land nor set an unusual precedent because the proposed addition will adjoin an existing structure on the property. Staff notes all neighboring properties are still required to comply with the setback requirements for any new construction.) **and**

5) That an undue hardship exists; (The applicant states that, if the variance is not approved, the applicant would have to demolish the historical structures on the land to add to the rear of the house. The applicant further states there are a number of large heritage pecan trees around the proposed that limit the buildable area. The applicant states the addition will need to be planned to be the least obtrusive in nature due to the landmark designation of the home.) **and**

6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. (The applicant states the variance will be in harmony with the spirit and purpose of the city's regulations.)

Chair Coker asked if there were any questions for staff.

Discussion followed on the provided plans, elevations, and clarification on the nature of the addition.

Chair Coker requested the applicant address the Board.

Greg Williams, 307 N Guenther, clarified the intent of the request and addressed the historic nature of the property.

Chair Coker asked if there were any questions for the applicant.

Discussion followed for clarification on the lack of elevation and floor plans, the hardship on the property, run-off from the roof, and preservation of the historic aspects.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion or discussion from the Board.

Motion by Member Leitch, seconded by Member Quidley to approve the proposed request for a variance to Section 3.3-2(b)(iii) and Section 3.3-2(b)(v) to allow a proposed addition to a single-family home to 1. encroach up to 2.3 feet into the required 5-foot side setback and 2. encroach up to 13 feet into the required 20-foot rear setback, addressed at 307 N. Guenther. Motion carried (4-0-1) with Member Foster in opposition.

(D) Z-20-021 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(ii)

to allow an attached carport with a deck to encroach approximately 18 feet into the required 25-foot front setback, addressed at 1021 Cole Avenue. (Applicant: Patricia & Dane Herbert; Case Manager: Chris Looney)

Mr. Looney presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding 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 the special circumstance affecting the subject property is its proximity to the City golf course and the resulting stray golf balls hit onto the existing driveway. The applicant states the concrete driveway was built in 1962 without a cover and, at the time, the golf course tee box was located next to the river and was therefore 75 yards farther from the subject property. The applicant states that, now that the tee box is closer to the subject property, errant golf balls frequently fly onto the driveway. Furthermore, the applicant cites the lot width and size as additional special circumstances of the property. Staff acknowledges the area of the subject property is 3,000 square feet less than the minimum lot area of 7,000 square feet required for corner lots in the "R-2" District and therefore, the buildable area is limited. Staff notes that the stray golf balls hit onto the driveway is not a special circumstance that isn't shared by other properties adjacent to the golf course and is therefore not a circumstance of the land itself.) ***and***
- 2) ***That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant states the variance is necessary because the ability to park in the existing driveway is removed due to risk of injury or property damage from stray golf balls, and therefore the applicant must park on Cole Avenue which has limited street width. The applicant further states the risks associated with golf balls hit onto the property removes the ability to use and enjoy the property, if the variance is not granted. Staff acknowledges the concerns regarding risk of injury or damage due to stray golf balls, however, the substantial property right to a single-family dwelling is not removed due to the setback requirements in the Zoning ordinance.) ***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 because the carport will be open for visibility and constructed with top grade materials. The applicant further states if the carport is constructed, public safety will improve as the property owners will be able to move their vehicles from the right-of-way and allow for the easy flow of traffic and emergency vehicles along Cole Avenue.) ***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 the variance should not prevent orderly use of other land nor set an unusual precedent. Staff notes all neighboring properties are still required to comply with the setback requirements for any new construction.) ***and***
- 5) ***That an undue hardship exists;*** (The applicant states the undue hardships that exist are the risk of being hit with golf balls and suffering from serious injury, the risk of damage to cars from hail and golf balls, and safety issues associated with parking on the street. The applicant further states that a building permit was issued for the carport by the City and therefore the subject structure is partially constructed. Staff acknowledges the possibility for stray golf balls to cause injury or damage, however, a hardship of the land itself has not been identified. Furthermore, the hardship of an incorrectly issued permit due to an inaccurate site plan is not a hardship of the land itself.) ***and***
- 6) ***That the granting of a variance will be in harmony with the spirit and purpose of these regulations.*** (The applicant states the variance will be in harmony with the spirit and purpose of the city's regulations and that adjacent property owners are in favor of the proposed carport. The applicant further states the carport will improve the health and safety for the community and enhance their enjoyment of the property. Staff notes the purpose of the front setback requirement is to maintain a visual setback from the street and ensure adequate visibility for drivers.)

Chair Coker asked if there were any questions for staff.

Chair Coker requested the applicant address the Board.

Dane & Trish Hebert, 1021 Cole Ave, provided clarification of the request.

Chair Coker asked if there were any questions for the applicant.

Discussion followed on concerns for the proposed second story of the deck.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion or discussion from the Board.

Discussion followed on if the permit process would be factored in the Board's decision and a potential motion with conditions.

Motion by Member Foster to approve the proposed request for a variance to Section 3.3-2(b)(1)(ii) to allow an attached carport with a deck to encroach approximately 18 feet into the required 25-foot front setback, addressed at 1021 Cole Avenue with the condition no enclosed structure may be built. With no second, the motion failed.

ITEMS FOR INDIVIDUAL CONSIDERATION

- A) Identify code sections or topics the Board may want to discuss on a future agenda to consider a recommendation to City Council to initiate process to amend or revise.

No discussion.

ADJOURNMENT

Chair Coker adjourned the meeting at 6:59 pm.

Chair

Date

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1/28/2021

Agenda Item No. A)

Presenter/Contact
Applicant, Chad Nolte
(830) 708-4745 - thenolte@swbell.net

SUBJECT:

Z-20-019 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(iii) to allow a proposed single-family home to encroach 10 feet into the required 25-foot corner side setback, addressed at 120 E. Edgewater Terrace.

BACKGROUND / RATIONALE:

Case#: Z-20-019

Applicant: Melvin Nolte Jr. & Chad Nolte
1015 N. Houston Avenue
New Braunfels, TX 78130

thenolte@swbell.net <<mailto:thenolte@swbell.net>>

Staff Contact: Maddison O'Kelley, Assistant Planner

(830) 221-4056 - <mokelley@nbtexas.org>

This request was postponed from the December 17th ZBA meeting due to an error on the initial mailings sent to owners of property within 200 feet of the subject property. A revised public notice has been provided.

The subject property is located on the southeast corner of E. Edgewater Terrace and N. Union Avenue and is zoned "R-2" Single Family and Two-Family District. The property is approximately 13,750 square feet with a lot depth of 125 feet and a lot width of 110 feet. Due to the configuration of the lot, the property fronts on E. Edgewater Terrace and the corner side property line is along N. Union Avenue.

The property is currently vacant. There was an existing home built in 1949 that was recently removed from the lot that had encroached 10 feet into the required corner side setback from N. Union Avenue. There is also an existing 320 square foot detached storage structure that is intended to remain on the lot.

The applicant is proposing to construct a new single-family dwelling and requesting a variance to allow the proposed home to encroach 10 feet into the required 25-foot corner side setback from N. Union Avenue. If approved, the home would be setback 15 feet from the property line. The applicant cites the variance as necessary to construct a reasonably sized one-story home and preserve multiple heritage trees on the property, including a large pecan tree located within the buildable area of the lot.

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 the location of the proposed home has been designed to allow two heritage pecan trees to be preserved by encroaching into the corner side setback. The applicant further states the home would be constructed too close to the existing detached shed if the home is setback 25 feet from N. Union Ave. Staff acknowledges the location of one existing tree is within the buildable area of the lot.)

and

- 2) ***That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant states the variance is necessary because the required setbacks limit the ability to build a reasonably sized one-story home. The applicant states a one-story home is necessary to preserve adequate sunlight for the existing trees. The applicant further states that, in order to construct a home within the required setbacks and preserve the existing trees, the home would have to be narrowly designed which would not fit in with the character of the neighborhood. Staff acknowledges the location of the existing trees on the property reduces the size of the buildable area of the lot if the trees are preserved, however, the 25-foot corner side setback requirement does not remove the substantial property right to construct a single-family home on the property. Building a single story vs. a multi-story home is not considered a property right nor a code requirement, however a single-story would likely provide more sunlight to facilitate tree growth and health.) ***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 others will not be negatively affected by the granting of the variance. The applicant further states the home that has been removed from the property encroached 10 feet into the required setback and there were not any issues with traffic, noise, or overall look. The applicant states the proposed home will fit in with the character of the neighborhood because the adjacent homes are all one-story in height. Staff acknowledges the homes built on the shared block as the subject property are all one-story in height and that, if the variance is approved, the impact to the surrounding area with a setback encroachment is likely minimal.) ***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 the variance should not prevent orderly use of other land nor set an unusual precedent. The applicant states the home will be one-story, rather than a two-story home that is much taller than the adjacent homes. Staff notes all neighboring properties are required to comply with the setback requirements for any new construction.) ***and***
- 5) ***That an undue hardship exists;*** (The applicant states the two existing pecan trees can be harmed if a home is built within the required setbacks and that building a two-story home is not possible to ensure the trees receive adequate sunlight. The applicant further states that, between the 20-foot rear setback and the 25-foot front and corner side setbacks, there is not enough buildable area for a reasonably sized one-story home.) ***and***
- 6) ***That the granting of a variance will be in harmony with the spirit and purpose of these regulations.*** (The applicant states the variance will be in harmony with the spirit and purpose of the city's regulations and that the variance will provide reasonable use of the property without affecting any neighbor, traffic, safety, sight lines, noise, or the neighborhood as a whole. The applicant further states protecting the existing pecan trees and the single-story design of the home fit the character of the neighborhood. Staff notes the homes built along the north side of N. Union on the shared block as the subject property meet the minimum 25-foot setback and therefore, approval of the variance could disrupt the current visual setback from the street. Visual clearance or the sight distance triangle at the intersecting streets will still need to be maintained for motorist safety.)

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:

13, 750 square feet;

Lot depth 125 feet

Lot width 110 feet

Variance Request Due to Notice of Violation:

No

Surrounding Zoning and Land Use:

North - Across E. Edgewater terrace, C-4 / Single-family residence

South - R-2 / Single-family residence

East - R-2 / Single-family residence

West - Across N. Union Avenue, R-2 / Single-family residence

NOTIFICATION:

A revised public notice was sent to 16 owners of property within 200 feet. Staff has received no responses.

ATTACHMENTS:

1. Aerial Map
2. Application
3. Site Plan
4. Tree Plan
5. Notification List and Map
6. Sec. 3.3-2 "R-2" Single-Family and Two-Family District



Z20-019

Variance for corner-side setback encroachment





Planning & Development Services Department
 550 Landa Street
 New Braunfels, Texas 78130
 (830) 221-4050 www.nbtexas.org

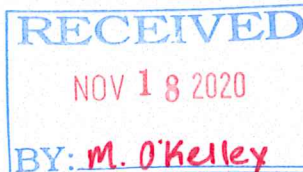
CC/Cash/Check No.: 20762

Amount Recd. \$ 721.00

Receipt No.: 226631

Case No.: 7-20-019

Submittal date – office use only



Variance Application (Zoning Board of Adjustment)

APPLICATION FEES:

Homestead: \$350 plus \$50 for each additional variance sought

Non-Homestead: \$700 plus \$50 for each additional variance sought

Please note that a 3% technology fee is applied to the total application fee

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.

Name of Applicant/Agent*: Melvin Nolte Jr./ Chad Nolte

Property Address: 120 E. Edgewater Terrace, New Braunfels, TX 78130

Mailing Address: 1015 N Houston Ave, New Braunfels, TX 78130

Contact information:

Phone: (830) 708-4745

E-Mail: thenolte@swbell.net

Legal Description: Lot #: 40 & 41 Block: 5110 Subdivision: N/A

(NOTE: If property is not platted, attach a copy of the metes and bounds description and survey/drawing.)

Present Use of Property: Residence/Vacant Land Zoning: R-2

Describe Variance Request: Requesting a 10.0ft encroachment into the 25.0ft side setback on North Union Ave so that the side setback is 15.0ft like it use to be.

SUBMITTAL CHECKLIST:

STAFF:

APPLICANT:



Completed application



Copy of deed showing current ownership



Homestead Verification (if applicable)



Application Fee



Letter of authorization if applicant is not property owner



Site plan, drawn to scale and no larger than 11"x17", showing all existing and proposed improvements, setbacks from the property lines, and building elevations (if applicable.)

Explain the following in detail:

Please note: The information provided in response to the following questions is imperative to the variance request process. You may use additional pages if necessary.

(1) What are the special circumstances or conditions affecting the land that warrant the variance?

There are two old pecan trees located on the opposite side of N. Union Ave that I am trying to protect.

If the 25 foot N. Union setback is kept, the future home will encroach too close to the trees, and put strain on them. Also, there is a 20.2' x 15.3' metal shed (built by previous owner) with re-bar enforced concrete, and steel beams that could encroach too close to the future home if the 15ft N Union setback is not allowed.

(2) Why is the variance necessary to preserve a substantial property right of the applicant?

The 25 foot setback severely limits the ability to build a one story home. A one story home is needed, as a two story home will block the western sun from one of the trees, since this pecan tree is used to a one story home.

It is also necessary to provide proper width for the house, as a combo of all the setbacks and the trees will cause the future house to take on a narrow design, something that would look undesirable for the existing neighborhood block. The required setback prevents the reasonable use of this lot to protect the trees.

(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?

No, a house built in 1949 was recently moved off of this lot, and it had a 15ft side setback. In over 70 years there was never any issue with the 15ft setback in regards to safety, traffic, noise, or overall look. The proposed home will fit into the characteristic of the existing neighborhood block that has nothing but one story homes. In allowing this variance, it will ensure that the two old pecan trees will continue to flourish.

(4) Would granting the variance prevent the orderly use of other properties within the area?

No, other properties will not be affected. The house will be one story, and not be a two story home towering above the rest of the houses in the neighborhood block. All other setbacks will remain in place.

Speaking for myself only, I would assume all of the surrounding neighbors would prefer a one story home vs a two story home on this lot.

(5) Does an undue hardship to the land exist that is not self-created, personal or financial?

If yes, please explain in detail. If no, a variance cannot be granted.

Yes, the two old pecan trees could be harmed if the 25 foot side setback on N Union is to remain. Building a two story house is out of the question since the western sun would be blocked & drip-line affected. A one story home is needed, but due to the setbacks for Edgewater 25', N Union 25', and 20' back setback, there is not enough build-able space for a one story home (3 bed, 3 bath, living-room, kitchen, office, and garage) and be able to adequately distance the future home to protect the two pecan trees, especially the middle tree.

(6) Will granting the variance be in harmony with the spirit and purpose of the City's regulations?

Yes, the variance will provide reasonable use of the property without affecting any neighbor, traffic, safety, sight lines, noise, or the neighborhood as a whole. It will also keep the one story characteristic of the neighborhood block, as well as fully protect two older pecan trees by ensuring that their drip-line's are not significantly harmed due to the encroachment of the future building.

Please initial the following important reminders:

CLN

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.

CLN

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.

The applicant is responsible for:

1. Paying for the required mail notification (**\$2.15 per mailed notice**)
2. Purchasing (**\$15 per sign**) and placing the signs at least **15 days prior to the hearing date**
3. Posting signs so they are clearly visible to the public from the adjacent public streets.
4. Ensuring that the signs remain on the property throughout the variance process.
5. 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.
6. Removing the signs after the final action by the Zoning Board of Adjustment.

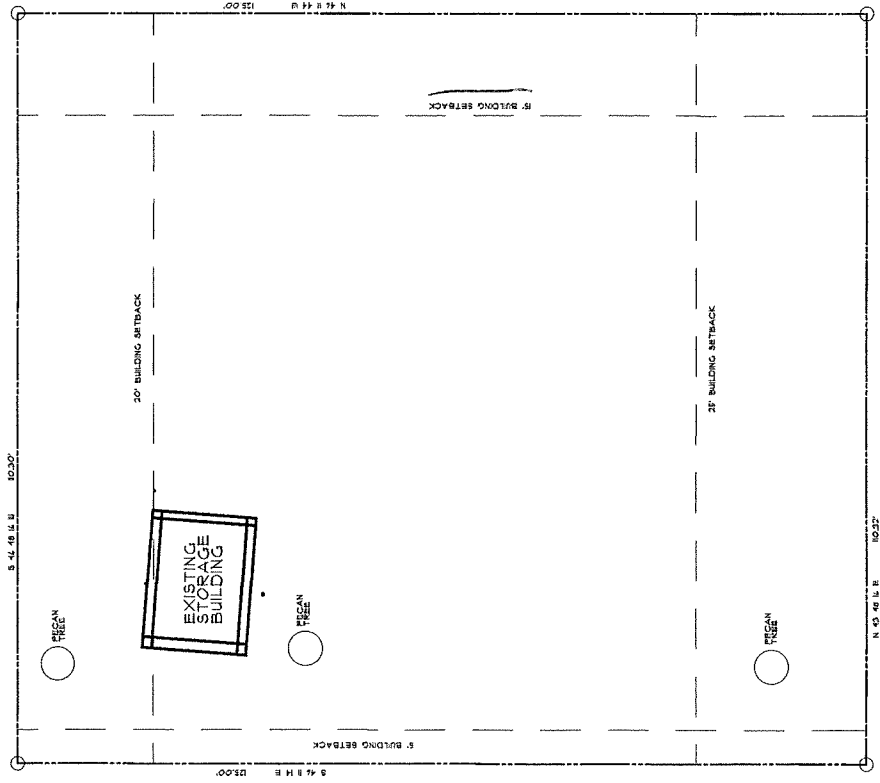
I hereby certify that the information provided is true and correct to the best of my knowledge.

Date: 11/17/2020

Signed:  Print Name: Chad Nolte
Applicant/Agent*

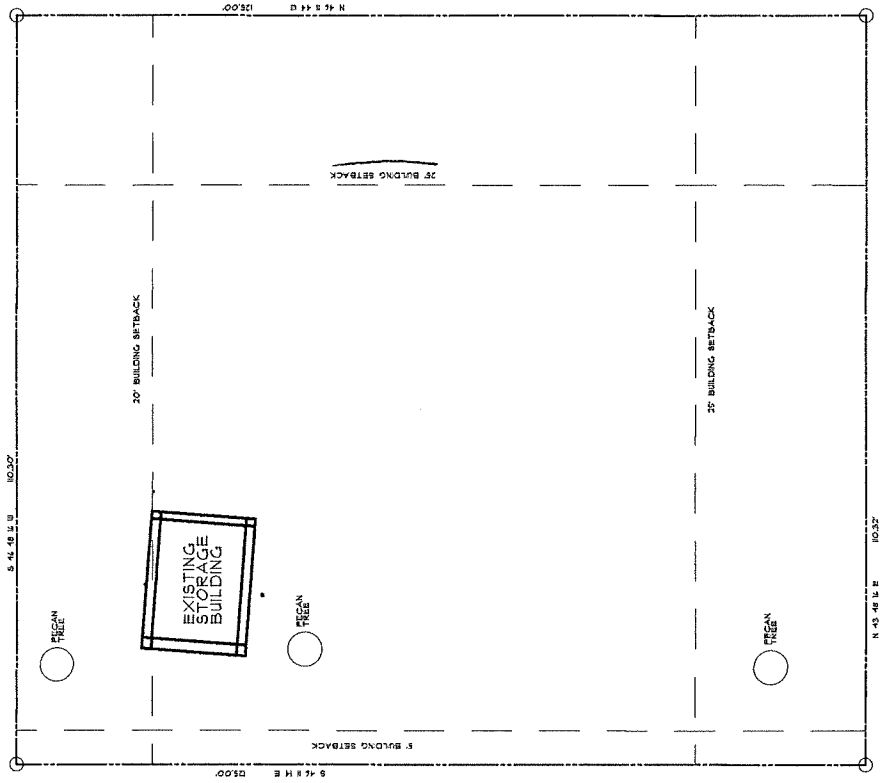
* If signed by an agent, a letter of authorization must be furnished by the property owner.

Proposed Site Plan



120 EAST EDGEWATER TERRACE

Current Required Setback

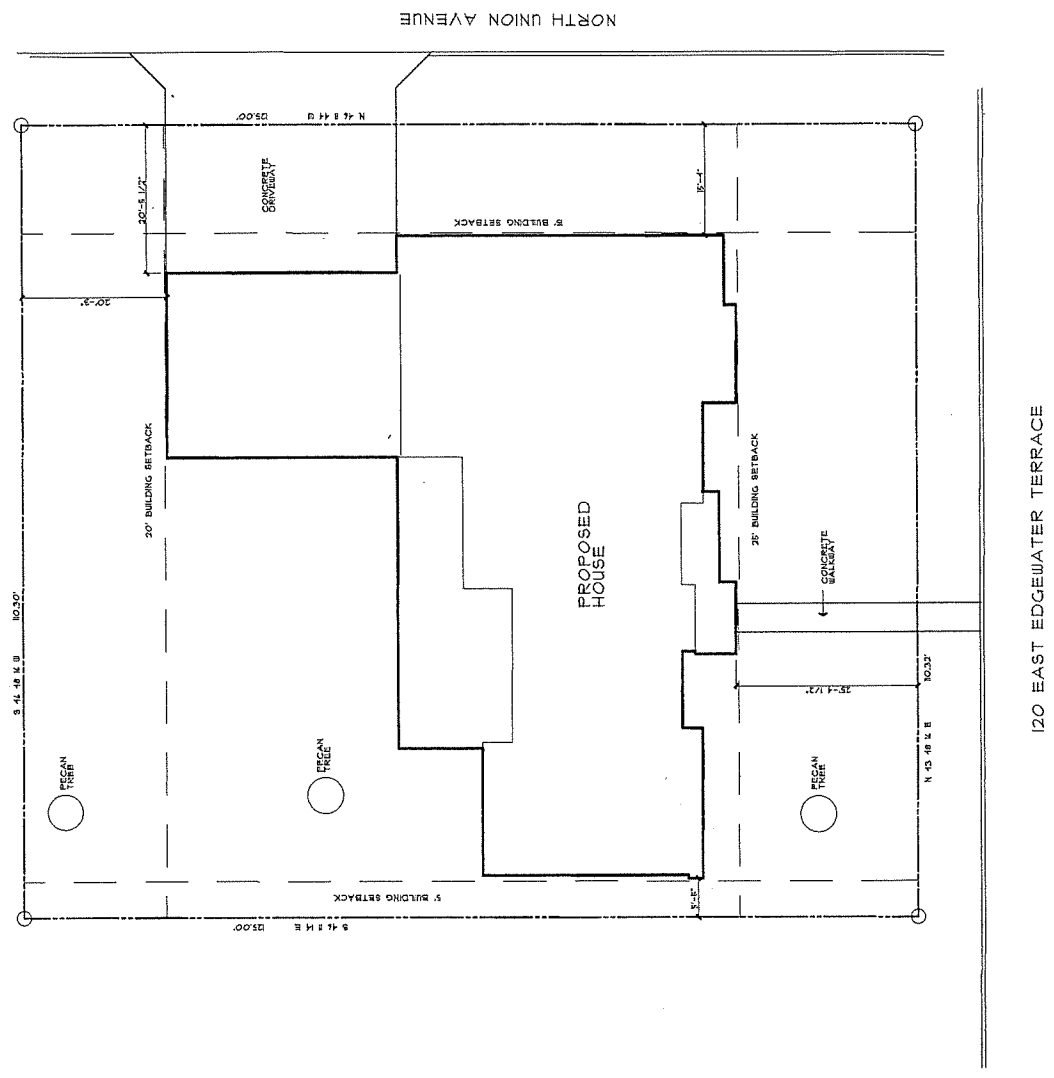
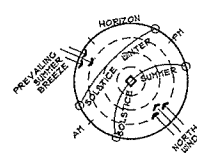


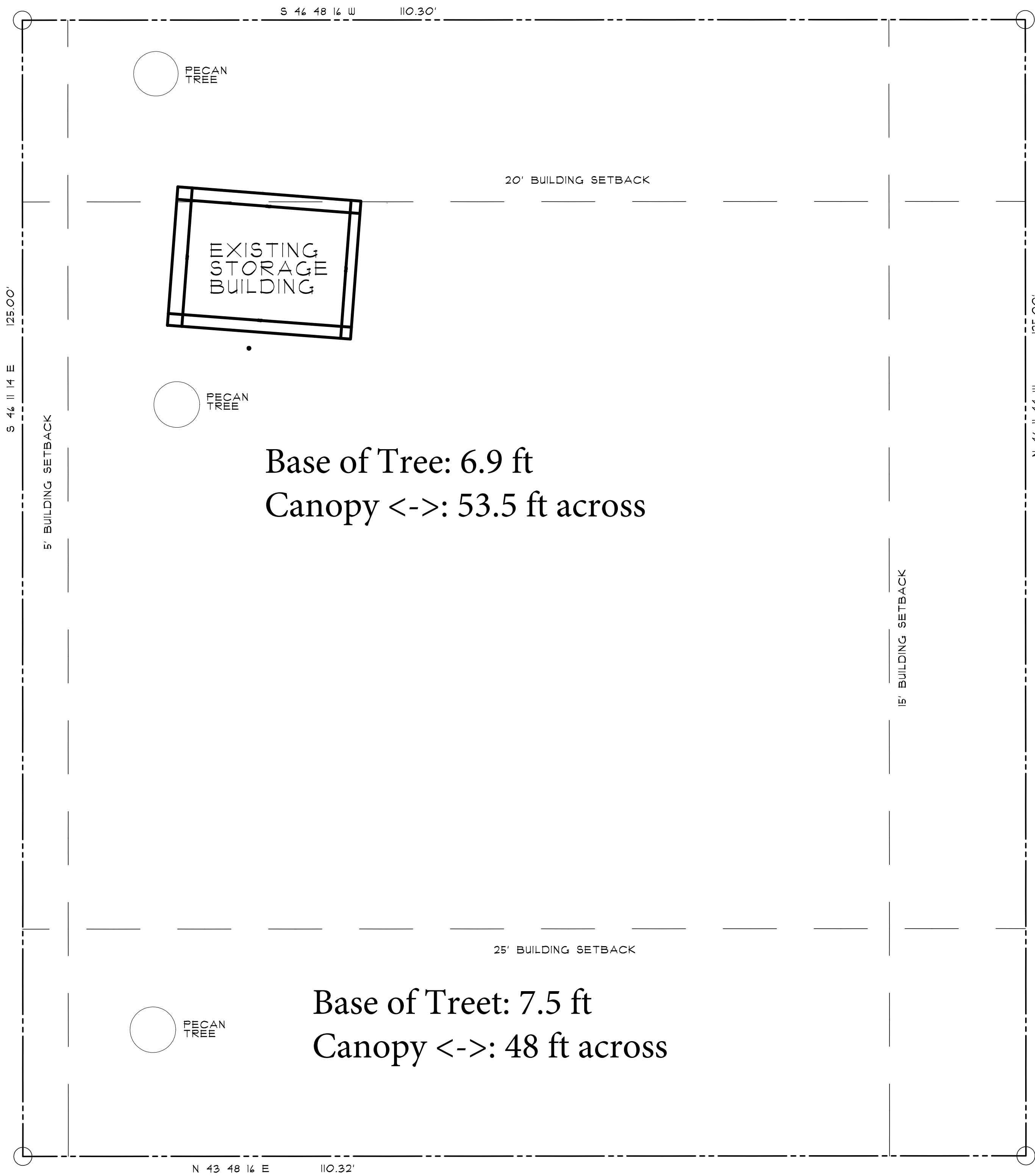
120 EAST EDGEWATER TERRACE

NORTH UNION AVENUE

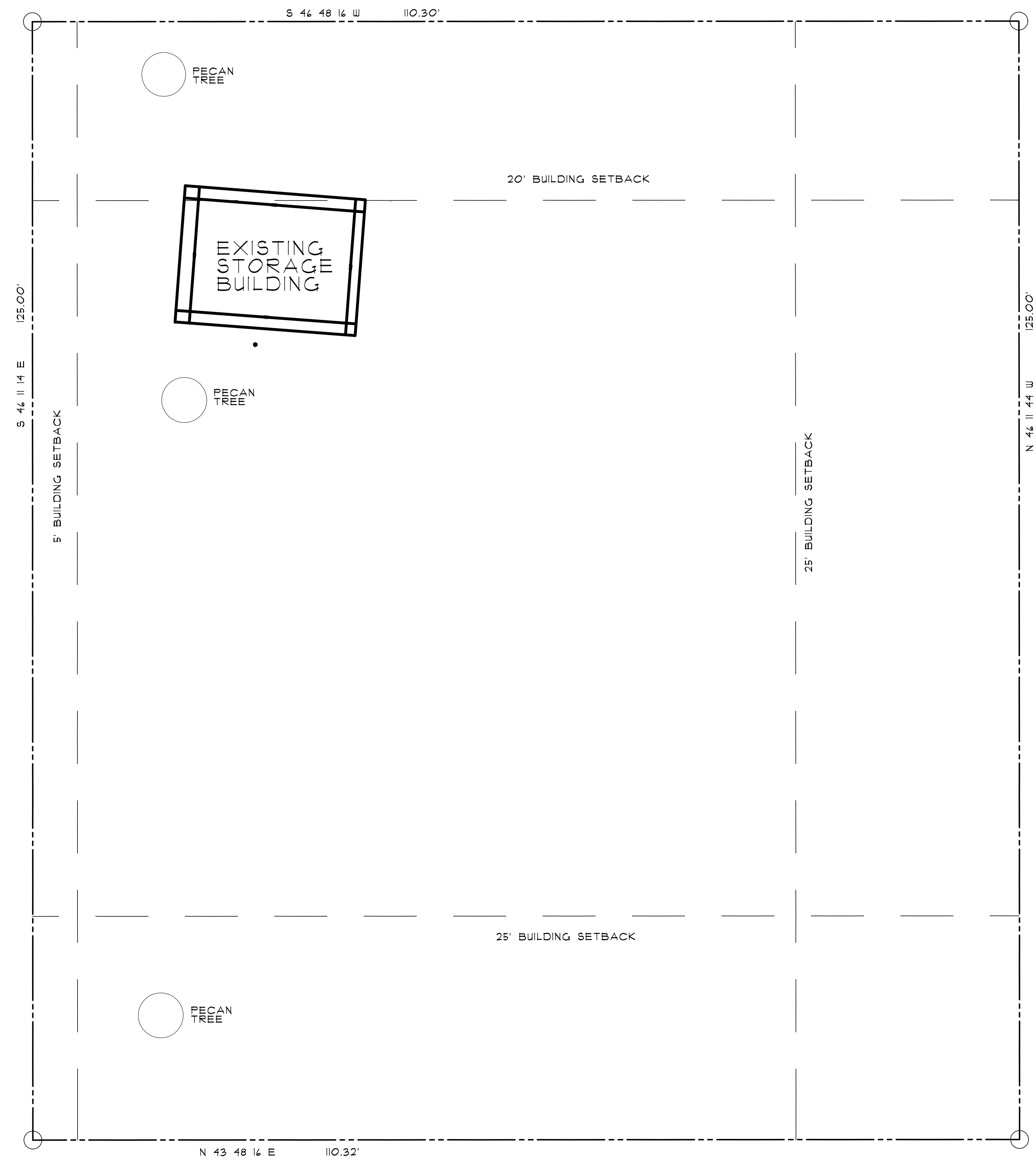
NORTH UNION AVENUE

CONSTRUCTION
ISSUE





120 EAST EDGEWATER TERRACE



120 EAST EDGEWATER TERRACE

ZONING BOARD OF ADJUSTMENT – JANUARY 28, 2021
ZOOM WEBINAR MEETING

Address/Location: 120 E Edgewater Terrace

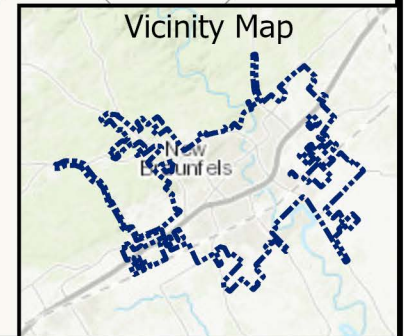
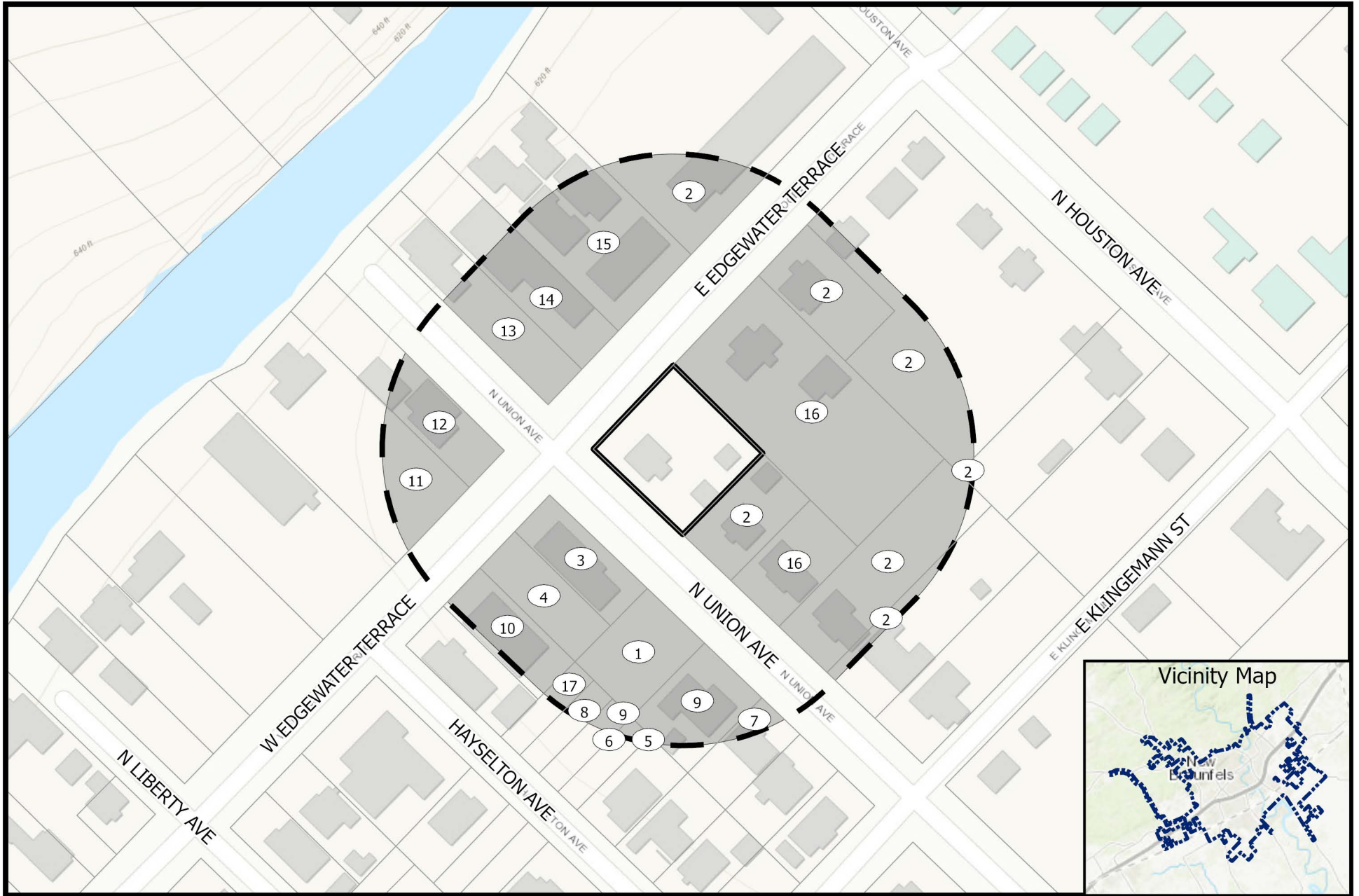
Applicant: Chad Nolte

Case #: Z-20-019

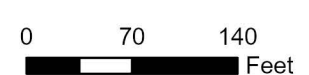
The circled numbers on the map correspond to the property owners listed below. All information is from the Comal Appraisal District Records. The property under consideration is marked "Subject Property."

- | | |
|-------------------------------------|----------------------------|
| 1. HAWKINS FRANCES | 11. PERUSQUIA ERNESTO |
| 2. NOLTE MELVIN JR | 12. DUFF ROBERT E & JOAN |
| 3. HARRIS ANGELA M & GUY J | 13. DARDEAU MARY ELIZABETH |
| 4. O'DONNELL PATRICK T & SANDRA H | 14. SINDELAR ANDREA D |
| 5. CHAR MAR LTD PARTNERSHIP | 15. NOLTE MELVIN JR |
| 6. JACOBS CHARLIE & CHERYL | 16. PROPERTY OWNERS |
| 7. DIETERT MICHAEL W & LINDA | 17. R L STEWART LP |
| 8. KAHLIG CLARENCE J III & JASMIN M | 18. MARTIN JOHN & AMBER |
| 9. BRIGGS ROBERT A JR | |
| 10. LOMBA MARIA DEL ROSARIO | |

SEE NOTIFICATION MAP



Z20-019
Variance for corner-side setback encroachment



3.3-2. "R-2" single-family and two family district. The following regulations shall apply in all "R-2" districts:

- (a) *Authorized uses.* Uses permitted by right shall be those set forth in the Land Use Matrix in Section 4 of this Chapter. The allowed uses in the district, which are intended to be identical with those listed in the Land Use Matrix, are as follows:

(1) *Uses permitted by right:*

Residential uses:

- Accessory dwelling (one accessory dwelling per lot, no kitchen)
- Accessory building/structure
- Community home (see definition)
- Duplex/two-family/duplex condominium
- Family home adult care
- Family home child care
- Home Occupation (see Sec. 5.5)
- One family dwelling, detached
- Single family industrialized home (see Sec. 5.8)

Non-residential uses:

- Barns and farm equipment storage (related to agricultural uses)
- Cemetery and/or mausoleum
- Church/place of religious assembly
- Community building (associated with residential uses)
- Contractor's temporary on-site construction office (only with permit from Building Official; see Sec. 5.10)
- Country club (private)
- Farms, general (crops) (see Chapter 6, Municipal Code and Sec. 5.9)
- Farms, general (livestock/ranch) (see Chapter 6, Municipal Code and Sec. 5.9)
- Golf course, public and private
- Governmental building or use with no outside storage
- Park and/or playground (private and public)
- Plant nursery (growing for commercial purposes but no retail sales on site)
- Public recreation/services building for public park/playground areas
- Recreation buildings (public)
- School, K-12 (public or private)
- Water storage (surface, underground or overhead), water wells and pumping stations that are part of a public or municipal system

- (2) *Conflict.* In the event of conflict between the uses listed in the Land Use Matrix and those listed in Subsection (1), the uses listed in this subsection shall be deemed those authorized in the district.

(b) *Maximum height, minimum area and setback requirements:*

(1) One family dwellings.

(i) *Height.* 35 feet.

(ii) *Front building setback.* 25 feet.

(iii) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.

- (iv) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
 - (v) *Rear building setback.* 20 feet.
 - (vi) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet, provided that where a lot has less width than herein required, and such lot was in separate ownership prior to September 25, 1967, this requirement will not prohibit the erection of a one-family dwelling.
 - (vii) *Lot area per family.* Every single-family dwelling hereafter erected or altered shall have a lot area of not less than 6,600 square feet per family for interior lots, and 7,000 square feet per family for corner lots. Where a lot was legally under separate ownership prior to September 25, 1967, but has an area less than the minimum required in this provision, this regulation shall not prohibit the erection of a one-family residence. Where a public or community sewer is not available and in use for the disposal of all sanitary sewage, each lot shall provide not less than one half acre or one acre on the Edwards Aquifer Recharge Zone.
 - (viii) *Lot depth.* 100 feet.
 - (ix) *Parking.* Two off-street parking spaces shall be provided for each one family detached dwelling unit. See Section 5.1 for other permitted uses' parking.
- (2) Duplexes.
- (i) *Height.* 35 feet.
 - (ii) *Front building setback.* 25 feet.
 - (iii) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.
 - (iv) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
 - (v) *Rear building setback.* 20 feet.
 - (vi) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet.
 - (vii) *Lot area per family.* Duplexes hereafter erected or altered shall have a lot area of not less than 8,000 square feet for an interior lot and 8,500 square feet for a corner lot. Where a lot was legally under separate ownership prior to September 25, 1967, but has an area less than the minimum required in this provision, this regulation shall prohibit the erection of a two-family residence. Where a public or community sewer is not available and in use for the disposal of all sanitary sewage, each lot shall provide not less than one acre and approved by the City Sanitarian.
 - (viii) *Lot depth.* 100 feet.

- (ix) *Parking.* Two off-street parking spaces shall be provided for each two-family dwelling unit. See Section 5.1 for other permitted uses' parking.
- (3) Non-Residential Uses.
- (i) *Height.* 35 feet.
 - (ii) *Front building setback.* 25 feet.
 - (iii) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Where any building abuts a property with a one or two family use, the setback from the one or two family property line shall be at least 20 feet plus one foot for each foot of building height over 20 feet.
 - (iv) *Corner lots.* Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lines of the corner lots coincide with the side lot lines of the adjacent lots. Where a minimum 25-foot setback is required, a canopy at least eight feet in height, attached to the main building, may be built within 15 feet of the property line so long as such construction will not obstruct the vision of vehicular or pedestrian traffic.
 - (v) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
 - (vi) *Rear building setback.* 20 feet.
 - (vii) *Width of lot.* 60 feet.
 - (viii) *Lot depth.* 100 feet.
 - (ix) *Parking.* See Section 5.1 for permitted uses' parking.

1/28/2021

Agenda Item No. B)

Presenter/Contact*Applicant: Jim Melsha**(210) 391-3189 - jimmelsha@icloud.com***SUBJECT:**

Z-20-022 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(i) to allow the height of a single-family dwelling to exceed the maximum 35-foot height by approximately 21 feet in the "R-2" Single and Two-Family District, addressed at 204 Rio Drive.

BACKGROUND / RATIONALE:**Case #:** Z-20-022

Applicant: James Melsha
204 Rio Drive
New Braunfels, TX 78130
(210) 391-3189 - [<jimmelsha@icloud.com>](mailto:jimmelsha@icloud.com)

Staff Contact: Maddison O'Kelley
(830) 221-4056 - [<mokelley@nbtexas.org>](mailto:mokelley@nbtexas.org)

The subject property is located at the terminus of Rio Drive and consists of 9,870 square feet of land that is zoned "R-2" Single and Two-Family District. The property is approximately 22 feet wide at Rio Drive and 180 feet deep and abuts Lake Dunlap at the rear of the property.

The entire property is located within the floodway and the 1% annual chance floodplain. Therefore, any new construction must comply with Chapter 58 Floods, which is reviewed at the time of building permit. New construction in the floodplain must be elevated two feet above the base flood elevation. The base flood elevation for this property is approximately 25 feet above grade.

The subject structure is a single-family residence currently under construction. The applicant requested a variance in 2018 to allow the structure to exceed the maximum allowable 35-foot height for a single-family home in "R-2" by 19 feet and 7 inches. A variance was granted to allow the home to exceed the 35-foot height requirement by a maximum of 12 feet, therefore the overall maximum height of the home permitted was 47 feet above grade.

The applicant is requesting a variance to allow the overall height of the structure to exceed the maximum 35-foot height by 21 feet, which is 9 feet taller than the variance granted in 2012. The applicant states the variance is necessary to accommodate an exterior elevator to access a proposed rooftop deck. If approved, the overall height of the home would be 56 feet above grade.

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 the structure must be elevated an additional 26 feet due to the property's location within the floodway. Staff acknowledges the required 25-foot base flood elevation impacts the construction of a single-family dwelling which, therefore, can be compressed with the generally applicable height limits.) **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the interior elevator needs to be extended to access the roof top deck, which will eliminate the secondary elevator and replace it with an emergency escape ladder. The applicant further states the plans originally approved with the first variance showed a secondary elevator, which would have required a support structure of the same height as the new elevator chase. Staff notes the additional height required to construct and access the proposed rooftop deck is not a substantial property right.) **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 the variance should not be detrimental to public health, safety or welfare. It is not anticipated the proposed structure will be detrimental to public health and safety if built to the appropriate standards.) **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 believes the variance should not prevent orderly use of other land within the area and states the additional height of the elevator enclosure does not obstruct the view of the river from any existing properties. There does not appear to be a negative effect preventing orderly use of other land within the area, however, all neighboring properties will still be required to comply with the height limits and other zoning ordinance standards for any new construction on their properties, including property located within the floodplain.) **and**
- 5) **That an undue hardship exists;** (The applicant states the standards to build two feet above the base flood elevation is an undue hardship. Staff acknowledges new construction of habitable space below the base flood elevation is prohibited and the construction of a new dwelling will be limited to having the elevation of the first habitable floor at a minimum elevation of 27 feet above the average adjacent grades. Staff notes that the variance granted in 2018 allowed an overall height of 20 feet for habitable area above the base flood elevation.) **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 zoning ordinance as it will allow for a safety structure in the form of an emergency escape ladder to be added, protecting the occupants from being trapped in the event of a power failure.)

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:**

9,870 square feet

180 feet depth

22 feet in width

Variance Request Due to Notice of Violation:

No

Surrounding Zoning and Land Use:

North - C-3 / Vacant

South - R-2 / Single family dwellings

East - Across Rio Drive, R-2 / Vacant

West - Across Guadalupe River/ Single family dwellings

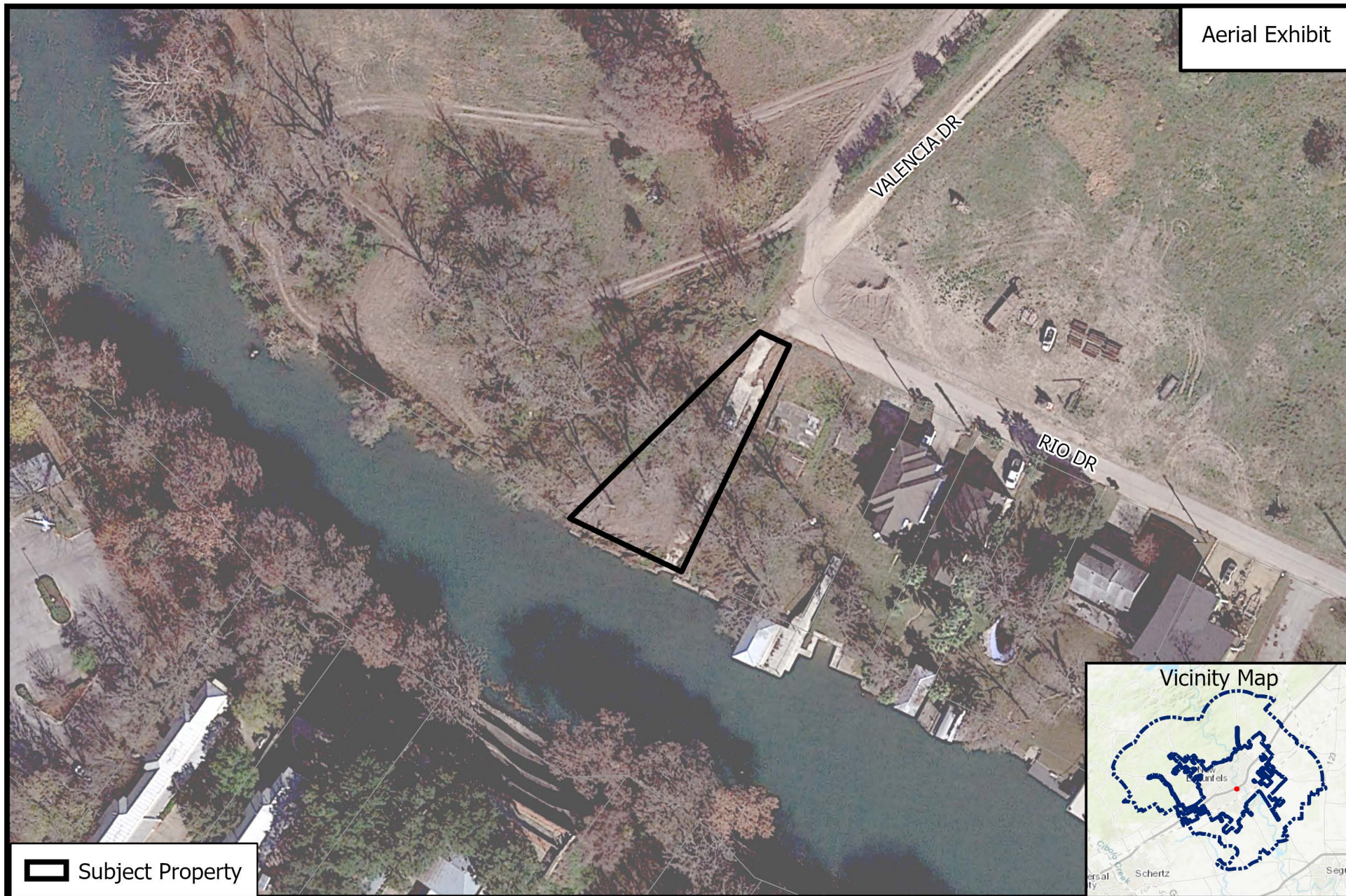
Notification

Public hearing notices were sent to 8 owners of property within 200 feet. Staff has received no responses

Attachments:

1. Aerial Map
2. Floodway Map
3. Application
4. Proposed Elevation Plans
5. Photograph
6. Notification List and Map
7. Sec. 3.3-2 "R-2" Single Family and Two Family District

Aerial Exhibit



 Subject Property



Z20-022

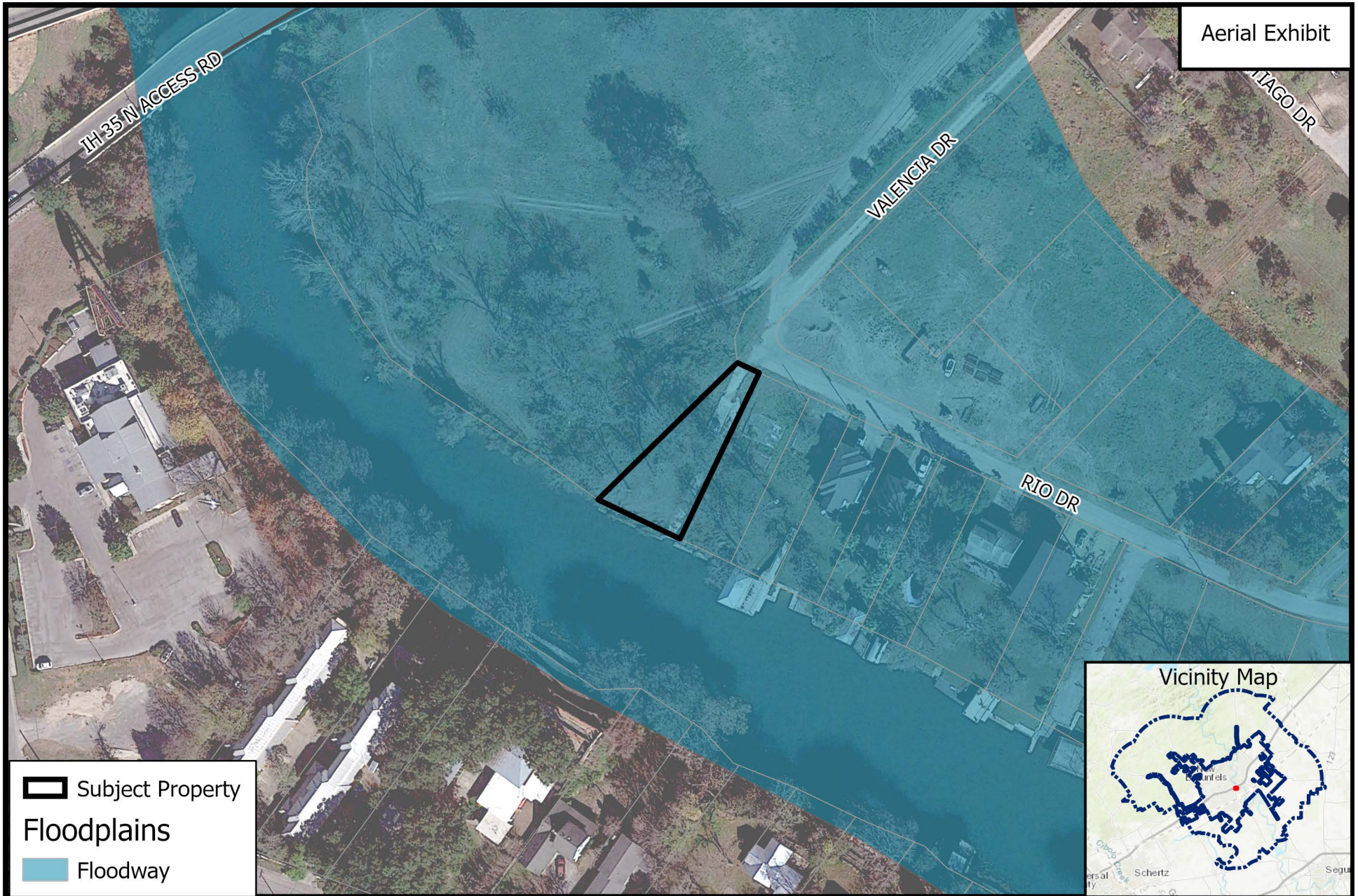
Maximum building height

0 50 100 Feet



Source: City of New Braunfels Planning
Date: 1/15/2021

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 any other party 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.



Z20-022

Maximum building height



**Planning & Community Development Department
Planning Division**

550 Landa St. New Braunfels, TX 78130
(830) 221-4050 www.nbtexas.org

CC/Cash/Check No.: 1260 Case No.: 2-20-022
Amount Recd. \$ 721.00
Receipt No.: 226652

RECEIVED

DEC 30 2020

BY: Sam H.
Submittal date - office use only

**VARIANCE APPLICATION
(ZONING BOARD OF ADJUSTMENT)**

APPLICATION FEES:

Homestead: \$350 plus \$50 for each additional variance sought

Non-Homestead: \$700 plus \$50 for each additional variance sought

Please note that a 3% technology fee is applied to the total application fee

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.

Name of Applicant/Agent*: Jim Melsha

Property Address: 204 Rio Dr

Mailing Address: 216 Rio Dr., New Braunfels, TX 78130

Contact information:

Phone: 210-391-3189

E-Mail: jimmelsa@icloud.com

Legal Description: Lot #: 144 Block: 18 Subdivision: _____

(NOTE: If property is not platted, attach a copy of the metes and bounds description and survey/drawing.)

Present Use of Property: residential Zoning: residential

Describe Variance Request: Allow for a total maximum
height of 56 feet. My request is for an
additional 8 feet, for a total of 56 feet

SUBMITTAL CHECKLIST:

STAFF:

APPLICANT:



Completed application



Copy of deed showing current ownership



Homestead Verification (if applicable)



Application Fee



Letter of authorization if applicant is not property owner



Site plan, drawn to scale and no larger than 11"x17", showing all existing and proposed improvements, setbacks from the property lines, and building elevations (if applicable.)

Explain the following in detail:

Please note: The information provided in response to the following questions is imperative to the variance request process. You may use additional pages if necessary.

(1) What are the special circumstances or conditions affecting the land that warrant the variance?

The structure must be elevated an additional 26 feet due to it being located in the 100-year flood way

(2) Why is the variance necessary to preserve a substantial property right of the applicant?

The interior elevator needs to be extended to access the roof top deck, eliminating the secondary elevator & replacing it with an emergency escape ladder. The originally approved plans showed a secondary elevator which would have required a support structure of the same height as the new elevator chase.

(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?

No

(4) Would granting the variance prevent the orderly use of other properties within the area?

The additional height of the elevator enclosure does not obstruct the view of the river from any of the existing properties

(5) Does an undue hardship to the land exist that is not self-created, personal or financial?

If yes, please explain in detail. If no, a variance cannot be granted.

The building must be elevated on piers in order to raise it above the water surface elevation of the 100-year flood way. This raises the overall height of the structure by 26 feet.

Explain the following in detail:

Please note: The information provided in response to the following questions is imperative to the variance request process. You may use additional pages if necessary.

(1) What are the special circumstances or conditions affecting the land that warrant the variance?

My request is for an additional 8 feet, for a total of 56 feet variance.

(2) Why is the variance necessary to preserve a substantial property right of the applicant?

(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?

(4) Would granting the variance prevent the orderly use of other properties within the area?

(5) Does an undue hardship to the land exist that is not self-created, personal or financial?

If yes, please explain in detail. If no, a variance cannot be granted.

(6) Will granting the variance be in harmony with the spirit and purpose of the City's regulations?

Yes, the variance will allow for a safety structure in the form of an emergency escape ladder to be added, protecting the occupants from being trapped in the event of a power failure.

Please initial the following important reminders:

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.

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.

The applicant is responsible for:

1. Paying for the required mail notification (**\$2.15 per mailed notice**)
2. Purchasing (**\$15 per sign**) and placing the signs at least **15 days prior to the hearing date**
3. Posting signs so they are clearly visible to the public from the adjacent public streets.
4. Ensuring that the signs remain on the property throughout the variance process.
5. 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.
6. Removing the signs after the final action by the Zoning Board of Adjustment.

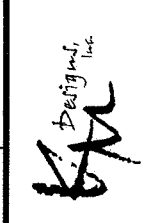
I hereby certify that the information provided is true and correct to the best of my knowledge.

Signed: James Melsha Date: 12/12/20
 Applicant/Agent* Print Name: James Melsha

* If signed by an agent, a letter of authorization must be furnished by the property owner.

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K11 DESIGNS, INC.
18534 Forty Six Parkway
Unit 3
Spring Branch, TX 78070
Office: 830-438-4556

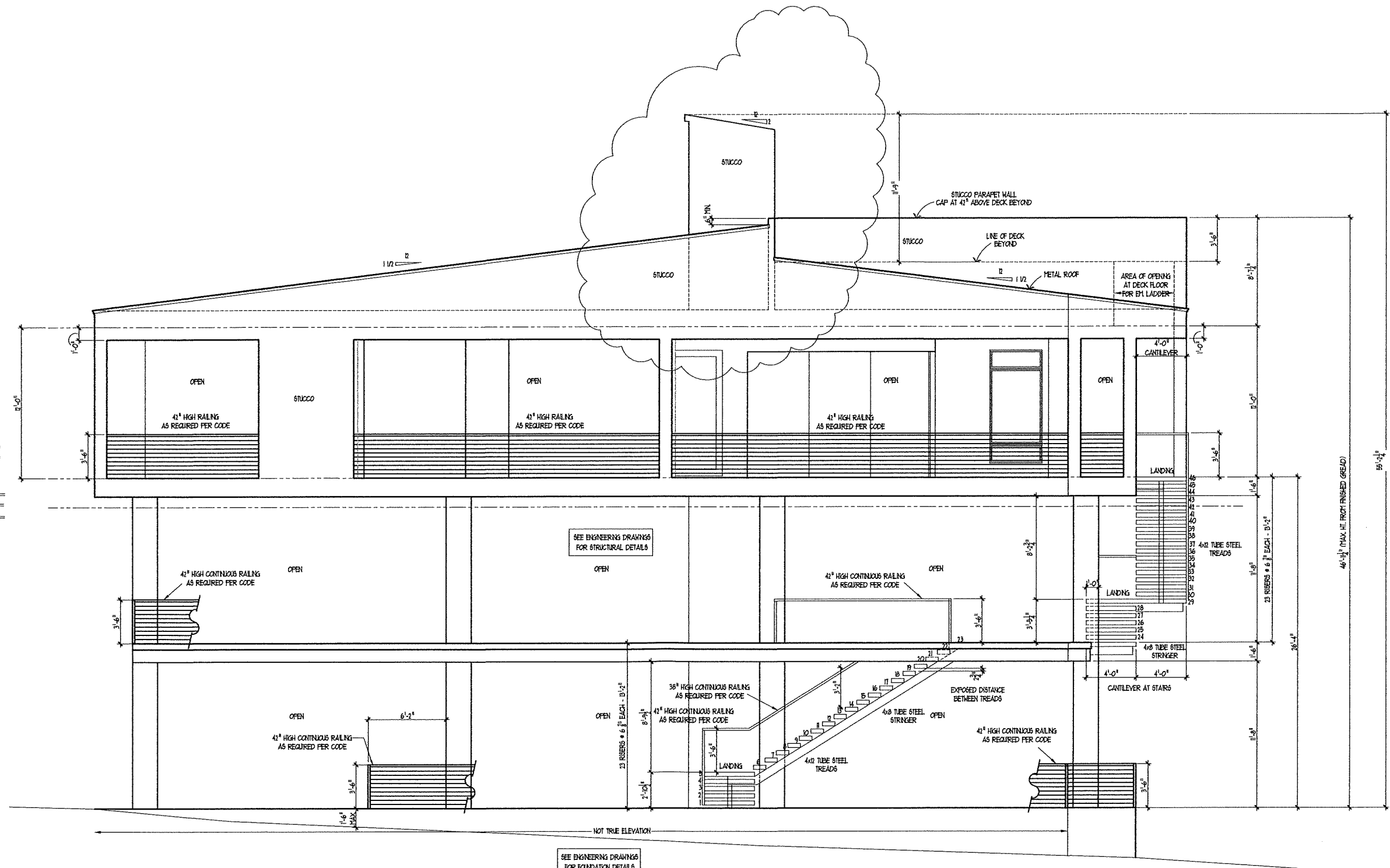
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A CUSTOM HOME FOR THE
MELSHA RESIDENCE

PLAN DATE:	8-6-18 - K11
REVISION:	8-14-18 - K11
REVISION:	8-28-18 - K11
REVISION:	11-11-18 - K11
REVISION:	2-10-19 - K11
REVISION:	1-4-19 - K11
REVISION:	1-5-10 - K11

ADDRESS:	RIO DRIVE
SUBDIVISION:	THE BLUEBONNET RIVER PARK ADDITION
LOT:	144
BLOCK:	B
PAGE:	A-6

611.33 FF
609 BFE



RIGHT ELEVATION
SCALE: 1/4" = 1'-0"

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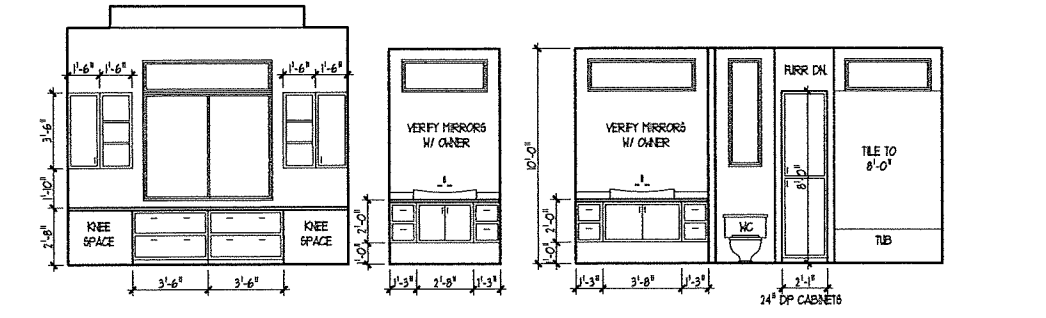
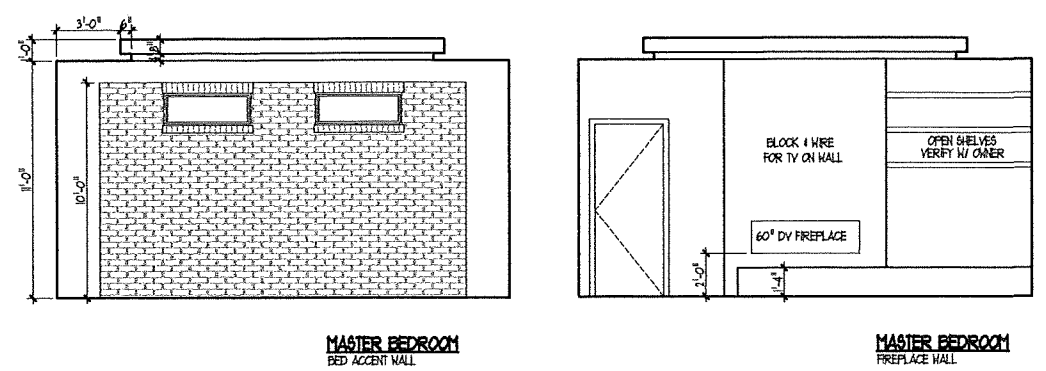
KIM DESIGNS, INC.
10534 Forty Six Parkway
Unit 3
Spring Branch, TX 78070
Office: 830-438-4556

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THIS PLAN INCLUDING ALL DESIGN CONCEPTS, DRAWINGS AND DETAILS CONTAINED HEREIN SHALL REMAIN THE SOLE PROPERTY OF KIM DESIGNS, INC. AND CAN NOT BE REPRODUCED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF KIM DESIGNS, INC. WORKING DRAWINGS SHALL NOT BE SCALED. BEFORE PROCEEDING WITH ANY WORK OR ORDERING OF MATERIALS, THE BUILDER AND/OR SUB-CONTRACTORS SHALL VERIFY ALL NOTES AND DIMENSIONS. ANY DISCREPANCIES IN OR OMISSIONS FROM THE WORKING DRAWINGS SHALL BE REPORTED TO THE BUILDER AND DESIGNER.

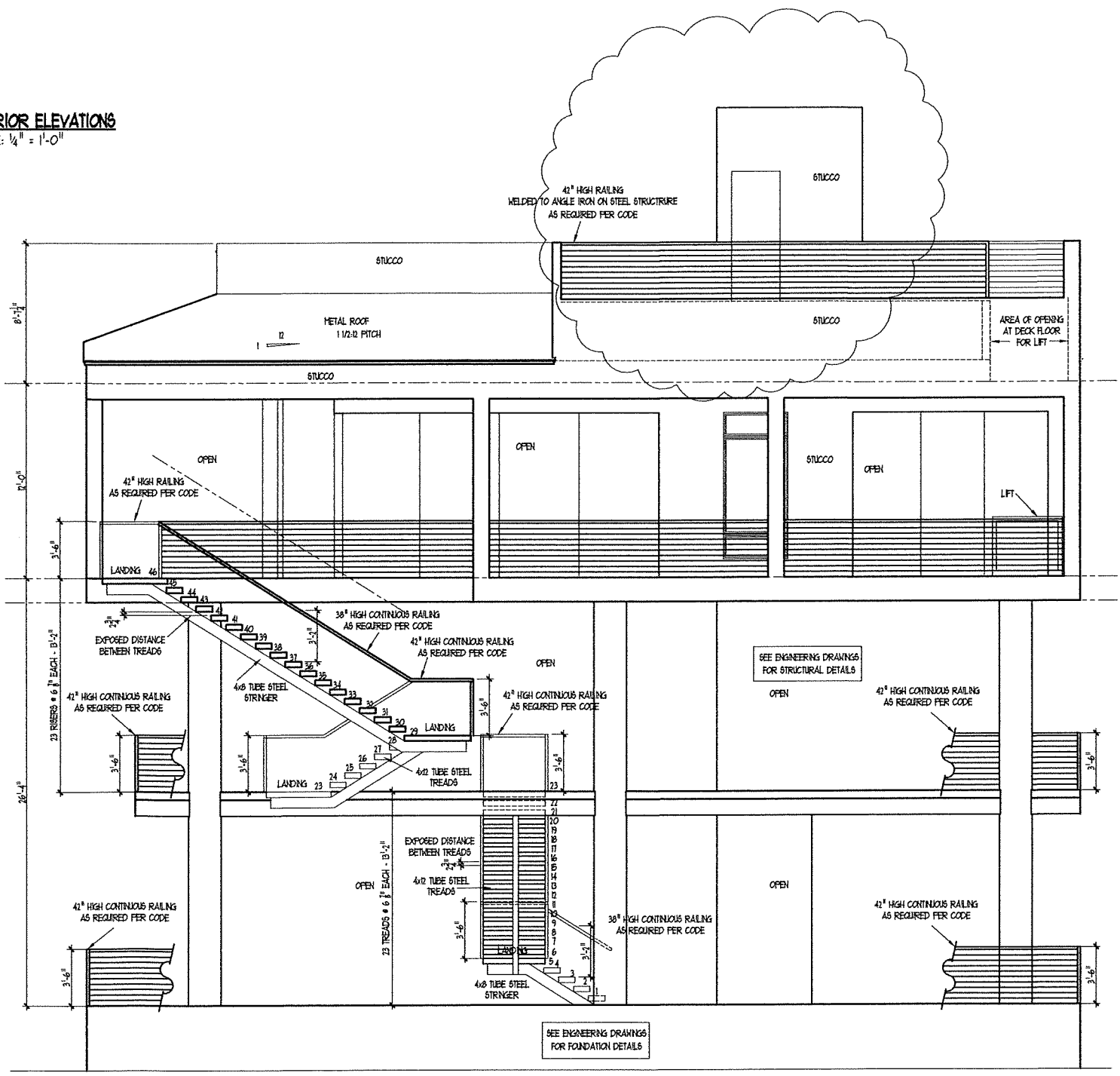
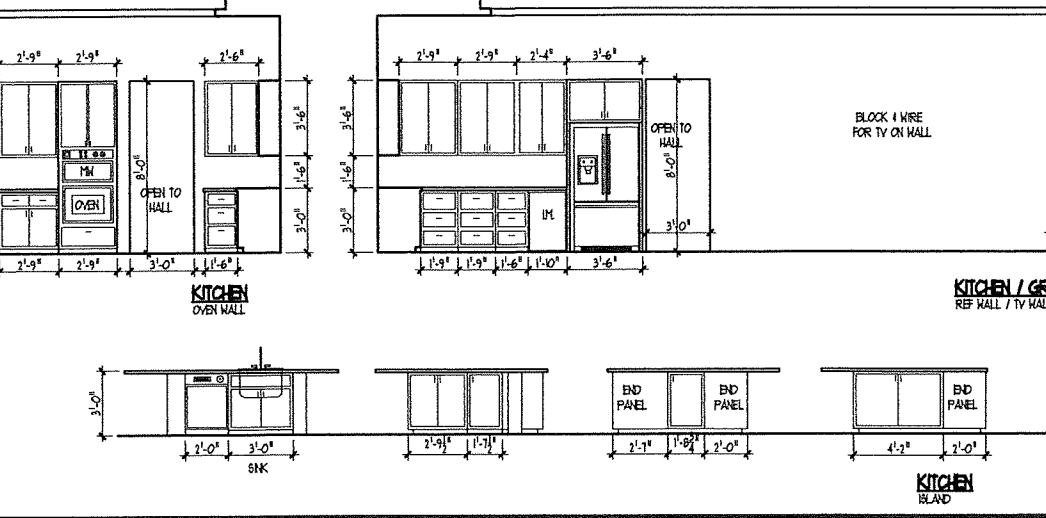
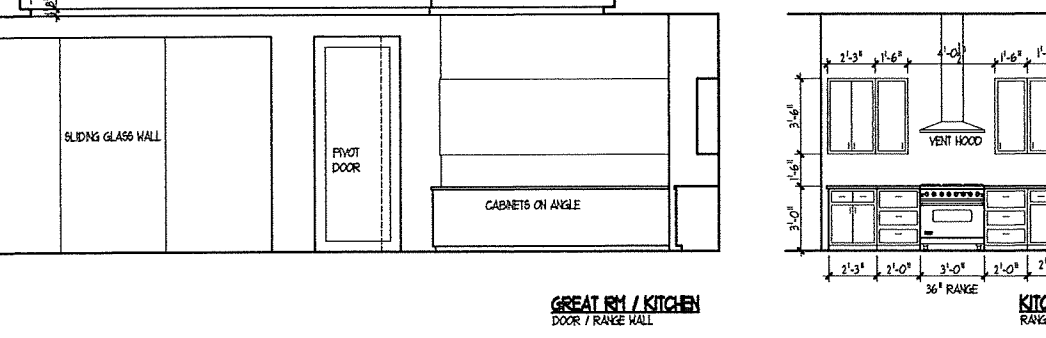
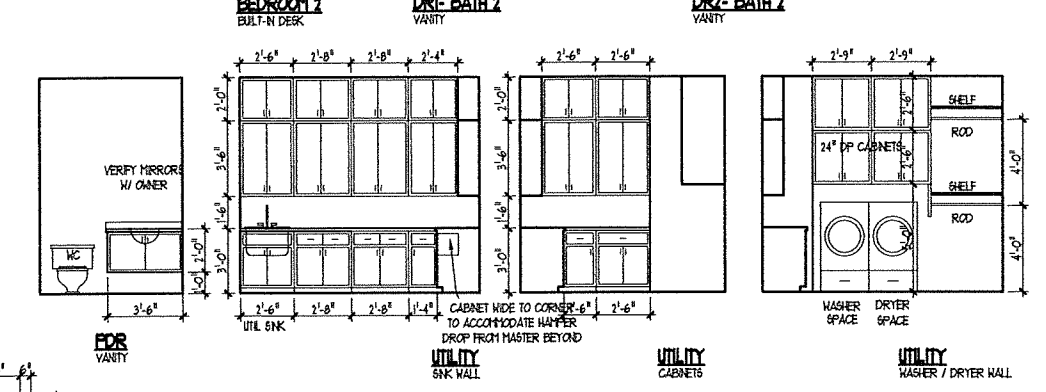
A CUSTOM HOME FOR THE
MELSHA RESIDENCE

PLAN DATE:	8-6-18 - KM
REVISION:	8-14-18 - KM
REVISION:	8-18-18 - KM
REVISION:	11-11-18 - KM
REVISION:	2-10-19 - KM
REVISION:	1-4-19 - KM
REVISION:	1-5-10 - KM

ADDRESS: RFD DRIVE
SUBDIVISION: THE BLUEBONNET RIVER PARK ADDITION
LOT: 14.4
BLOCK: B
PAGE: A-8



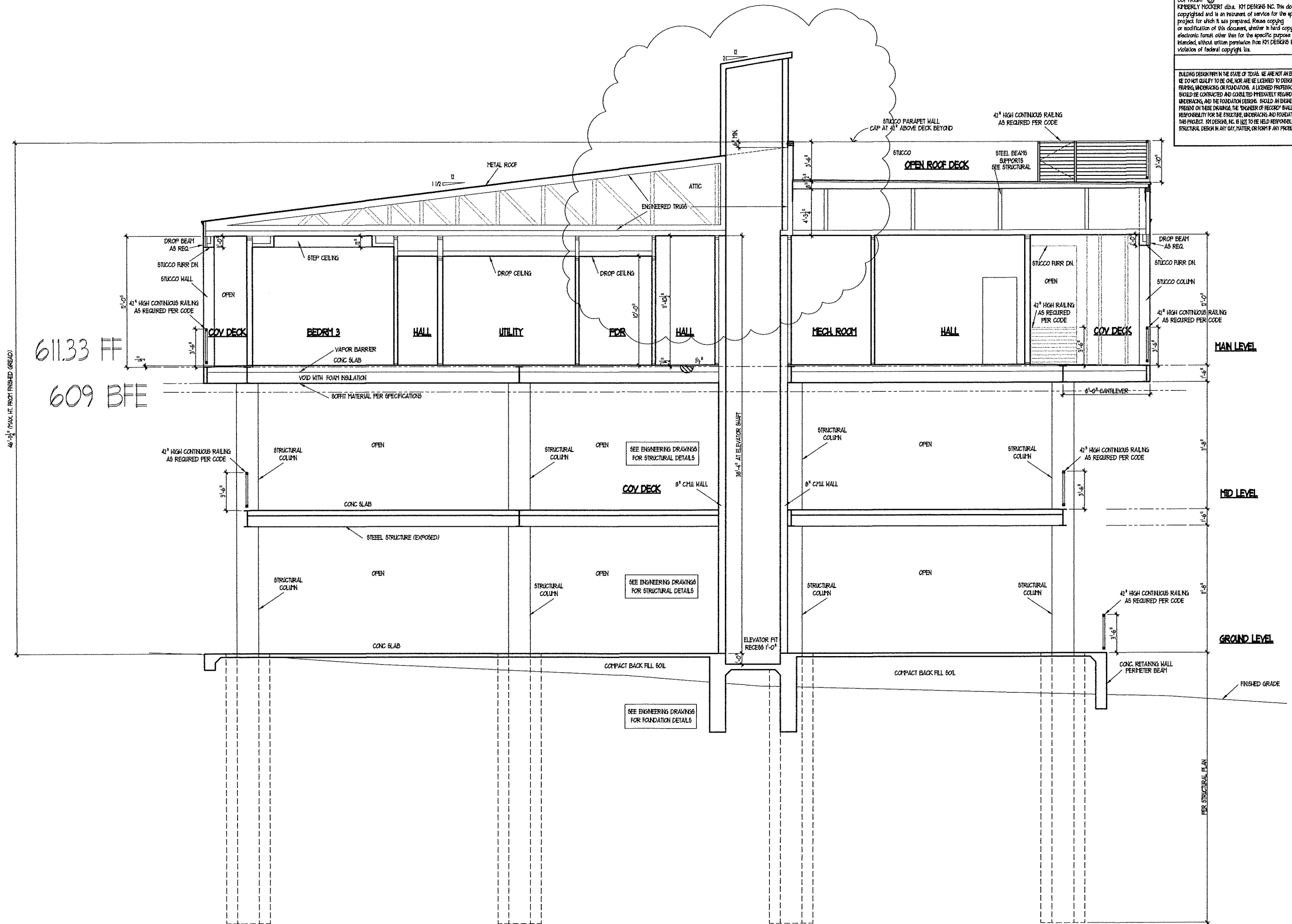
INTERIOR ELEVATIONS
SCALE: 1/4" = 1'-0"



46'-3 1/4" (MAX. AT ROOF FINISH GRADE)

611.33 FF

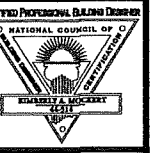
609 BFE



CROSS SECTION
SCALE: 1/4\"/>

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BUILDING DESIGN FIRM IN THE STATE OF TEXAS. WE ARE NOT AN ENGINEERING FIRM. WE DO NOT QUALIFY TO BE ONE, NOR ARE WE LICENSED TO DESIGN STRUCTURAL FRAMING, UNDERPINNING OR FOUNDATIONS. A LICENSED PROFESSIONAL ENGINEER SHOULD BE CONSULTED AND CONSULTED IMMEDIATELY REGARDING FRAMING, UNDERPINNING, AND THE FOUNDATION DESIGN. SHOULD AN ENGINEER BE PRESENT ON THESE DRAWINGS, THE ENGINEER OF RECORD SHALL BEAR ALL RESPONSIBILITY FOR THE STRUCTURE, UNDERPINNING AND FOUNDATION DESIGN FOR THIS PROJECT. KIM DESIGNS, INC. IS NOT TO BE HELD RESPONSIBLE FOR THE STRUCTURAL DESIGN IN ANY WAY, WHETHER OR NOT ANY PROBLEMS MAY ARISE.



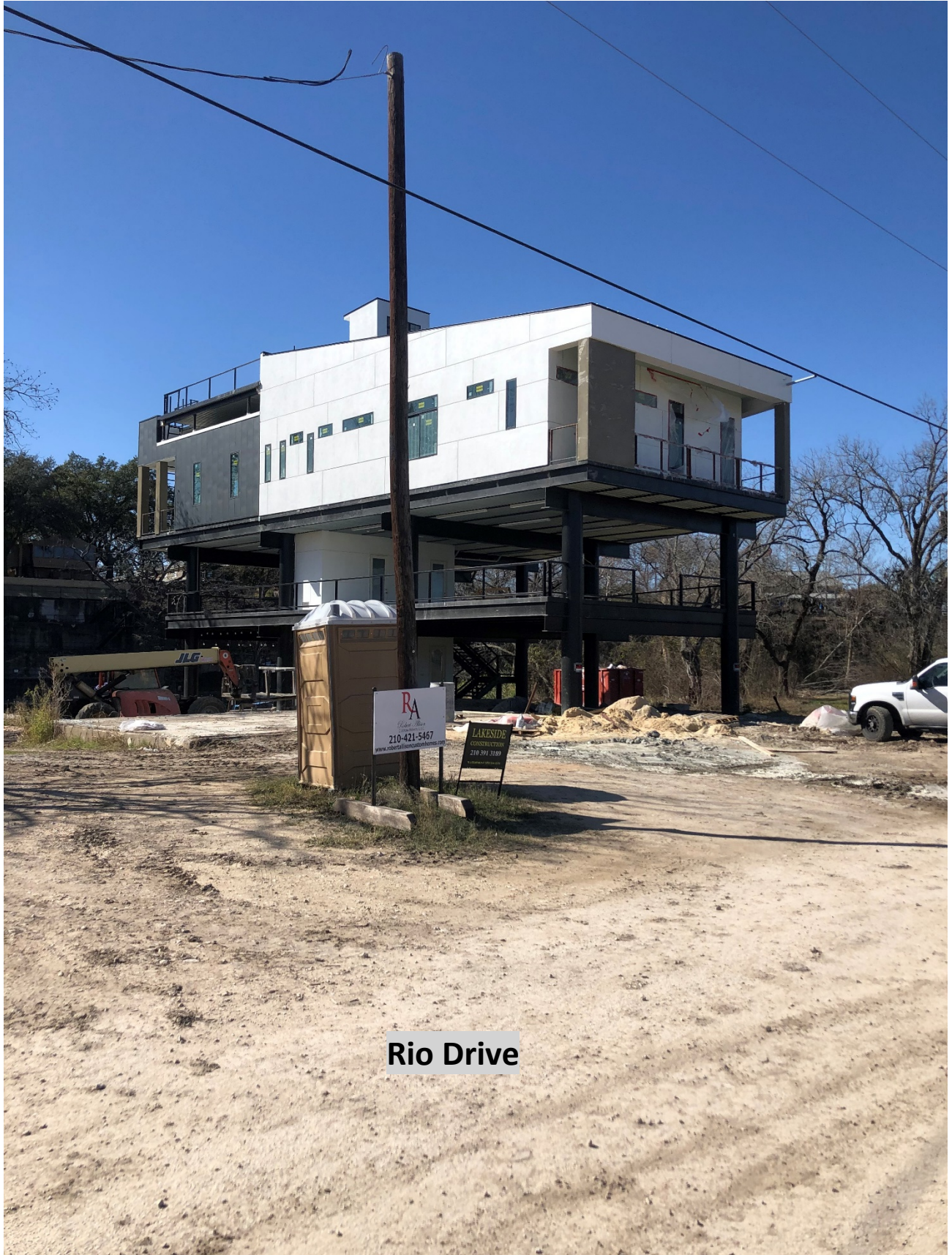
KIM DESIGNS, INC.
18534 Forty Six Parkway
Unit 3
Spring Branch, TX 78070
Office: 830-438-4566

CONTRACTOR NOTES:
THIS PLAN INCLUDING ALL DESIGN CONCEPTS, DIMENSIONS AND DETAILS CONTAINED HEREIN SHALL REMAIN THE SOLE PROPERTY OF KIM DESIGNS, INC. AND CAN NOT BE DUPLICATED IN PART OR IN WHOLE WITHOUT THE PRIOR WRITTEN PERMISSION OF KIM DESIGNS, INC. WORKING DRAWINGS SHALL NOT BE SCALED. BEFORE PROCEEDING WITH ANY WORK OR ORDERING OF MATERIALS, THE BUILDER AND/OR SUB-CONTRACTORS SHALL VERIFY ALL NOTES AND MEASUREMENTS. ANY DISCREPANCIES IN OR OMISSIONS FROM THE WORKING DRAWINGS SHALL BE REPORTED TO THE BUILDER AND DESIGNER.

A CUSTOM HOME FOR THE
MELSHA RESIDENCE

PLAN DATE:	8-6-18 - KIM
REVISION:	8-14-18 - KIM
REVISION:	8-28-18 - KIM
REVISION:	11-19-18 - KIM
REVISION:	2-10-19 - KIM
REVISION:	11-4-19 - KIM
REVISION:	11-5-20 - KIM

ADDRESS: R10 DRIVE
SUBDIVISION: THE BLUEBONNET RIVER PARK ADDITION
LOT: 1144
BLOCK: 18
PAGE: A-9



Rio Drive

ZONING BOARD OF ADJUSTMENT – JANUARY 28, 2021
ZOOM WEBINAR MEETING

Address/Location: 204 Rio Dr

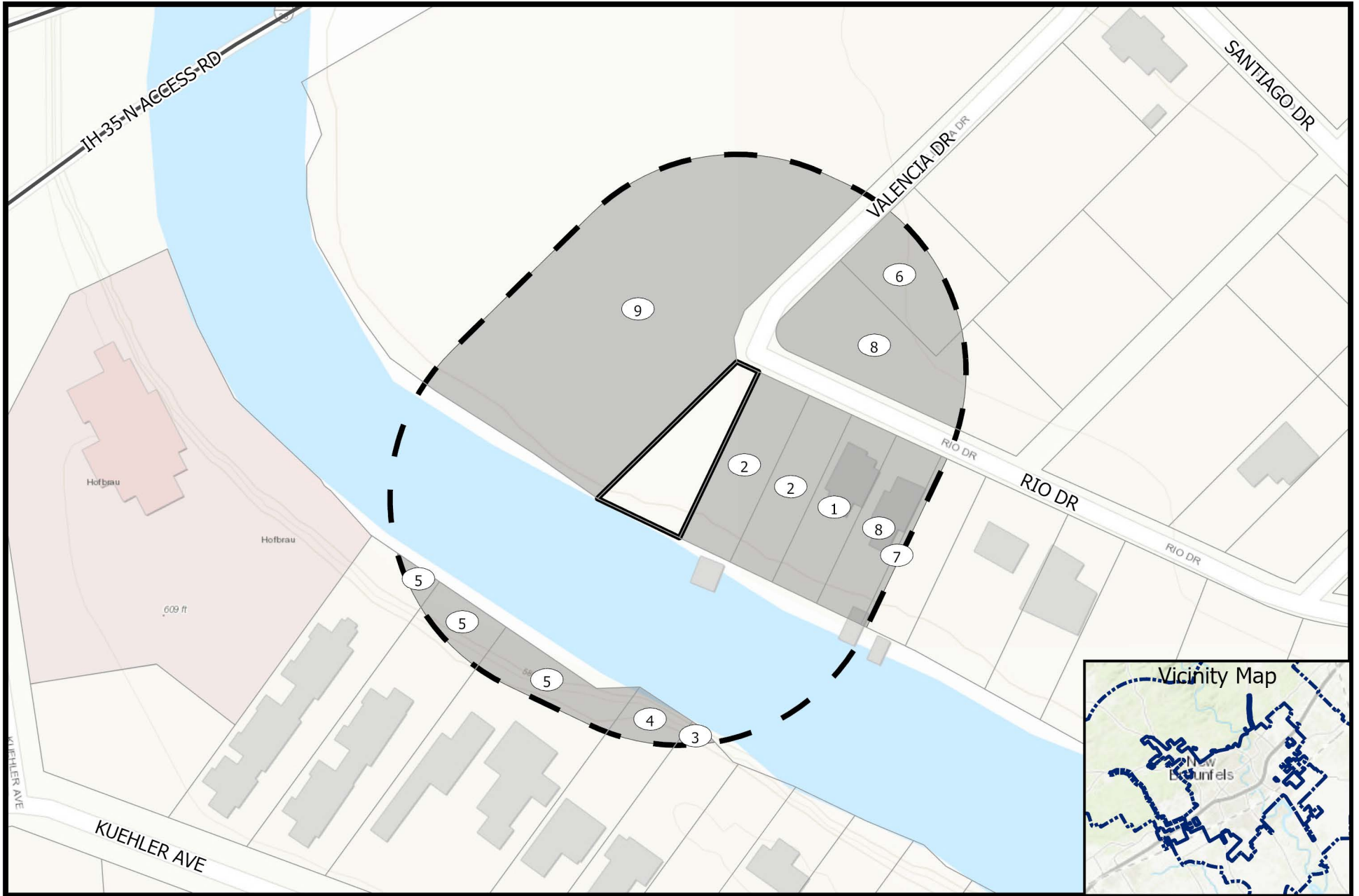
Applicant: Jim Melsha

Case #: Z-20-022

The circled numbers on the map correspond to the property owners listed below. All information is from the Comal Appraisal District Records. The property under consideration is marked "Subject Property."

- | | |
|----------------------------|----------------------------|
| 1. TARR JASON FLOYD | 6. MELSHA LARA B |
| 2. TAHOE WEST VENTURES LLC | 7. MELSHA JAMES |
| 3. BEAH LLC | 8. MELSHA JAMES H |
| 4. WILSON STEPHEN B JR | 9. HEIMER ARCHIE H TRUSTEE |
| 5. ELKHORN PROPERTIES LLC | 10. MELSHA JAMES H |

SEE NOTIFICATION MAP



Z20-022 Maximum building height

3.3-2. "R-2" single-family and two family district. The following regulations shall apply in all "R-2" districts:

- (a) *Authorized uses.* Uses permitted by right shall be those set forth in the Land Use Matrix in Section 4 of this Chapter. The allowed uses in the district, which are intended to be identical with those listed in the Land Use Matrix, are as follows:

(1) *Uses permitted by right:*

Residential uses:

- Accessory dwelling (one accessory dwelling per lot, no kitchen)
- Accessory building/structure
- Community home (see definition)
- Duplex/two-family/duplex condominium
- Family home adult care
- Family home child care
- Home Occupation (see Sec. 5.5)
- One family dwelling, detached
- Single family industrialized home (see Sec. 5.8)

Non-residential uses:

- Barns and farm equipment storage (related to agricultural uses)
- Cemetery and/or mausoleum
- Church/place of religious assembly
- Community building (associated with residential uses)
- Contractor's temporary on-site construction office (only with permit from Building Official; see Sec. 5.10)
- Country club (private)
- Farms, general (crops) (see Chapter 6, Municipal Code and Sec. 5.9)
- Farms, general (livestock/ranch) (see Chapter 6, Municipal Code and Sec. 5.9)
- Golf course, public and private
- Governmental building or use with no outside storage
- Park and/or playground (private and public)
- Plant nursery (growing for commercial purposes but no retail sales on site)
- Public recreation/services building for public park/playground areas
- Recreation buildings (public)
- School, K-12 (public or private)
- Water storage (surface, underground or overhead), water wells and pumping stations that are part of a public or municipal system

- (2) *Conflict.* In the event of conflict between the uses listed in the Land Use Matrix and those listed in Subsection (1), the uses listed in this subsection shall be deemed those authorized in the district.

(b) *Maximum height, minimum area and setback requirements:*

(1) One family dwellings.

(i) **Height. 35 feet.**

(ii) *Front building setback. 25 feet.*

(iii) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.

- (iv) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
 - (v) *Rear building setback.* 20 feet.
 - (vi) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet, provided that where a lot has less width than herein required, and such lot was in separate ownership prior to September 25, 1967, this requirement will not prohibit the erection of a one-family dwelling.
 - (vii) *Lot area per family.* Every single-family dwelling hereafter erected or altered shall have a lot area of not less than 6,600 square feet per family for interior lots, and 7,000 square feet per family for corner lots. Where a lot was legally under separate ownership prior to September 25, 1967, but has an area less than the minimum required in this provision, this regulation shall not prohibit the erection of a one-family residence. Where a public or community sewer is not available and in use for the disposal of all sanitary sewage, each lot shall provide not less than one half acre or one acre on the Edwards Aquifer Recharge Zone.
 - (viii) *Lot depth.* 100 feet.
 - (ix) *Parking.* Two off-street parking spaces shall be provided for each one family detached dwelling unit. See Section 5.1 for other permitted uses' parking.
- (2) *Duplexes.*
- (i) *Height.* 35 feet.
 - (ii) *Front building setback.* 25 feet.
 - (iii) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.
 - (iv) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
 - (v) *Rear building setback.* 20 feet.
 - (vi) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet.
 - (vii) *Lot area per family.* Duplexes hereafter erected or altered shall have a lot area of not less than 8,000 square feet for an interior lot and 8,500 square feet for a corner lot. Where a lot was legally under separate ownership prior to September 25, 1967, but has an area less than the minimum required in this provision, this regulation shall prohibit the erection of a two-family residence. Where a public or community sewer is not available and in use for the disposal of all sanitary sewage, each lot shall provide not less than one acre and approved by the City Sanitarian.
 - (viii) *Lot depth.* 100 feet.

- (ix) *Parking.* Two off-street parking spaces shall be provided for each two-family dwelling unit. See Section 5.1 for other permitted uses' parking.
- (3) Non-Residential Uses.
- (i) *Height.* 35 feet.
 - (ii) *Front building setback.* 25 feet.
 - (iii) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Where any building abuts a property with a one or two family use, the setback from the one or two family property line shall be at least 20 feet plus one foot for each foot of building height over 20 feet.
 - (iv) *Corner lots.* Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lines of the corner lots coincide with the side lot lines of the adjacent lots. Where a minimum 25-foot setback is required, a canopy at least eight feet in height, attached to the main building, may be built within 15 feet of the property line so long as such construction will not obstruct the vision of vehicular or pedestrian traffic.
 - (v) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
 - (vi) *Rear building setback.* 20 feet.
 - (vii) *Width of lot.* 60 feet.
 - (viii) *Lot depth.* 100 feet.
 - (ix) *Parking.* See Section 5.1 for permitted uses' parking.

1/28/2021

Agenda Item No. C)

Presenter/Contact*Applicant, HMT Engineering & Surveying
(830) 625-8555 - plats@hmtnb.com***SUBJECT:**

Z-20-023 Hold a public hearing and consider a request for a variance to Section 3.3-9(b)(1)(v) to allow an existing commercial structure to encroach up to 15 feet into the required 20-foot residential setback, addressed at 177 E. Faust Street.

BACKGROUND / RATIONALE:**Case #:** Z-20-023

Applicant: HMT Engineering & Surveying
290 S. Castell Avenue, Suite 100
New Braunfels, TX 78130
(830) 625-8555, plats@hmtnb.com <<mailto:plats@hmtnb.com>>

Staff Contact: Maddison O'Kelley, Assistant Planner
(830) 221-4056, <mokelley@nbtexas.org>

The subject property is zoned "C-3" Commercial District and is located near the intersection of E. Faust Street and S. Seguin Avenue. The property is approximately 7,501 square feet with a lot depth of 150 feet and a lot width of 50 feet. The lot's width is approximately 10 feet less than the minimum 60-foot width required in the C-3 District, likely due to it being platted before that minimum width requirement was adopted.

There is currently an existing commercial structure on the property that was constructed in 1986 that is approximately 1,600 square feet. An adjacent property addressed at 165 E. Faust Street to the west of the subject property is also zoned C-3, however, it is currently a residential land use. The C-3 district requires non-residential buildings that abut a one- or two-family use or zoning district to maintain a minimum 20-foot setback plus one foot for each foot of the commercial building's height over 20 feet from property line shared with the residential use. This is intended to ameliorate any negative impacts between the uses.

The subject structure does not exceed an overall height of 20 feet and therefore is required to meet the minimum 20-foot residential setback. However, the existing structure is currently set back approximately 5 feet from the side property line shared with the adjacent residential use. The subject structure was constructed prior to the adoption of the 20-foot residential setback requirement in 2006.

The applicant is requesting a variance to allow the existing structure to encroach up to 15 feet into this required 20-foot setback in order for the existing structure to be brought into compliance as a

legally conforming building. The Zoning Ordinance states nonconforming structures shall not be added to or enlarged in any manner unless such addition and enlargements are made to conform to all the requirements of the district in which the building or structure is located. The intent for the applicant's request for the structure to be brought into compliance as a legally conforming structure is to allow the property owner to expand the structure's footprint in the future. Staff has not received details regarding the timeline or plans for the proposed expansions.

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 the building's current setback is approximately 5-6 feet from the property line. The applicant further states the entire block wherein the subject property is located is zoned commercial; however, the adjacent property is a residential use that required a 20-foot setback affecting the subject property. Staff acknowledges the commercial zoning of the neighborhood; the residential setback is intended to protect residential land uses from potential adverse effects of being located adjacent to commercial uses. Staff further acknowledges the provision requiring a residential setback was adopted after the existing commercial structure was built.) ***and***
- 2) ***That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant states the variance is necessary for the property owner to obtain permits for any future improvements to the property. Staff acknowledges the subject structure may not be enlarged or expanded due to its legal-nonconforming status; and the substantial property right to have a commercial use is not removed due to the residential setback requirement within the Zoning Ordinance.) ***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 there will be no detriment to the public's health, safety, or welfare if the variance is granted. Staff acknowledges the setback encroachment will likely have a minimal impact; the subject property must comply with all other development standards intended to protect adjacent residential uses from potential nuisances such as required lighting, noise, and buffering standards.) ***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 the variance should not prevent the orderly use of other land nor set an unusual precedent. Staff states the intent of the residential setback is to preserve the property right of adjacent residences to use and enjoy their property. Furthermore, neighboring properties would still be required to comply with the residential setback requirement for any new commercial construction adjacent to property used or zoned for one- or two-family dwellings.) ***and***
- 5) ***That an undue hardship exists;*** (The applicant states the building was existing in the current location at the time the current owner purchased the property. Staff acknowledges the allowable width of a commercial structure is limited due to the width of the lot and the residential setback from the adjacent property. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other commercial property adjacent to residential land uses; this is becoming a more mixed-use neighborhood, therefore impacts to surrounding residential properties and property owners should be considered when designing the form and scale of commercial construction, or when making improvements to existing

structures.) **and**

6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. (The applicant states granting the variance will be in harmony with the spirit and purposes of these regulations.)

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:

Approximately 7,501 square feet.

150-foot lot depth.

50-foot lot width.

Variance Request Due to Notice of Violation:

No.

Surrounding Zoning and Land Use:

North- "C-3" Commercial District/single family residential and commercial

South - Across E Faust Street, "C-3" Commercial District/ commercial

East - "C-3" Commercial District/ commercial

West - "C-3" Commercial District/ commercial

Notification

Public hearing notices were sent to 16 owners of property within 200 feet. Staff has not received any responses.

Attachments

1. Aerial Map
2. Application
3. Site Plan
4. Photos
5. Notification List and Map
6. Section 3.3-9 "C-3" Commercial District
7. Section 2.3 Nonconforming uses and structures





Planning & Development Services Department

550 Landa Street

New Braunfels, Texas 78130

(830) 221-4050 www.nbtexas.org

CC/Cash/Check No.: _____

Amount Recd. \$ _____

Receipt No.: _____

Case No.: _____

Submittal date – office use only

Variance Application
(Zoning Board of Adjustment)

APPLICATION FEES:

Homestead: \$350 plus \$50 for each additional variance sought

Non-Homestead: \$700 plus \$50 for each additional variance sought

*****Please note that a 3% technology fee is applied to the total application fee*****

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.

Name of Applicant/Agent*: _____

Property Address: _____

Mailing Address: _____

Contact information:

Phone: _____

E-Mail: _____

Legal Description: Lot #: _____ Block: _____ Subdivision: _____

(NOTE: If property is not platted, attach a copy of the metes and bounds description and survey/drawing.)

Present Use of Property: _____ **Zoning:** _____

Describe Variance Request: _____

SUBMITTAL CHECKLIST:

STAFF:

APPLICANT:

☐☐

Completed application

☐☐

Copy of deed showing current ownership

☐☐

N/A

Homestead Verification (if applicable)

☐☐

Application Fee

☐☐

Letter of authorization if applicant is not property owner

☐☐

Site plan, drawn to scale and no larger than 11"x17", showing all existing and proposed improvements, setbacks from the property lines, and building elevations (if applicable.)

Explain the following in detail:

Please note: The information provided in response to the following questions is imperative to the variance request process. You may use additional pages if necessary.

(1) What are the special circumstances or conditions affecting the land that warrant the variance?

(2) Why is the variance necessary to preserve a substantial property right of the applicant?

(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?

(4) Would granting the variance prevent the orderly use of other properties within the area?

(5) Does an undue hardship to the land exist that is not self-created, personal or financial?

If yes, please explain in detail. If no, a variance cannot be granted.

(6) Will granting the variance be in harmony with the spirit and purpose of the City's regulations?

Yes.

Please initial the following important reminders:

SH

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.

SH

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.

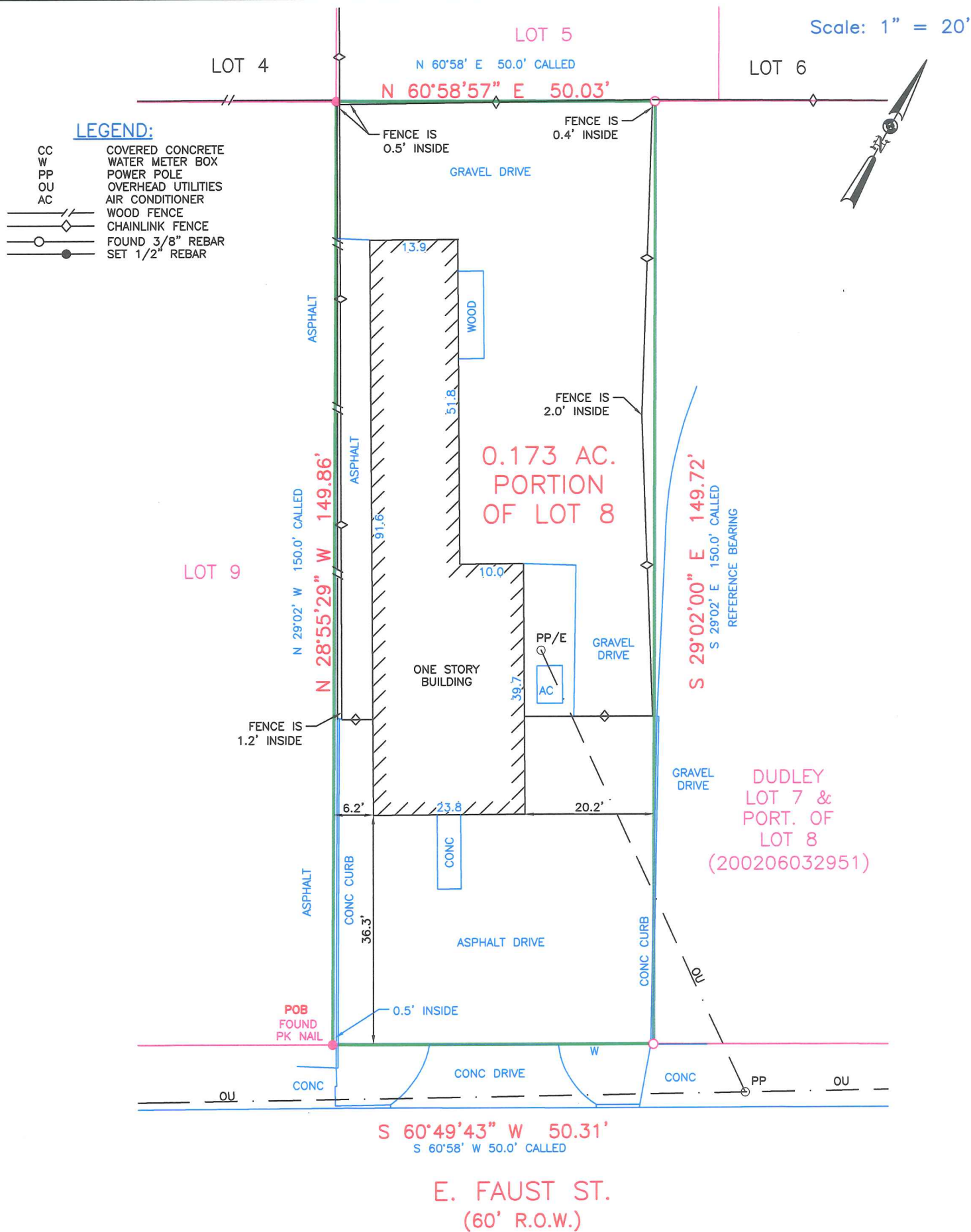
The applicant is responsible for:

1. Paying for the required mail notification **(\$2.15 per mailed notice)**
2. Purchasing **(\$15 per sign)** and placing the signs at least **15 days prior to the hearing date**
3. Posting signs so they are clearly visible to the public from the adjacent public streets.
4. Ensuring that the signs remain on the property throughout the variance process.
5. 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.
6. Removing the signs after the final action by the Zoning Board of Adjustment.

I hereby certify that the information provided is true and correct to the best of my knowledge.

Signed:  Date: 11/24/2020
 Applicant/Agent* Print Name: Stephen W. Hanz

* If signed by an agent, a letter of authorization must be furnished by the property owner.



REFERENCE BEARING:
OBTAINED FROM VOL. 46, PGS. 430-431

ADDRESS: 177 E. FAUST ST.

REFERENCES: VOL. 46, PGS. 430-431
DOC# 9906010405

SURVEY PLAT SHOWING: A 0.173 OF AN ACRE
PORTION OF LOT 8, NEW CITY BLOCK 1049,
KUEHLER ADDITION, CITY OF NEW BRAUNFELS,
COMAL COUNTY, TEXAS.
(LEGAL DESCRIPTION PREPARED)



New Braunfels Branch Office

Texas Survey Firm 10194320
1011 West County Line Road
New Braunfels, Texas 78130
(P) 830/625.0337 (F) 830/626.3601



THIS PLAT SHOWS THE LOCATION
OF EASEMENTS, RESTRICTIONS, AND
BUILDING SETBACK LINES AS SET
FORTH IN SCHEDULE B OF
TITLE CO.: ALAMO TITLE
G.F. #SAT-14-4000141800684-KF
DATED: 06/12/2018
THE SURVEYOR HAS NOT ABSTRACTED
THE SUBJECT PROPERTY.

I HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE
GROUND, AND THAT TO THE BEST OF MY KNOWLEDGE AND
BELIEF, THIS PLAT CORRECTLY REPRESENTS THE FACTS
FOUND AT THE TIME OF THIS SURVEY AND THAT THERE ARE
NO VISIBLE EASEMENTS OR ENCROACHMENTS OF BUILDINGS
ON ADJOINING PROPERTY AND THAT ALL BUILDINGS ARE
WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS SHOWN
ABOVE.

DAVID A. LAMBERTS
REGISTERED PROFESSIONAL LAND SURVEYOR

4907

TEXAS REGISTRATION NO.
SURVEY NOT VALID UNLESS ORIGINAL
SIGNATURE IS IN RED INK

JOB # 201-800-219
DATE: 07/20/2018



3.3-9. "C-3" commercial district. The following regulations shall apply in all "C-3" districts:

- (a) *Authorized uses.* Uses permitted by right shall be those set forth in the Land Use Matrix in Section 4 of this Appendix. The allowed uses in the district, which are intended to be identical with those listed in the Land Use Matrix, are as follows:

(1) *Uses permitted by right.*

Residential uses:

- Accessory building/structure
- Accessory dwelling (one accessory dwelling per lot, no kitchen)
- Bed and breakfast inn (see Sec. 5.6)
- Boardinghouse/lodging house
- Community home (see definition)
- Duplex / two-family / duplex condominiums
- Family home adult care
- Family home child care
- Home Occupation (See Sec. 5.5)
- Multifamily (apartments/condominiums)
- One family dwelling, detached
- Rental or occupancy for less than one month (see Sec. 5.17)
- Residential use in buildings with the following non-residential uses
- Single family industrialized home (see Sec. 5.8)

Non-residential uses:

- Accounting, auditing, bookkeeping, and tax preparations
- Adult day care (no overnight stay)
- Adult day care (with overnight stay)
- Aircraft support and related services
- All terrain vehicle (ATV) dealer / sales
- Ambulance service (private)
- Amphitheater
- Amusement devices/arcade (four or more devices)
- Amusement services or venues (indoors) (see Sec. 5.13)
- Amusement services or venues (outdoors)
- Animal grooming shop
- Answering and message services
- Antique shop
- Appliance repair
- Armed services recruiting center
- Art dealer / gallery
- Artist or artisan's studio
- Assembly/exhibition hall or areas
- Athletic fields
- Auction sales (non-vehicle)
- Auto body repair, garages (see Sec. 5.11)
- Auto glass repair/tinting (see Sec. 5.11)
- Auto interior shop / upholstery (see Sec. 5.11)
- Auto leasing
- Auto muffler shop (see Sec. 5.11)
- Auto or trailer sales rooms or yards (see Sec. 5.12)
- Auto or truck sales rooms or yards - primarily new (see Sec. 5.12)
- Auto paint shop
- Auto repair as an accessory use to retail sales (see Sec. 5.11)
- Auto repair garage (general) (see Sec. 5.11)
- Auto supply store for new and factory rebuilt parts

Auto tire repair /sales (indoor)
 Automobile driving school (including defensive driving)
 Bakery (retail)
 Bank, savings and loan, or credit
 Bar/Tavern
 Barber/beauty college (barber or cosmetology school or college)
 Barber/beauty shop, haircutting (non-college)
 Barns and farm equipment storage (related to agricultural uses)
 Battery Charging station
 Bicycle sales and/or repair
 Billiard / pool facility
 Bingo facility
 Bio-medical facilities
 Book binding
 Book store
 Bottling or distribution plants (milk)
 Bottling works
 Bowling alley/center (see Sec. 5.13)
 Broadcast station (with tower) (see Sec. 5.7)
 Bus barns or lots
 Bus passenger stations
 Cafeteria / café / delicatessen
 Campers' supplies
 Car wash (self service; automated)
 Car wash, full service (detail shop)
 Carpet cleaning establishments
 Caterer
 Cemetery and/or mausoleum
 Check cashing service
 Chemical laboratories (not producing noxious fumes or odors)
 Child day care/children's nursery (business)
 Church/place of religious assembly
 Civic/conference center and facilities
 Cleaning, pressing and dyeing (non-explosive fluids used)
 Clinic (dental)
 Clinic (emergency care)
 Clinic (medical)
 Club (private)
 Coffee shop
 Commercial amusement concessions and facilities
 Communication equipment installation and/or repair
 Community building (associated with residential uses)
 Computer and electronic sales
 Computer repair
 Confectionery store (retail)
 Consignment shop
 Contractor's office/sales, with outside storage including vehicles
 Contractor's temporary on-site construction office (only with permit from Building Official; see Sec. 5.10)
 Convenience store with or without fuel sales
 Country club (private)
 Credit agency
 Curio shops
 Custom work shops
 Dance hall / dancing facility (see Sec. 5.13)
 Day camp

Department store
 Drapery shop / blind shop
 Drug sales/pharmacy
 Electrical repair shop
 Electrical substation
 Exterminator service
 Farmers market (produce market - wholesale)
 Farms, general (crops) (see Chapter 6, Municipal Code and Sec. 5.9)
 Farms, general (livestock/ranch) (see Chapter 6, Municipal Code and Sec. 5.9)
 Feed and grain store
 Filling station (fuel tanks must be below the ground)
 Florist
 Food or grocery store with or without fuel sales
 Fraternal organization/civic club (private club)
 Freight terminal, truck (all storage of freight in an enclosed building)
 Frozen food storage for individual or family use
 Funeral home/mortuary
 Furniture manufacture
 Furniture sales (indoor)
 Garden shops and greenhouses
 Golf course (miniature)
 Golf course, public or private
 Governmental building or use
 Greenhouse (commercial)
 Handicraft shop
 Hardware store
 Health club (physical fitness; indoors only)
 Heating and air-conditioning sales / services
 Heavy load (farm) vehicle sales/repair (see Sec. 5.14)
 Home repair and yard equipment retail and rental outlets (no outside storage)
 Hospice
 Hospital, general (acute care/chronic care)
 Hospital, rehabilitation
 Hotel/motel
 Hotels/motels - extended stay (residence hotels)
 Ice delivery stations (for storage and sale of ice at retail only)
 Kiosk (providing a retail service)
 Laundromat and laundry pickup stations
 Laundry, commercial (w/o self serve)
 Laundry/dry cleaning (drop off/pick up)
 Laundry/washateria (self serve)
 Lawnmower sales and/or repair
 Limousine / taxi service
 Locksmith
 Lumberyard (see Sec. 5.15)
 Lumberyard or building material sales (see Sec. 5.15)
 Maintenance/janitorial service
 Major appliance sales (indoor)
 Market (public, flea)
 Martial arts school
 Medical supplies and equipment
 Metal fabrication shop
 Micro brewery (onsite manufacturing and/or sales)
 Mini-warehouse/self storage units with outside boat and RV storage
 Mini-warehouse/self storage units (no outside boat and /RV storage permitted)
 Motion picture studio, commercial film

Motion picture theater (indoors)
Motion picture theater (outdoors, drive-in)
Motorcycle dealer (primarily new / repair)
Moving storage company
Moving, transfer, or storage plant
Museum
Needlework shop
Non-bulk storage of fuel, petroleum products and liquefied petroleum
Nursing/convalescent home/sanitarium
Offices, brokerage services
Offices, business or professional
Offices, computer programming and data processing
Offices, consulting
Offices, engineering, architecture, surveying or similar
Offices, health services
Offices, insurance agency
Offices, legal services - including court reporting
Offices, medical offices
Offices, real estate
Offices, security/commodity brokers, dealers, exchanges and financial services
Park and/or playground (private or public)
Parking lots (for passenger car only) (not as incidental to the main use)
Parking structure/public garage
Pawn shop
Personal watercraft sales (primarily new / repair)
Pet shop / supplies (10,000 sq. ft. or less)
Pet store (more than 10,000 sq. ft.)
Photo engraving plant
Photographic printing/duplicating/copy shop or printing shop
Photographic studio (no sale of cameras or supplies)
Photographic supply
Plant nursery
Plant nursery, with retail sales
Plumbing shop
Portable building sales
Propane sales (retail)
Public recreation/services building for public park/playground areas
Publishing/printing company (e.g., newspaper)
Quick lube/oil change/minor inspection
Radio/television shop, electronics, computer repair
Recreation Buildings (private or public)
Recycling kiosk
Refreshment/beverage stand
Research lab (non-hazardous)
Restaurant with drive-through
Restaurant/prepared food sales
Retail store and shopping center
Retirement home/home for the aged (public)
RV park
RV/travel trailer sales
School, K-12 (public or private)
School, vocational (business/commercial trade)
Security monitoring company
Security systems installation company
Shoe repair shops
Sign manufacturing/painting plant

Storage - exterior storage for boats and recreational vehicles
 Storage in bulk
 Studio for radio or television (without tower)
 Studios (art, dance, music, drama, reducing, photo, interior decorating, etc.)
 Tailor shop
 Tattoo and body piercing studio
 Taxidermist
 Telemarketing agency
 Telephone exchange buildings (office only)
 Tennis court (commercial)
 Theater (non-motion picture; live drama)
 Tire sales (outdoors)
 Tool rental
 Transfer station (refuse/pick-up)
 Travel agency
 Truck Stop
 University or college (public or private)
 Upholstery shop (non-auto)
 Used or second hand merchandise/furniture store
 Vacuum cleaner sales and repair
 Veterinary hospital (with or without outside animal runs or kennels) with the exception that outdoor kennels may not be used between the hours of 9:00 p.m. and 7:00 a.m. and are prohibited adjacent to residential
 Video rental / sales
 Warehouse / office and storage / distribution center
 Waterfront amusement facilities - berthing facilities sales and rentals
 Waterfront amusement facilities - boat fuel storage / dispensing facilities
 Waterfront amusement facilities - boat landing piers / launching ramps
 Waterfront amusement facilities – swimming / wading pools / bathhouses
 Water storage (surface, underground or overhead), water wells and pumping stations that are part of a public or municipal system
 Welding shop
 Wholesale sales offices and sample rooms
 Woodworking shop (ornamental)

Any comparable business or use not included in or excluded from any other district described herein.

- (2) *Conflict.* In the event of conflict between the uses listed in the Land Use Matrix and those listed in Subsection (1), the uses listed in this subsection shall be deemed those authorized in the district.

(b) *Maximum height, minimum area and setback requirements:*

(1) Non-residential uses.

- (i) *Height.* 120 feet.
- (ii) *Front building setback.* No building setback required.
- (iii) *Side building setback.* No side building setback is required except that where a side line of a lot in this district abuts upon the side line of a lot in a "R" or "B-1" zone, a side building setback of not less than five feet shall be provided.
- (iv) *Rear building setback.* 20 feet.

- (v) *Residential setback.* Effective November 8, 2006, where a non-residential building abuts a one or two family use or zoning district, the setback from the one or two family property line shall be at least 20 feet plus one foot for each foot of building height over 20 feet.
 - (vi) *Width of lot.* The minimum width of a lot shall be 60 feet, provided that where a lot has less width than required and such lot was in separate ownership prior to February 4, 1984, this requirements will not prohibit the construction of a use enumerated in this district.
 - (vii) *Lot depth.* 100 feet.
 - (viii) *Parking.* See Section 5.1 for permitted uses' parking.
- (2) One family dwellings.
- (i) *Height.* 45 feet.
 - (ii) *Front building setback.* 25 feet.
 - (iii) *Rear building setback.* 20 feet.
 - (iv) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.
 - (v) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
 - (vi) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet, provided that where a lot has less width than herein required, and such lot was in separate ownership prior to September 25, 1967, this requirement will not prohibit the erection of a one-family dwelling.
 - (vii) *Lot area.* Every single-family dwelling hereafter erected or altered shall have a lot area of not less than 6,600 square feet per family for interior lots, and 7,000 square feet per family for corner lots. Where a lot was legally under separate ownership prior to September 25, 1967, but has an area less than the minimum required in this provision, this regulation shall not prohibit the erection of a one-family residence. Where a public or community sewer is not available and in use for the disposal of all sanitary sewage, each lot shall provide not less than one half acre and one acre on the Edwards Aquifer Recharge Zone.
 - (viii) *Lot depth.* 100 feet.
 - (ix) *Parking.* Two off-street parking spaces shall be provided for each one-family detached dwelling. See Section 5.1 for other permitted uses' parking.
- (3) Duplexes.
- (i) *Height.* 45 feet.
 - (ii) *Front building setback.* 25 feet.
 - (iii) *Rear building setback.* 20 feet.

- (i) *Side building setbacks.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.
 - (v) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
 - (vi) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet
 - (vii) *Lot area.* Duplexes hereafter erected or altered shall have a lot area of not less than 8,000 square feet for an interior lot and 8,500 square feet for a corner lot. Where a lot was legally under separate ownership prior to September 25, 1967, but has an area less than the minimum required in this provision, this regulation shall prohibit the erection of a two-family residence. Where a public or community sewer is not available and in use for the disposal of all sanitary sewage, each lot shall provide not less than one acre and approved by the City Sanitarian.
 - (viii) *Lot depth.* 100 feet.
 - (ix) *Parking.* Two off-street parking spaces shall be provided for each two-family dwelling unit. See Sec. 5.1 for other permitted uses' parking.
- (4) Multifamily dwellings.
- (i) *Height.* 45 feet; 60 feet when a pitched roof is used (minimum 4:12 slope).
 - (ii) *Front building setback.* 25 feet.
 - (iii) *Rear building setback.* 25 feet.
 - (iv) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.
 - (v) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
 - (vi) *Residential setback.* Effective November 8, 2006, where a multifamily dwelling abuts a one or two family use or zoning district, the setback from the one or two family property line shall be at least 20 feet plus one foot for each foot of building height over 20 feet.
 - (vii) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet, provided that where a lot has less width than herein required, and such lot was in separate ownership prior to September 25, 1967, this requirement will not prohibit the erection of a one-family dwelling.

- (viii) *Lot area.* The minimum lot area for a multifamily dwelling shall be 15,000 square feet; for each unit over ten an additional 1,500 square feet of lot area shall be required. Where public or community sewer is not available and in use, for the disposal of all sanitary sewage, multifamily developments shall be approved by the City Sanitarian.
- (ix) *Lot coverage.* For multifamily structures, the combined area of all yards shall be at least 55 percent of the total lot or tract; provided, however, that in the event enclosed parking is provided the minimum total yard area requirement shall be 40 percent of the total lot or tract.
- (x) *Distance between structures.* For multifamily structures, there shall be a minimum of ten feet between structures side by side; a minimum of 20 feet between structures side by front or rear; a minimum of 40 feet between structures front to front; and a minimum of ten feet between structures backing rear to rear, and a minimum of 20 feet front to rear. (See Illustration 1 in Sec. 3.3-3)
- (xi) *Lot depth.* 100 feet.
- (xii) *Parking.* For apartments, apartment hotel units and other multifamily dwellings, off-street parking spaces shall be provided in accord with the following schedule:
 - 1. One-bedroom apartment or unit . . . 1 1/2 spaces
 - 2. Two-bedroom apartment or unit . . . 2 spaces
 - 3. Each Additional bedroom . . . 1/2 space
 - 4. Each dwelling unit provided exclusively for low income elderly occupancy . . . 3/4 space ("Low income elderly" is defined as any person 55 years of age or older with low or moderate income, according to HUD standards.)

2.3. *Nonconforming uses and structures.* The lawful use of any building, structure or land existing at the time of the enactment of this Chapter may be continued although such use does not conform with the provisions of this Chapter. The right to continue such nonconforming uses shall be subject to regulations prohibiting the creation of a nuisance and shall terminate when inappropriate use of the premises produces a condition which constitutes a nuisance. The right of nonconforming uses to continue shall be subject to such regulations as to the maintenance of the premises and conditions of operations and shall be subject to the specific regulations herein contained.

(a) *Nonconforming buildings:*

(1) A nonconforming building or structure may be occupied except as herein otherwise provided.

(2) Repairs and alterations may be made to a nonconforming building or structure, provided that no structural alteration shall be made except those required by law or this Chapter, and further provided these regulations shall never be construed to allow an addition to a nonconforming building.

(3) A nonconforming building or structure shall not be added to or enlarged in any manner unless such addition and enlargements are made to conform to all the requirements of the district in which such building or structure is located.

(4) No nonconforming building or structure shall be moved in whole or in part to any other location on the lot, or on any other lot, unless every portion of such building or structure is made to conform to all the regulations of the district.

(5) A nonconforming building or structure which is damaged or partially destroyed by fire, flood, wind, explosion, earthquake, or other calamity or act of God shall not be again restored or used for such purpose if the expense of such restoration exceeds 75 percent of the replacement cost of the building or structure at the time such damage occurred. Any nonconforming building or structure partially destroyed may be restored provided restoration is started within 12 months of the date of partial destruction and is diligently prosecuted to completion. Whenever a nonconforming building or structure is damaged in excess of 75 percent of its replacement cost at that time, the repair or reconstruction of such building or structure shall conform to all the regulations of the district in which it is located, and it shall be treated as a new building.

(b) *Nonconforming uses of buildings:*

(1) Except as otherwise provided in this Chapter, the nonconforming use of the building or structure lawfully existing at the time of the effective date of this Chapter may be continued.

(2) The use of a nonconforming building or structure may be changed to a use of the same or more restricted classification, but where the use of a nonconforming building or structure is hereafter changed to a use of a more restricted classification, it shall not thereafter be changed to a use of less restricted classification.

(3) A vacant, nonconforming building or structure lawfully constructed may be occupied by use for which the building or structure was designated or intended, if so occupied within a period of one year after the effective date of this Chapter, and the use of a nonconforming building or structure lawfully constructed which becomes vacant after the effective date of this Chapter may also be occupied by

the use for which the building or structure was designated or intended, if so occupied within a period of one year after the building becomes vacant.

(c) Nonconforming use of land:

Continuation of use. The nonconforming use of land existing at the time of the effective date of this Chapter may be continued, provided that no such nonconforming use of land shall in any way be expanded or extended either on the same or adjoining property, and provided that if such nonconforming use of land or any portion thereof is discontinued or changed, any future use of land or portion thereof shall be in conformity with the provisions of this Chapter.

(d) Abandonment:

A nonconforming use of any building, structure or land which has been abandoned shall not thereafter be returned to such nonconforming use. A nonconforming use shall be considered abandoned:

- (1) When the intention of the owner to discontinue the use is apparent; or,
- (2) When the characteristic equipment and furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within one year; or,
- (3) When a nonconforming building, structure or land or portion thereof which is or hereafter becomes vacant and remains unoccupied or out of use for a continuous period of one year; or,
- (4) When it has been replaced by a conforming use.



Zoning Board of Adjustment Agenda Item Report

550 Landa Street
New Braunfels, TX

1/28/2021

Agenda Item No. A)
