



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



**COUNCIL CHAMBERS
550 LANDA STREET**

THURSDAY, NOVEMBER 18, 2021 at 6:00 PM

AGENDA

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF MINUTES

- A) Approval of the October 28, 2021 Regular Meeting [21-1252](#) Minutes.

4. INDIVIDUAL ITEMS FOR CONSIDERATION

- A) ZB21-0003 Hold a public hearing and consider a request [21-1211](#) for a variance to Section 3.3-2(b)(1)(iii) to allow a proposed dwelling to encroach up to 1) 10 feet into the required 15-foot corner-side setback for a maximum length of 89 feet and 2) 5 feet into the required 15-foot corner-side setback for a maximum length of 24 feet for the foundation only with an allowance for a cantilevered structure to be able to project an additional 3 feet into the setback, in the "R-2" Single and Two-Family District, addressed at 298 W. Edgewater Terrace.

Applicant: Susan Tolbert

- B) ZB21-0010 Hold a public hearing and consider a request [21-1233](#) for a variance to Section 3.4-17(b)(4)(v) and Section 5.3-7(i)(5) 1) to allow two proposed 42-foot-tall buildings to encroach up to 13 feet into the required 42-foot residential setback and 2) to not require the property owner to plant 10 of the 10 shade trees required to buffer between the proposed use and the common property lines shared with residential property, addressed at 548 Rusk Street.

Applicant: Nik Petrik

5. STAFF REPORT

- A) ZBA Training Workshop [21-1150](#)

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

11/18/2021

Agenda Item No. A)

**ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
October 28, 2021**

MEMBERS PRESENT

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

STAFF PRESENT

Chris Looney, Planning and Development Services Director
Nathan Brown, Assistant City Attorney
Maddison O'Kelley, Planner
Sam Hunter, Assistant Planner
Stacy Snell, Planning Manager
Jean Drew, Assistant Director of Planning and Development Services

MEMBERS ABSENT

None.

Chair Coker called the meeting to order at 6:23 p.m. Roll was called, and a quorum declared.

3. APPROVAL OF MINUTES

Motion by Vice Chair Mund, seconded by Member Foster, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of August 25, 2021. The motion carried (5-0-0).

4. INDIVIDUAL ITEMS FOR CONSIDERATION

(A) ZB21-0005 Hold a public hearing and consider a request for two variances: 1) Section 3.3-2(b)(1)(iii) to allow a proposed addition to encroach up to 4 feet and 4 inches into the required 15-foot corner side setback ; and, 2) Section 3.3-2(b)(1)(iv) to allow a proposed attached carport to encroach up to 20 feet into the required 20-foot garage setback in the "R-2" Single-Family and Two-Family District, addressed at 325 S. Santa Clara. (Applicant: Kristen Burnup; 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 a narrow corner lot which requires a significant corner-side setback for new construction and that there is not enough room to construct the proposed addition at the rear of the house due to an existing rear porch and large pecan trees. The applicant states the home was built in 1925 in the colonial style and if the addition was constructed in front of the home, it would destroy the architectural symmetry of the house and the historic colonial façade which the applicant intends to maintain. The applicant further states there is not sufficient space to construct the addition on the other side of the house. Staff notes the subject property meets the minimum width for corner lots in the "R-2" and setback requirements are not a special circumstance of the land itself since their impact on development of the subject property is shared with other residential properties with the same zoning. Furthermore, while the intent to preserve the existing face can be challenging to achieve while maintain the required setbacks, the façade is not considered a special circumstance of the land itself and there is sufficient room behind the house for an addition) **and**
- 2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the proposed addition would maintain the same setback as the existing detached carriage house at the rear of the property. The applicant further cites the age of the home, stating it was constructed without central air conditioning, one bedroom, and a cast iron stove to cook on. The applicant describes various improvements made to the home since its initial construction, however, the applicant states the home is still too small to accommodate a modern standard of living and that a primary suite is needed on the first floor of the home. The applicant states the reason for the addition is to

- accommodate older guests and the limited mobility of the property owner. The applicant then states the carport is necessary to protect vehicles parked on the driveway from inclement weather. Staff notes the substantial property right to use the property for a residential dwelling is not removed due to the corner side setback or garage setback requirements as space remains behind the house. Staff also notes that because carports are not required by the zoning ordinance, they are not considered a substantial property right of the applicant. The property does not have any local, state, or federal historical landmark designations.) **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.) **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. Staff notes all neighboring properties will still be required to comply with zoning ordinance standards for any new construction and the permit construction plans must meet the minimum requirements of the building code for structures built within 5 feet of a property line.) **and**
 - 5) **That an undue hardship exists;** (The applicant cites the limited use of the property due to the antiquated construction of the home as an undue hardship. The applicant further states the hardship is not self-created due to the age of the home nor is it personal, because the layout of the home would be challenging for any elderly or disabled person from using the house. The applicant states the hardship is not financial because the disfunction and layout of the home cannot be resolved at a specific cost. The applicant further states the proposed layout would allow for proper drainage on the lot, because there is a downward slope toward the house from Marguerite Street, where water tends to pool at the side of the house. The applicant states the addition and carport would allow the applicant to capture water through gutters before it collects and damages the home. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other residential property within the neighborhood. Staff did not identify a significant change in grade on the lot that would result a hardship in construction due to drainage.) **and**
 - 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states the addition is a modest size that is necessary to make the home more livable and accessible for the property owner. The applicant further states a 10-foot setback from the corner side property will be maintained which still allows for adequate sight distance and that the intent for the request is to preserve the historic character of the home while allowing for necessary updates to bring it up to a modern standard of living. Staff acknowledges the historic character of the home and the intent to preserve the facade while expanding the footprint of the house. Staff notes there are additional requirements for structures built within 5 feet of a property line under the building code that will be subject to review upon permit application for the carport. The property has not sought local historic landmark designation so it is unknown if the proposed addition would be in character with the historic characteristics of the house.)

Chair Coker asked if there were any questions for staff.

No one spoke.

Chair Coker asked if the applicant would like to speak.

James and Kristen Burnup elaborated on the intent behind their request.

Discussion followed on the proposed setback of the addition, the proposed setback of the carport, clarification as to why the addition could not be added to the rear of the house, and hardships on the property.

Chair Coker asked if anyone would like to speak in favor.

Kip Legler stated he is in favor of the request citing the character and aesthetics of the neighborhood.

Chair Coker asked if anyone would like to speak in opposition.

No one spoke in opposition.

Motion by Cynthia Foster to vote on each variance separately. Motion failed due to lack of second.

Motion by Vice Chair Mund, seconded by Member Foster, to approve the proposed variance to Section 3.3-2(b)(1)(iii) to allow a proposed addition to encroach up to 4 feet and 4 inches into the required 15-foot corner side setback and deny the proposed variance to Section 3.3-2(b)(1)(iv) to allow a proposed attached carport to encroach up to 20 feet into the required 20-foot garage setback in the "R-2" Single-Family and Two-Family District, addressed at 325 S. Santa Clara. Motion failed (2-2-1) with Member Leitch and Member Quidley in opposition and Chair Coker abstained.

Motion by Member Quidley, seconded by Member Leitch, to approve the proposed variances to 1) Section 3.3-2(b)(1)(iii) to allow a proposed addition to encroach up to 4 feet and 4 inches into the required 15-foot corner side setback; and, 2) Section 3.3-2(b)(1)(iv) to allow a proposed attached carport to encroach up to 20 feet into the required 20-foot garage setback in the "R-2" Single-Family and Two-Family District, addressed at 325 S. Santa Clara. Motion failed (3-2-0) with Member Vice Chair Mund and Member Foster in opposition.

Motion by Member Leitch, seconded by Chair Coker, to vote on each variance separately. Motion carried (5-0-0).

Motion by Vice Chair Mund, seconded by Member Leitch, to approve the proposed variance to Section 3.3-2(b)(1)(iii) to allow a proposed addition to encroach up to 4 feet and 4 inches into the required 15-foot corner side setback in the "R-2" Single-Family and Two-Family District, addressed at 325 S. Santa Clara. Motion carried (5-0-0).

Due to lack of a motion, the proposed variance to Section 3.3-2(b)(1)(iv) to allow a proposed attached carport to encroach up to 20 feet into the required 20-foot garage setback in the "R-2" Single-Family and Two-Family District, addressed at 325 S. Santa Clara was denied.

(B) ZB21-0006 Hold a public hearing and consider a request for a variance to Section 3.4-2(b)(1)(iii) to allow a proposed carport addition to the main structure to encroach up to 4 feet and 3 inches into the required 5-foot side setback in the "R-1A-6.6" Single-Family District, addressed at 186 E. Lincoln Street. (Applicant: Chandler Gray; 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 cites the property's 50-foot width and the existing 3-foot side setback encroachment of the home as two special circumstances that affect the land. The applicant states the proposed sunshade (carport) would follow along the edge of the house, but, due to the city's setback requirements, the sunshade would not be in compliance with the 5-foot side setback requirement. Staff notes that the minimum width for all interior lots in "R-1A-6.6" is 60 feet and that the subject property is only 50 feet wide. However, there are several residential districts within the city where 50-foot wide lots exist and 5-foot wide setbacks are maintained. Setback requirements are not a special circumstance of the land itself since their impact on development of the subject property is shared with other residential properties with the same zoning. Furthermore, the applicant states the purpose of the carport's proposed location is to keep it in line with the existing house, but the house is set back approximately 3 feet from the property line. Additional explanation has not been provided as to why it would be necessary for the carport to be constructed 9 inches from the side property line, 27 inches closer than the existing house.) **and**

- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the existing driveway was permitted in 2001 and that he would prefer to build the sunshade in the same location as the driveway. The applicant further states the intent of the variance request is to enhance the home and better protect his vehicles without constructing a fully enclosed garage. The applicant states granting the variance would help protect his vehicles which would provide a reasonable use of the land. Staff notes the substantial property right to use the property for a residential dwelling is not removed due to the width of the lot nor the side setback requirement.) **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.) **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. Staff notes all neighboring properties will still be required to comply with zoning ordinance standards for any new construction and the permit construction plans must meet the minimum building code requirements for structures built within 5 feet of a property line.) **and**
- 5) **That an undue hardship exists;** (The applicant cites the width of the lot, age of the dwelling, and the year in which the property was platted as hardships that affect the land itself due to each circumstance predating the modern standard for garages and off-street parking for vehicles. The applicant further states that most homes in the neighborhood have a structure used to protect vehicles and the applicant would like to do the same. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other residential property within the neighborhood. Staff acknowledges the lot is only 50 feet wide where the district requires 60-foot wide interior lots, however, a carport of 18.5 feet in width would appear to have sufficient room on the lot to be located to maintain the 5-foot setback.) **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states all other features, other than the side setback, of the proposed carport will conform to city regulations. The applicant further states the two-post carport will be neutral in color and set back further from the front property line than neighboring garages and carports. Staff acknowledges the carport's conformity to all other requirements adopted within the zoning ordinance as proposed. Staff notes there are additional requirements for structures built within 5 feet of a property line under the building code that will be subject to review during the permit application for the carport per Section R302.1(1) of the International Residential Code.)

Chair Coker asked if there were any questions for staff.

Discussion followed on the setback distance of the carport from the side property line.

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

Chandler Grey elaborated on the intent behind the request and stated they spoke with property number 6 on the notification map to make sure they would be okay with the request.

Bob Grey provided further clarification.

Discussion followed on the hardship.

Chair Coker asked if anyone would like to speak in favor.

Marilyn McDonald stated she is in favor of the request.

Violet Tanneberger stated she is in favor of the request.

Chair Coker asked if anyone would like to speak in opposition.

No one spoke.

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

Motion by Vice Chair Mund, seconded by Member Quidley, to approve the proposed variance to Section 3.4-2(b)(1)(iii) to allow a proposed carport addition to the main structure to encroach up to 4 feet and 3 inches into the required 5-foot side setback in the “R-1A-6.6” Single-Family District, addressed at 186 E. Lincoln Street. Motion carried (4-1-0) with Member Leitch in opposition.

(B) ZB21-0009 Hold a public hearing and consider a request for a variance to Section 3.3-9(b)(2)(iii) to allow a proposed dwelling to encroach up to 10 feet into the required 15-foot corner side setback in the “C-3” Commercial District, addressed at 394 Kessler Street. (Applicant: Michael Leal; 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 property is at the corner of Kessler Street and Sanger Avenue and is a corner lot that is subject to the 15-foot required corner side setback for residential properties. The applicant states that Sanger Avenue is an unused, dead-end street and as a result, the subject property functions similarly to an interior lot where the corner-side setback is not needed to maintain adequate sight-distance. Staff notes the lot is approximately 10 feet narrower than the minimum lot width of 70 feet for corner lots in the “C-3” district and less than 50% of Sanger Avenue adjacent to the subject property is improved. There are no vehicular access points on this segment of Sanger Avenue and the extension of Sanger Avenue is not likely.) **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 maximize the buildable area of the lot while also remaining consistent with other properties in the neighborhood. Staff notes that, although the increased setback can create be more challenging to design a structure that can accommodate the width of the buildable area, the substantial property right to use the property for a residential dwelling is not removed due to the corner-side setback requirement.) **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 and that the 15-foot corner side setback is not needed to maintain sight distance for vehicles since Sanger Avenue is a dead end. Staff acknowledges that the impact to the surrounding area is likely minimal and that the terminus of Sanger Avenue is unimproved.) **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. Staff notes all neighboring properties and subsequent structures will still be required to comply with zoning ordinance standards for any new construction.) **and**
- 5) **That an undue hardship exists;** (The applicant cites the location of Sanger Avenue as a hardship by technically classifying the lot as a corner lot, even though it functions as an interior lot. The applicant further states the neighbor to the south of the subject property has replatted their property in such a way that does not allow the applicant to acquire the adjacent right-of-way to provide for a larger buildable area and remove the constraints created by the development standards in the district. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other residential corner lots within the neighborhood.) **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. Staff acknowledges the purpose of the corner-side setback requirement is to ensure adequate sight-distance for passing vehicles and to maintain the line of sight for building by creating a standardized setback. In this circumstance, the sight-distance and building setback line are not relevant to the subject property’s development due

to the lack of vehicular activity this portion of Sanger Avenue adjacent the subject property.)

Chair Coker asked if there were any questions for staff.

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

Michael Leal elaborated on the intent behind the request.

Discussion followed on the location of the site and details of the house being moved.

Chair Coker asked if anyone would like to speak in favor.

No one spoke.

Chair Coker asked if anyone would like to speak in opposition.

No one spoke.

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

Motion by Member Leitch, seconded by Vice Chair Mund, to approve the proposed variance to Section 3.3-9(b)(2)(iii) to allow a proposed dwelling to encroach up to 10 feet into the required 15-foot corner side setback in the "C-3" Commercial District, addressed at 394 Kessler Street. Motion carried (5-0-0).

5. STAFF REPORT

A) Election of Officers

Chair and Vice Chair

Motion by Vice Chair Mund, seconded by Member Foster, to nominate John Coker to continue as Chair. Motion carried (5-0-0).

Motion by Member Leitch, seconded by Member Quidley, to nominate Brandon Mund to continue as Vice Chair. Motion carried (5-0-0).

B) Briefing with no action regarding forthcoming amendments to various development-related ordinances to streamline processes. *Christopher Looney, Planning and Development Services Director.*

Mr. Looney presented.

Discussion followed.

C) Appointment of a Zoning Board of Adjustment representative to the Unified Development Code Citizens Advisory Committee. *Christopher Looney, Planning and Development Services Director.*

Mr. Looney presented.

Motion by Vice Chair Mund, seconded by Chair Coker, to appoint John Coker as the Zoning Board of Adjustment representative to the Unified Development Code Citizens Advisory Committee. Motion carried (5-0-0).

Cynthia Foster asked what timeframe the meetings will be held.

Member Foster asked to be the alternate to Chair Coker.

Discussion followed and the Board agreed to recommend Member Foster as an alternate to Chair Coker if he was unable to attend

D) New Board and Commission Application and Term Expiration Process. *Stacy Snell, Planning*

Manager.

Mrs. Snell presented on the timeline for reappointments.

Discussion followed on how the board will be informed on their reappointment.

6. ADJOURNMENT

Vice Chair Mund adjourned the meeting at 7:25 pm.

Chair

Date

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11/18/2021

Agenda Item No. A)

Presenter/Contact*Applicant: Susan Tolbert*
(831) 261-6853 - @gmail.com**SUBJECT:**

ZB21-0003 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(iii) to allow a proposed dwelling to encroach up to 1) 10 feet into the required 15-foot corner-side setback for a maximum length of 89 feet and 2) 5 feet into the required 15-foot corner-side setback for a maximum length of 24 feet for the foundation only with an allowance for a cantilevered structure to be able to project an additional 3 feet into the setback, in the "R-2" Single and Two-Family District, addressed at 298 W. Edgewater Terrace.

BACKGROUND / RATIONALE:**Case #:** ZB21-0003

Applicant: Susan Tolbert
579 Lakeview Circle
New Braunfels, TX 78130
(830) 822-0524 - tolbert.susan@gmail.com <<mailto:tolbert.susan@gmail.com>>

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

The subject property is located at the northeast corner of W. Edgewater Terrace and N. Liberty Avenue and is 9,240 square feet in area. The property is zoned "R-2" Single and Two-Family District, is approximately 40 feet wide, 231 feet deep, and abuts Landa Lake at the rear of the property. The lot width is approximately 30 feet less than the minimum 70 feet required for corner lots in the "R-2" district. Approximately 73% of the property is located within the 1% chance annual floodplain and approximately 23% of the property is located within the floodway. Due to the required setbacks within "R-2", the buildable area is 20 feet wide by 186 feet deep (3,720 square feet). When the floodway area at the rear of the property is subtracted the remaining buildable area is approximately 2,860 square feet.

The existing property improvements include a 1,270 square-foot single family dwelling and a 536 square-foot detached accessory structure. The existing dwelling currently encroaches approximately 10 feet into the 15-foot corner side setback along N. Liberty Avenue and approximately 4 feet and 3 inches into the 5-foot interior side setback.

The applicant is proposing to demolish all structures on the property to construct a new single-family dwelling with an attached garage. The applicant is proposing a building envelope with desired setbacks rather than a site plan with specific building placement to allow for flexibility in drafting a

floor plan. The applicant is requesting a variance to allow structures within the building envelope to encroach up to 10 feet into the required 15-foot corner side setback for a length not to exceed 89 feet. A portion of the building envelope, beginning at approximately 40 feet from the rear property line, would only encroach up to 5 feet into the 15-foot corner side setback for a length of 24 feet. This portion of the building envelope with a reduced encroachment of only 5 feet is to allow for adequate root protection of an existing 24-inch caliper burr oak tree. This 24-foot by 5-foot area (referred to as an area of accommodation on the provided site plan) would allow for cantilevered structures to project an additional 3 feet into the setback.

The applicant has limited the extent of the desired setback encroachments to ensure the heritage trees located on the property are protected. The applicant's proposed building envelope (buildable area of the property) is approximately 1,600 square feet in area, which is 1,260 square feet smaller than the building envelope created by the required setbacks for the current R-2 the zoning district (2,860 square feet).

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

- 1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states the lot is 30 feet narrower than the minimum width required for interior lots in the R-2 district and that there are five heritage trees on the property that are intended to be preserved. The tree set back furthest from the front property line on W. Edgewater that would be located in front of the proposed building envelope is 86 feet from the front property line which significantly reduces the buildable area of the lot. The applicant summarizes the land is restricted by the 15-foot corner side setback and the heritage trees, the combination of which makes the variance necessary to build a home. Staff acknowledges the width of the lot 30 feet less than the minimum required lot width for corner lots in "R-2" district impacts the property and the five heritage trees on the property significantly reduce the buildable area. The four heritage trees between the front property line and proposed location of the home reduce the buildable area by 1,260 square feet (63 feet in depth from the front setback line by a 20-foot buildable width.) **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 the right to build a home with modern living and safety standards. The applicant further states the variance is necessary to extend the buildable area away from the existing trees. Staff notes the 20-foot buildable width of the lot is less than the typical buildable width for residential property, however, the substantial property right to use for the property for residential dwelling is not removed due to the corner side setback requirement.) **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. The applicant further states the proposed dwelling will improve public safety because it will be built to comply with all city codes and inhabited by its owner.) **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 neighboring properties will continue to enjoy and use their properties in the same manner because the variance would allow the proposed new structure to be located in approximately the same corner-side setback from N. Liberty Avenue as the existing structures. The applicant further states by removing the old structures, the new dwelling will meet the minimum 5-foot interior side setback, a reduction of an encroachment of approximately 4 feet. There does not appear to be a negative effect preventing orderly use of other land within the area by granting the variance for the house, however, all neighboring properties will still be required to comply with zoning ordinance standards for new construction. Furthermore, the proposed structures are required to comply with all city codes and standards required for structures built within the floodplain.) **and**

5) That an undue hardship exists; (The applicant states the undue hardship is the building area is decreased by the existing heritage trees and the narrow buildable width of the lot which is not typical for corner lots. The applicant states the undue hardship is not self-created, personal, or financial and that the hardships are environmental and ecological and a result of outdate city code. Staff acknowledges the buildable width of the property is limited to 20 feet due to the corner lot setback requirements of the “R-2” district on a dead-end street where the only driveway access is to the subject property, and that the buildable area is further reduced due to the existing heritage trees on the lot.) **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 because the city has an interest in preserving the scale, context, foliage, and ecology of the area. Staff acknowledges it is in the best interest of the city to support the preservation of mature, desirable trees. Staff further acknowledges purpose of the corner-side setback requirement is to ensure adequate sight-distance for passing vehicles and to maintain the line of sight for buildings by creating a standardized setback. In this circumstance, the sight-distance and building setback line are not relevant to the subject property’s development due to the lack of vehicular activity on this portion of N. Liberty Avenue adjacent the subject property.)

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:

9,240 square feet in area

240 feet in depth

40.3 feet in width

Variance Request Due to Notice of Violation:

No

Surrounding Zoning and Land Use:

North - Across Comal River, R-2 / Single Family Dwellings

South - Across W. Edgewater Terrace, R-2 / Single Family Dwellings

East - R-2 / Single Family Dwellings

West - Across N. Liberty Avenue, R-2/ Single family Dwellings

Notification

Public hearing notices were sent to 20 owners of property within 200 feet. Staff has received no responses

Attachments:

1. Aerial Map
2. Application
3. Site Plan with Proposed Building Envelope
4. Survey of Existing Improvements
5. Aerial Tree Exhibit
6. Arborists Summary of Heritage Tree Protection Requirements
7. Pictures of Subject Property
8. Notification List and Map
9. Sec. 3.3-2 "R-2" Single Family and Two-Family District

Aerial Exhibit



ZB21-0003
Encroachments into Corner Side Setback



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*: Susan Tolbert

Property Address: 298 Edgewater Terrace

Mailing Address: 579 Lakeview Circle

Contact information:

Phone: 830-822-0524

E-Mail: tolbert.susan@gmail.com

Legal Description: Lot #: 1 Block: 4 Subdivision: Landa Park Estates
 (NOTE: If property is not platted, attach a copy of the metes and bounds description and survey/drawing.)

Present Use of Property: Rental Zoning: R-2

Describe Variance Request: I seek a variance that will allow a new home to be built 5' from the exterior property line which is the same setback as the existing house enjoys.

SUBMITTAL CHECKLIST:

STAFF:	APPLICANT:
<input type="checkbox"/>	<input type="checkbox"/> Completed application
<input type="checkbox"/>	<input type="checkbox"/> Copy of deed showing current ownership
<input type="checkbox"/>	<input type="checkbox"/> Homestead Verification (if applicable)
<input type="checkbox"/>	<input type="checkbox"/> Application Fee
<input type="checkbox"/>	<input type="checkbox"/> Letter of authorization if applicant is not property owner
<input type="checkbox"/>	<input type="checkbox"/> 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 lot's configuration is 30 feet more narrow than the minimum required for a typical R-2 lot. Secondly, the lot contains 5 legacy trees that should be preserved. The tree furthest from the front-facing property line is set back 86 feet (see pg. 2).

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

The variance is necessary to preserve my right to build a home with modern living and safety standards. The variance is also necessary to extend the buildable area away from 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?

The variance will not be detrimental to public health, safety or welfare. Once the new home is built it will improve public safety because it will be built in a sustainable manner that complies with all city codes, and be inhabited by the owner.

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

The neighboring properties will continue to enjoy and use their properties in the same manner as today since variance would allow for the new structure to be placed in approximately the same side setback as the existing structure. (see pg. 2)

(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. Given the limitations described in item 1, not only is the building area decreased by the trees but also by the narrow width of the lot which is not the width of a typical corner lot which current city codes are written for. This undue hardship is not self-created, personal or financial. It is environmental and ecological. It is also the result of codes written before I was born.

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

Yes, granting the variance will be in harmony with the purpose and spirit of the city regulations, because the city also has an interest in preserving the scale, context, foliage and ecology of the area.

Please initial the following important reminders:

ST **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.

ST **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: Oct. 22, 2021

Signed: Susan Tolbert

Print Name: Susan Tolbert

Applicant/Agent*

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

Continuation of (1)

which makes the buildable area 750 sq. feet less than the typical R-2 corner lot.

So, not only is the land restricted by the 15 foot setback it is also restricted by the heritage trees. These 2 factors combined make the variance necessary to build a home.

continuation of (4)

Also by the removal of the old, existing structures, the new home will be in compliance with the 5' interior setback.

The existing structure encroaches almost 4 ft. into the 5 ft setback.

BEING LOT 1, BLOCK 4, LANDA PARK ESTATES, RECORDED IN
VOLUME 62, PAGE 464, DEED RECORDS, COMAL COUNTY, TEXAS.

BEARINGS SHOWN HEREON ARE BASED ON
THE TEXAS COORDINATE SYSTEM, SOUTH
CENTRAL ZONE (4204), NAD 83.

REFERENCE NEW BRAUNFELS TITLE
COMMITMENT, GF #084628NBT, EFFECTIVE
DATE 08/01/16

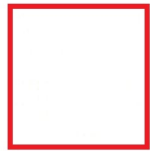
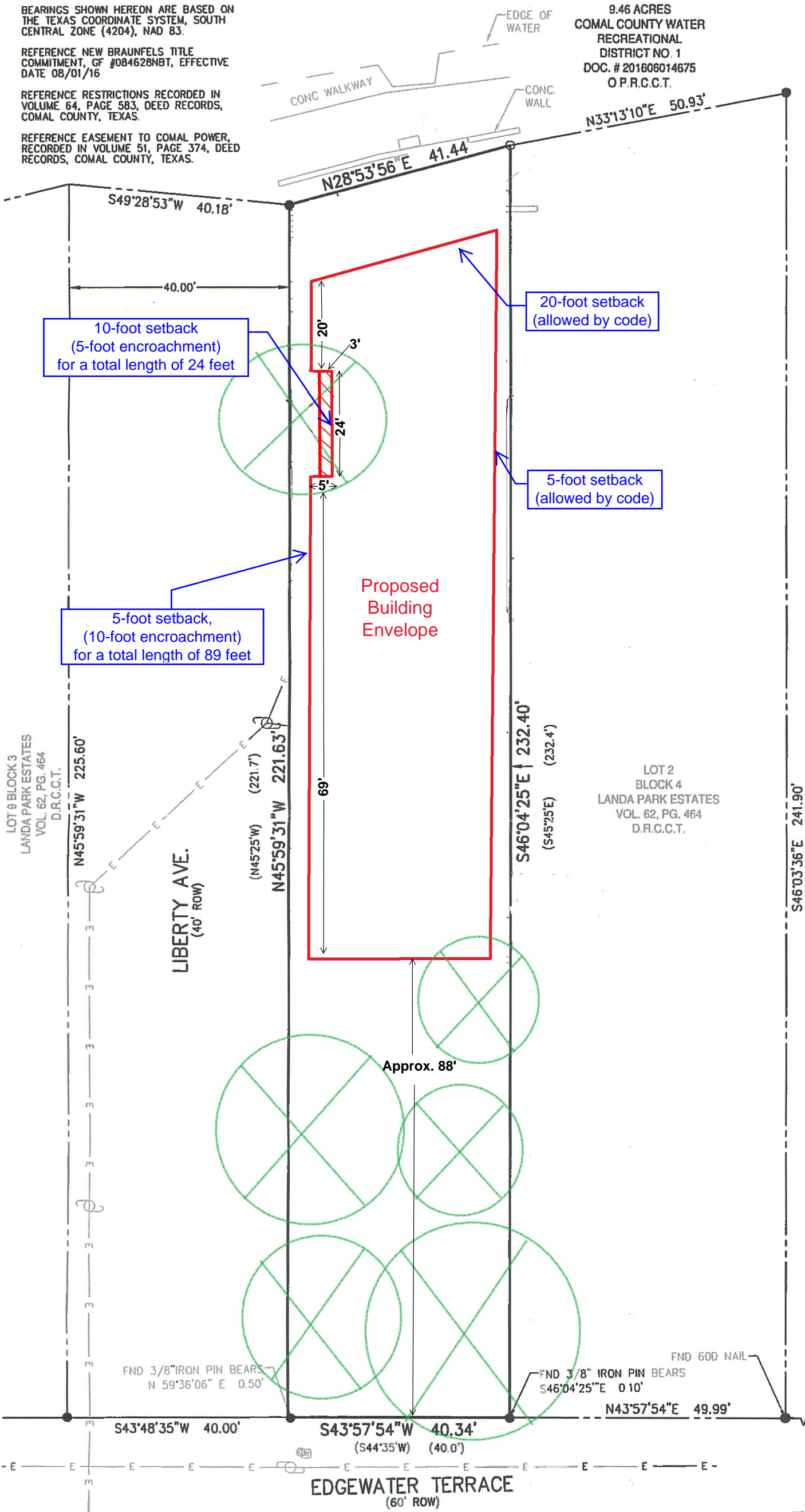
REFERENCE RESTRICTIONS RECORDED IN
VOLUME 64, PAGE 583, DEED RECORDS,
COMAL COUNTY, TEXAS.

REFERENCE EASEMENT TO COMAL POWER,
RECORDED IN VOLUME 51, PAGE 374, DEED
RECORDS, COMAL COUNTY, TEXAS.

9.46 ACRES
COMAL COUNTY WATER
RECREATIONAL
DISTRICT NO. 1
DOC. # 201606014675
O.P.R.C.C.T.

LEGEND:

- = FND 1/2" IRON PIN
UNLESS OTHERWISE NOTED
- = SET 1/2" IRON PIN W/
PLASTIC CAP STAMPED "HMT"
- B.L. = BUILDING SETBACK LINE
- R.O.W. = RIGHT-OF-WAY
- () = PLAT CALLS
- X— = FENCE
- O.P.R.C.C.T. = OFFICIAL PUBLIC RECORDS
OF COMAL COUNTY, TEXAS
- D.R.C.C.T. = DEED RECORDS OF
COMAL COUNTY, TEXAS
- = ELECTRIC JUNCTION BOX
- ⊠ = GAS METER
- ⊙ = CLEAN OUT
- ⌋ = POWER POLE
- E— = OVERHEAD ELECTRIC
- ⊞ = WATER METER



Boundary of Proposed
Building Envelope



"Area of Accommodation"
Cantilevered Structures
Only



Existing Trees to
Remain



SCALE: 1"=20'

HMT
ENGINEERING & SURVEYING

410 N. SEGUIN AVE.
NEW BRAUNFELS,
TEXAS, 78130
WWW.HMTNB.COM
PH: (830) 625-8555
TBPLS FIRM 10153600



STATE OF TEXAS
COUNTY OF COMAL

I HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THIS
SURVEY IS TRUE AND CORRECT ACCORDING TO AN ACTUAL SURVEY MADE
ON THE GROUND UNDER MY SUPERVISION AND THAT ALL OBSERVABLE
EVIDENCE OF EASEMENTS ON THE GROUND ARE SHOWN AND ALL
OBSERVABLE EVIDENCE OF BUILDINGS, STRUCTURES AND OTHER
IMPROVEMENTS SITUATED ON THE ABOVE PREMISES ARE SHOWN

THIS 8TH DAY OF SEPTEMBER 2016

Michael J. Vanderstappen
MICHAEL J. VANDERSTAPPEN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6594

298 EDGEWATER TERRACE
NEW BRAUNFELS, TX

THIS SURVEY IS CERTIFIED TO:
SUSAN TOLBERT AND
NEW BRAUNFELS TITLE
INSURANCE COMPANY

BEING LOT 1, BLOCK 4, LANDA PARK ESTATES, RECORDED IN
VOLUME 62, PAGE 464, DEED RECORDS, COMAL COUNTY, TEXAS.

BEARINGS SHOWN HEREON ARE BASED ON
THE TEXAS COORDINATE SYSTEM, SOUTH
CENTRAL ZONE (4204), NAD 83.

REFERENCE NEW BRAUNFELS TITLE
COMMITMENT, GF #084628NBT, EFFECTIVE
DATE 08/01/16

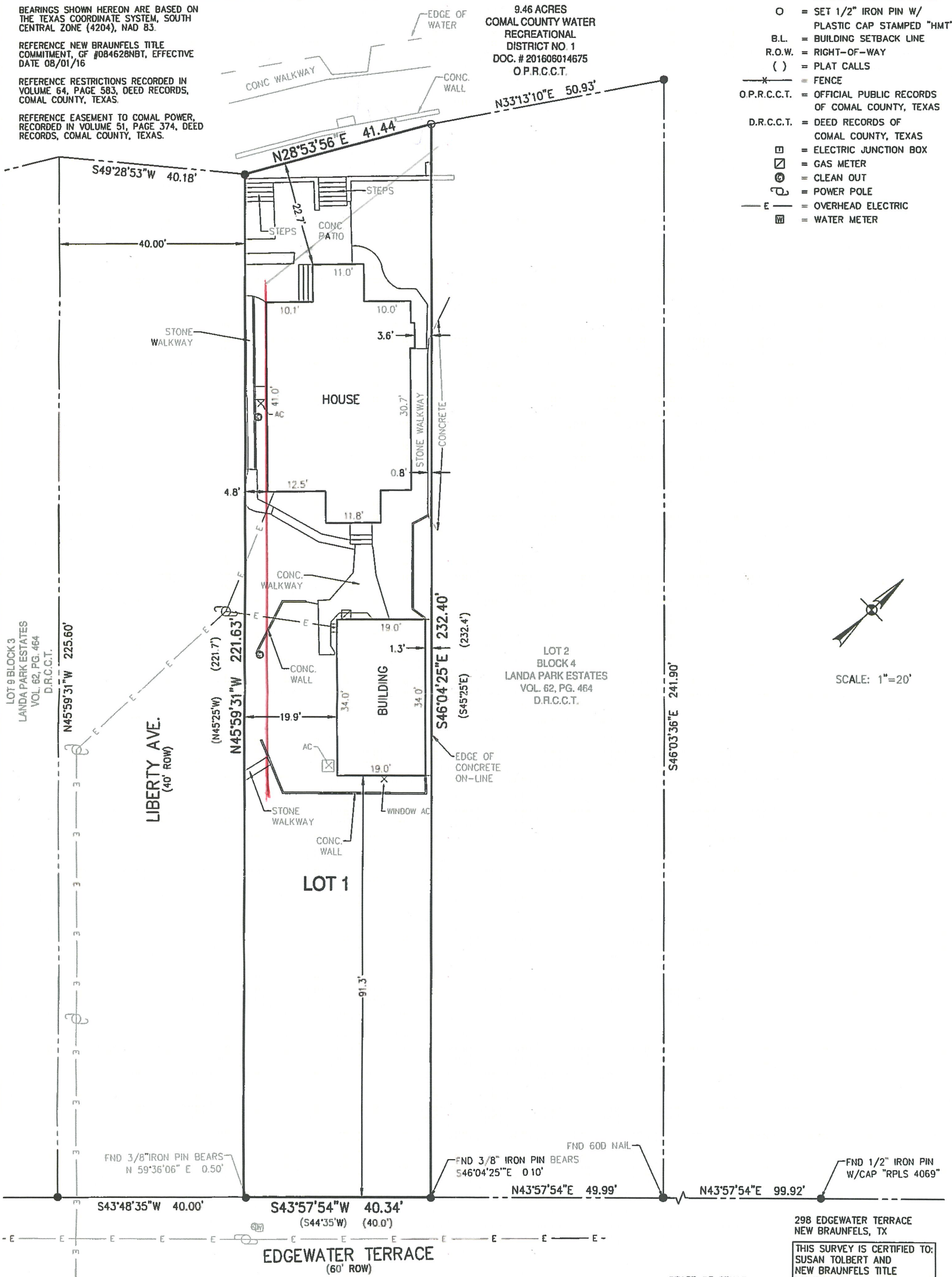
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COMAL COUNTY WATER
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UNLESS OTHERWISE NOTED
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- ⌋ = POWER POLE
- E— = OVERHEAD ELECTRIC
- ⊞ = WATER METER



SCALE: 1"=20'

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EVIDENCE OF EASEMENTS ON THE GROUND ARE SHOWN AND ALL
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298 EDGEWATER TERRACE
NEW BRAUNFELS, TX

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SUSAN TOLBERT AND
NEW BRAUNFELS TITLE
INSURANCE COMPANY

Permitting Portal | New Braunfels Building Permits | Permitting - Summary - Cityworks | Map | Forms and Applications | New | 299 W Edgewater Terrace - Google Maps | Public Viewer

https://permits.nbtexas.org/cityworks/FieldMap

Tools | Legend | Locate | Selection | Navigation | Bookmarks | Base Maps

Selection

Navigation

1155

294

244

203

LIBERTY AVE

W EDGEWATER

Type here to search

Windows taskbar icons: File Explorer, Microsoft Edge, Google Chrome, Microsoft Word, Microsoft Excel



Susan Tolbert <tolbert.susan@gmail.com>

Davey Tree Property Recommendations CRM:0358000001408

Divin, Jess <Jess.Divin@davey.com>

Mon, Sep 27, 2021 at 11:10 PM

To: Susan Tolbert <tolbert.susan@gmail.com>

Mrs. Tolbert,

I'm sorry the day got away from me today. I will call you tomorrow. I will also remove the automatic (*) on the proposal, and we would never preform any service without your permission and it is meant to be a renewable service only if you wish it.

The large Bur Oak on the left side of the home (looking from Edgewater Terrace) is 32" inches in diameter and 4-1/2' foot off the ground DBH or diameter and breast height (standard forestry measurement). The 2 pecans at the front left of the property are each 24" inches DBH. The pecan at far front right of the property is 32" DBH. The next tree on the right is a live oak at 15" inches DBH. The proposed removal of the pecan closer to the out building in front of the home with poor growth structure and low long term viability, is 18" inches DBH. There is no definitive definition of "Heritage Tree" in the city ordinance but in other municipalities it is any desired species 24" inches and larger. All oaks and pecans fall under the desired species designations.

Root protection zone established by City of New Braunfels Municipal code 144-5.3-9 (6) i. , is 6" inches of root protection zone per 1" diameter inch of trunk at DBH. By ordinance you only need 16' foot of root protection zone for the Bur oak. The root protection zone does not have to be centered on the tree or need to be circular in shape. Most of the root system of the tree will be along the grass area and not under the existing home so expanding the protection zone in the grass area will actually help the tree. I have copied and pasted all of the tree protection ordinance below.

(6)Protection measures.

(i)Prior to construction or land development, four-foot high safety fencing shall be installed around the root protection zone of a protected or heritage tree that is to be preserved. The root protection zone is an area with a radius of one-half foot for each inch of trunk measured four and one-half feet above the ground, or if branching occurs at four and one-half feet, the diameter is measured at the point where the smallest diameter closest to the branching occurs. The zone need not be exactly centered around the tree or circular in shape, but it should be positioned so that no disturbance occurs closer to the tree than one-half of the radius of the zone or within five feet of the tree, whichever is less. For any tree or groups of trees, the zone need not exceed 1,000 square feet in size. The radial root protection zones of trees may overlap one another so that the area of protection required for one tree may be shared by the area of protection required for another tree to minimize the total square footage of protected area where possible.

(ii)During construction, the cleaning of equipment or materials and/or the disposal of any waste material, including, but not limited to paint, oil, solvents, asphalt, concrete, mortar, etc., under the canopy or drip line of any protected tree shall be prohibited.

(iii)No attachments or wires of any kind, other than those of a protective nature, shall be attached to any protected tree.

(iv) Grading or fill in an area under the drip line of a protected tree shall be prohibited unless approved by the planning director and city engineer. If grading or filling were to occur within five feet of the protected or heritage tree to be preserved, a retaining wall or tree well of rock, brick, landscape timbers or other approved materials shall be constructed around the tree no closer than the drip line of the protected tree. The top of the retaining wall or tree well shall be constructed at the new grade.

Thank you,

Jess Divin | District Manager

ISA Certified Arborist RM-7097AM

Texas ISA Oak Wilt Qualified TXOWQ - 218

The Davey Tree Expert Company | East San Antonio Office

18838 Fm2252, Ste. 500, San Antonio, TX 78266

P: 210.981-2870 | F: 210.981.2871



Review us on Google!

<http://www.davey.com/friend>

[Quoted text hidden]



ZONING BOARD OF ADJUSTMENT – NOVEMBER 18, 2021
CITY COUNCIL CHAMBERS

Address/Location: 298 W. Edgewater Terrace

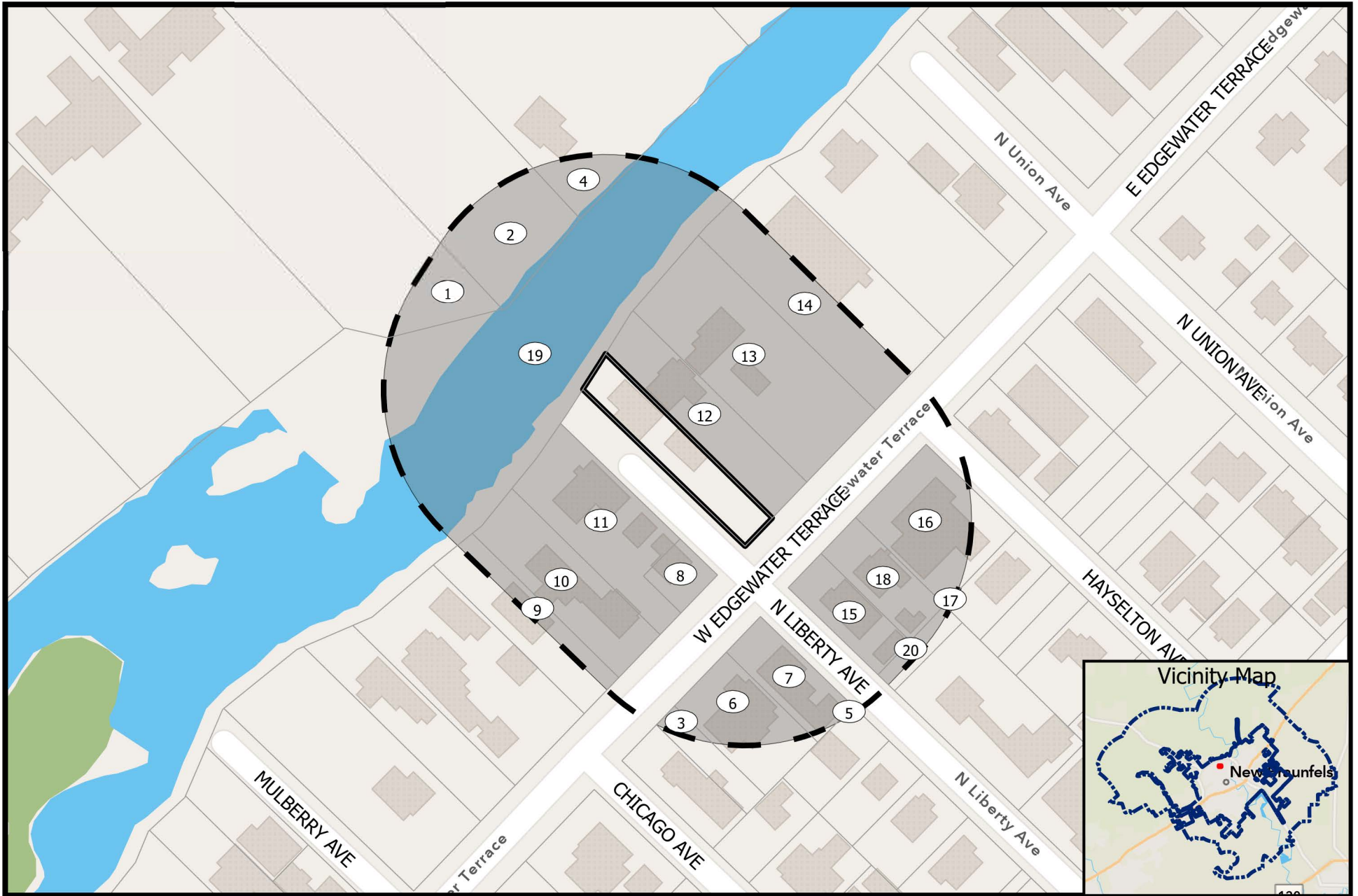
Applicant: Susan Tolbert

Case #: ZB21-0003

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. LANO CHARLES F JR & KATHLEEN | 11. DANVERS HOLLIS & KIRSTEN |
| 2. SACCO MARK | RVCBL TRST |
| 3. MOUSSA GEORGE | 12. REID BEN A & LINDA C |
| 4. ONEILL KATHERINE L EXEMPT | 13. ALLEN BONNIE B |
| TRUST & ROBERT K LEY EXEMPT | 14. JBY INTERNATIONAL HOLDINGS |
| TRUST | LLC |
| 5. P & W RANCH LLC | 15. JARVIE GREG & MICHELLE |
| 6. DUFF ROBERT E & JOAN | 16. GUINN JOE L & NINA |
| 7. WINKLER EDITH | 17. MILLER RANDY & KAREN |
| 8. STEFFAN KATHLEEN C | 18. BERGMAN MEYERS K ET AL |
| 9. LOS LEONES FAMILY | 19. COMAL COUNTY WATER |
| PARTNERSHIP | RECREATIONAL DISTRICT NO 1 |
| 10. RHODUS GEORGE T & DEBORAH M | 20. BRIGGS ROBERT A JR |

SEE NOTIFICATION MAP



ZB21-0003
corner side setback encroachments

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.

11/18/2021

Agenda Item No. B)

Presenter/Contact*Applicant: Nik Petrik**(512) 220-9916 - nik@loanrangercapital.com***SUBJECT:**

ZB21-0010 Hold a public hearing and consider a request for a variance to Section 3.4-17(b)(4)(v) and Section 5.3-7(i)(5) 1) to allow two proposed 42-foot-tall buildings to encroach up to 13 feet into the required 42-foot residential setback and 2) to not require the property owner to plant 10 of the 10 shade trees required to buffer between the proposed use and the common property lines shared with residential property, addressed at 548 Rusk Street.

BACKGROUND / RATIONALE:**Case #:** ZB21-0010

Applicant: Nik Petrik
151 S. Capital of TX HWY, Suite 306
Austin, TX 78746
(512) 220-9916 - [<nik@loanrangercapital.com>](mailto:nik@loanrangercapital.com)

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

The subject property is located on Rusk Street in the Rivermill area and is zoned "C-O" Commercial Office District. Chevrolet Alley (as shown on the aerial map) is a part of the subject property and is not city right-of-way, therefore, the property is considered an interior lot with its only frontage on Rusk Street. The property is approximately 37,260 square feet in area with an approximate lot depth of 345 feet and approximate lot width of 108 feet. There are currently no improvements on the property but has several large trees.

The applicant has an approved replat to combine the four tracts into one lot and intends to construct nine dwelling units within three separate buildings resembling townhomes in scale and appearance. Because the Zoning Ordinance defines multifamily use as three dwellings or more on a single tract, the proposed use of the property (9 dwelling units) must follow the city's multifamily development standards.

The "C-O" district requires a multifamily use developed immediately adjacent to a one- or two-family use or zoning district to have a setback from the one- or two-family property line of at least 20 feet plus one foot for each foot of building height over 20 feet. Essentially the setback is to be equal to the maximum height of the building. This provision in the regulations is intended to buffer residential

homes from large scale apartment complexes and commercial development; regulating development of smaller scale residential complexes or multiple units on a single lot was not the intention of this requirement. When this setback requirement was created, the standard for construction was primarily single-family homes and large apartment complexes or commercial developments. Recent recognition of the importance of allowing “Missing Middle” types of housing has resulted in the Workforce Housing Commission recommending revisions to the zoning regulations to remove obstacles to development such as the masonry wall requirement and the residential setback from being applied to smaller scale missing middle housing types such as the dwellings proposed in this project.

The subject property is adjacent to 5 single-family properties along the northern interior side property line and the rear property line. The proposed townhome-style structures are each proposed to be approximately 42 feet in height, measured from the ground to the highest point of the pitched roof, and are therefore subject to a 42-foot setback from each property line shared with residential property. With the 42-foot residential setback and the minimum interior side setback of 20 feet, the buildable area of the lot is approximately 16,528 square feet with a maximum allowable width for new structures of 41 feet. This buildable area represents only 44% of the entire lot size, meaning that the setback requirements take up over one-half of the lot area. Furthermore, the 42-foot height of the proposed structures is 7 feet taller than the maximum allowable height of 35 feet for single-family structures within the district; single-family structures taller than 20 feet in height do not have to abide by increased setbacks nor additional buffering.

The applicant is requesting a variance to allow two of the three proposed structures to encroach up to 13 feet into the required 42-foot residential setback. If the variance is approved, the structures would be set back 29 feet from the side and rear property lines shared with the residential uses. The third structure, towards the front of the property along Rusk Street, is unaffected by the residential setback requirement.

Section 144-5.4(7)(i)(5) of the Zoning Ordinance states at least one shade tree per 25 linear feet of property, or part thereof, shall be planted along the common property line shared by a non-residential or multifamily development and one- or two-family property as part of a residential buffer. There is approximately 250 linear feet of property line shared with the adjacent one-family properties, therefore, 10 shade trees are required to be planted evenly spaced along the side and rear property lines where the residential buffer is required. The applicant is requesting a variance to waive the minimum residential landscaping buffering requirements and to not plant 10 of the 10 required shade trees.

Additionally, the subject property must also comply with the tree preservation requirements requiring replacement of at least 50% of any protected or heritage trees removed from the site.

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 that, if the setback variance is not approved, the residential setback requirement will force the applicant to construct a dense structure (with all nine of the proposed units) at the front of the lot and leave the rear portion

as a 20-car parking lot. . Staff finds that while placing the buildings in this manner might meet code, the impact of the design would be more out of scale with the adjacent residential neighborhood than would the proposed layout. As the intent of the setback requirement is to make the project blend into the scale of the residential neighborhood, staff does not believe the result of this modified layout would meet the intent of the code. The proposed layout includes buildings that have stair-stepped elevations with the portions of the buildings closest to the one-family properties at a height of 28 feet and 8-1/4 inches No hardship justification has been submitted for the requested variance from the tree requirement of the residential buffer.) **and**

- 2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states that by granting the variance the proposed buildings can be spaced evenly across the lot which allows them to fit better into the character of the neighborhood and existing residential uses. Additionally, the applicant states that by spacing out the townhome-style buildings across the lot and providing packing between each building, there is more adequate buffering for car noise, street sounds, and headlights; whereas if the variance is not approved, the rear end of the lot would be constructed as a parking lot and could heighten these impacts on the adjacent residences. Staff notes that the residential setback substantially restricts the buildable area of the lot however, the residential setback of 42 feet is a reflection of the overall desired building height and some relief in the setback may be provided in reducing the building height. The applicant has not demonstrated a special circumstance that prevents the planting of the minimum required residential landscape buffer trees.) **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 notes 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 one- and two-family residences to use and enjoy their property. **and**
- 5) That an undue hardship exists;** (The applicant states the location of the property in relation to the neighboring residential properties is an undue hardship because, if the variance is not approved, the setback requirements require the townhome-style buildings to be built at the front of the property, leaving the rear of the property to be used for the 20-car parking lot. The applicant further states this design creates an unappealing view for the adjacent residential property owners and exposes them to nuisances such as vehicle noise and exhaust. Staff notes the front of the property is not encumbered by the residential buffer requirements since the adjacent land uses are non-residential and would be allowed to construct a multi-dwelling unit building at a maximum height of 60 feet when a pitched roof is used with a setback of 20 feet. The general area around the subject property is becoming a more mixed-use neighborhood, and 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. Staff acknowledges the adjacent residential properties are legally non-conforming uses as residential use has been removed as an allowed use from the M-2 industrial district in 2019, and therefore the use of these

properties is likely to change in the future. The applicant has not identified a hardship of the land that prevents the planting of the minimum required residential landscape buffer trees.)
and

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 and cites the zoning district for the property which allows for multifamily use. Staff notes that the upcoming Unified Development Code will examine the residential setback requirement, and propose adjustments to these standards to better accommodate the inclusion of Missing Middle housing types, in response the recommendations of the Workforce Housing Commission.

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 37,260 square feet
345 feet in depth
108 feet in width

Variance Request Due to Notice of Violation:

No

Surrounding Zoning

North - M-2/ Single-family dwellings
South - Across Rusk Street, M-2 / Old Mill property
East - M-2 / Antique storage and warehouse
West - M-2/ Parking lot and single-family dwellings

Notification

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

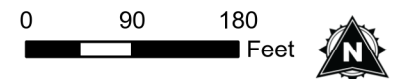
Attachments:

1. Aerial Map
2. Application
3. Proposed Site Plan
4. Proposed Elevations Submitted with Building Permit
5. Exhibit of Adjacent Residential Properties
6. Notification Packet
7. Sec. 3.4-17 Commercial Office District Zoning Ordinance
8. Section 144-5.4(7) Additional Landscaping Requirements



ZB21-0010

Residential setback encroachment and waived buffering requirements



Source: City of New Braunfels Planning

Date: 11/9/2021

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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*: Nik Petik

Property Address: 548 Rusk Street, New Braunfels 78130

Mailing Address: 151 S. Capital of TX HWY, suite 306, Austin, TX 78746

Contact information:

Phone: (512) 220-9916

E-Mail: nik@loanrangercapital.com

Legal Description: Lot #: 1 Block: 1 Subdivision: Rusk Townhomes

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

Present Use of Property: vacant

Zoning: C-O

Describe Variance Request: Requesting variance from additional residential buffering requirements

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?

Due to existing plat location and proposed residential buildings on said plat, the set back requirements create a very dense structure at the front of the lot leaving the back portion of the lot as a 20 car parking lot in view of the adjacent properties and neighborhood.

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

By allowing the set back variance, this enables the proposed buildings to spread evenly across the lot evoking an overall residential feel that is cohesive to the adjacent properties that have residential uses. In addition, by spacing out townhomes and allowing (2) 10 car parking lot in between, allows better sound buffer to noise, street sounds, headlights, and overall appearance, where otherwise a 20 car parking lot in the back of lot would enhance sound, headlights, and be more intrusive to the neighborhood.

(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?

No.

(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, because of the location of the parcel in relation to the neighboring properties, this causes the setback requirements to force the residential buildings to the front of property, leaving the rear of property to be a 20 car parking lot. This creates an unappealing view to abutting and adjacent neighbors and exposes them to more vehicular noise and visibility henderences.

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

Yes, the zoning for this lot is C-O

Please initial the following important reminders:

NP

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.

NP

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: _____

[Signature]

Applicant/Agent*

Date: 10/21/21

Print Name: _____

Nik Petrik

*

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



10.21.2021

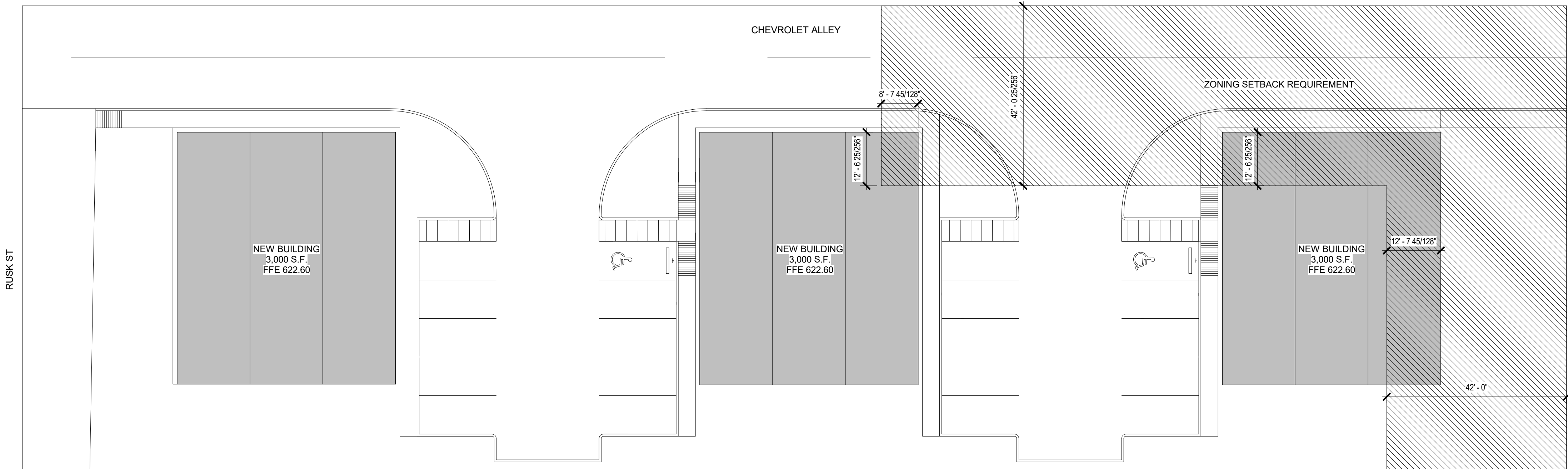
Revisions		
Number	Description	Date

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RUSK STREET TOWNHOMES

548 RUSK STREET
NEW BRAUNFELS, 78130



1 SITE PLAN - DIAGRAM

SCALE: 1/16" = 1'-0"

project #: 21.031

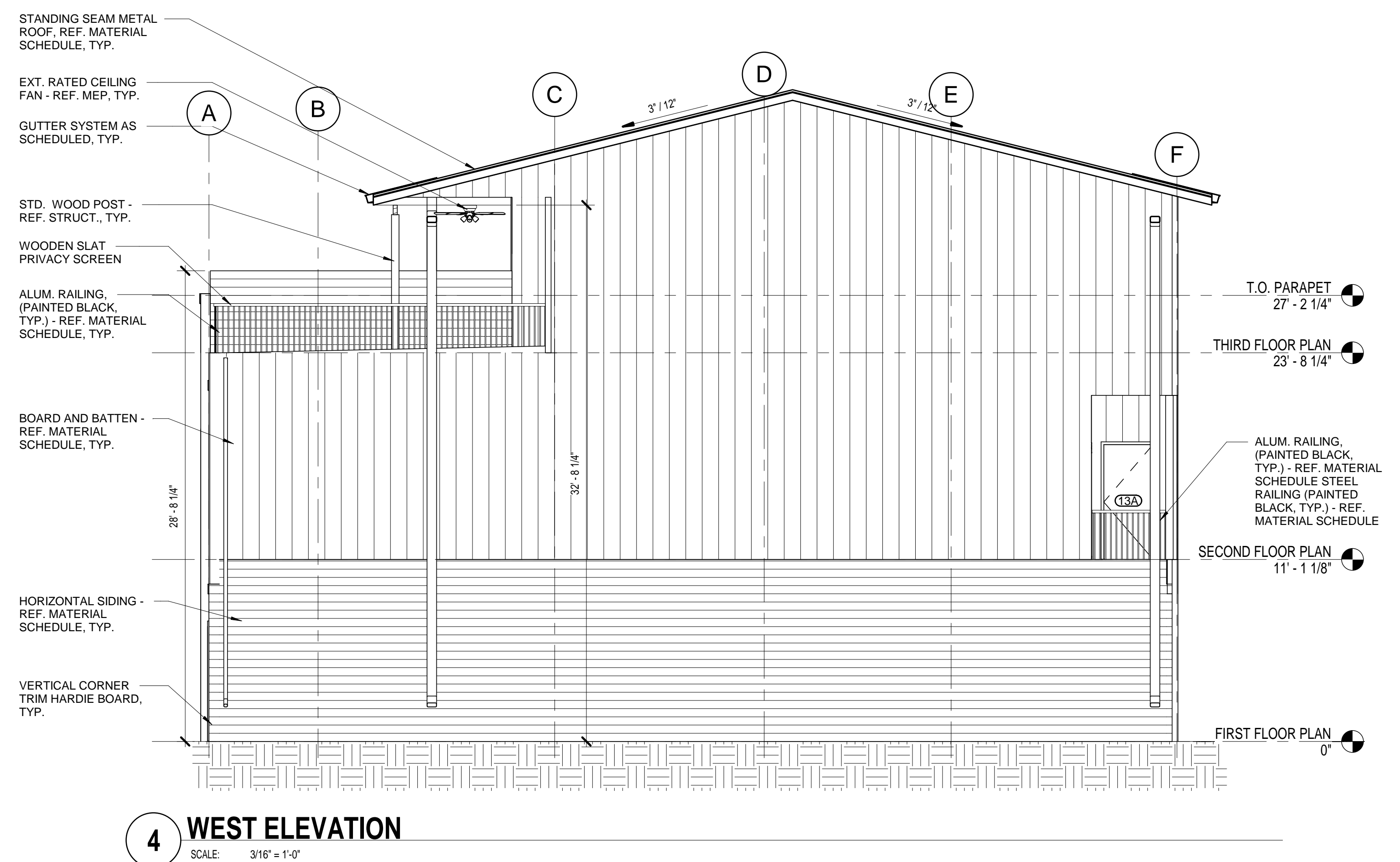
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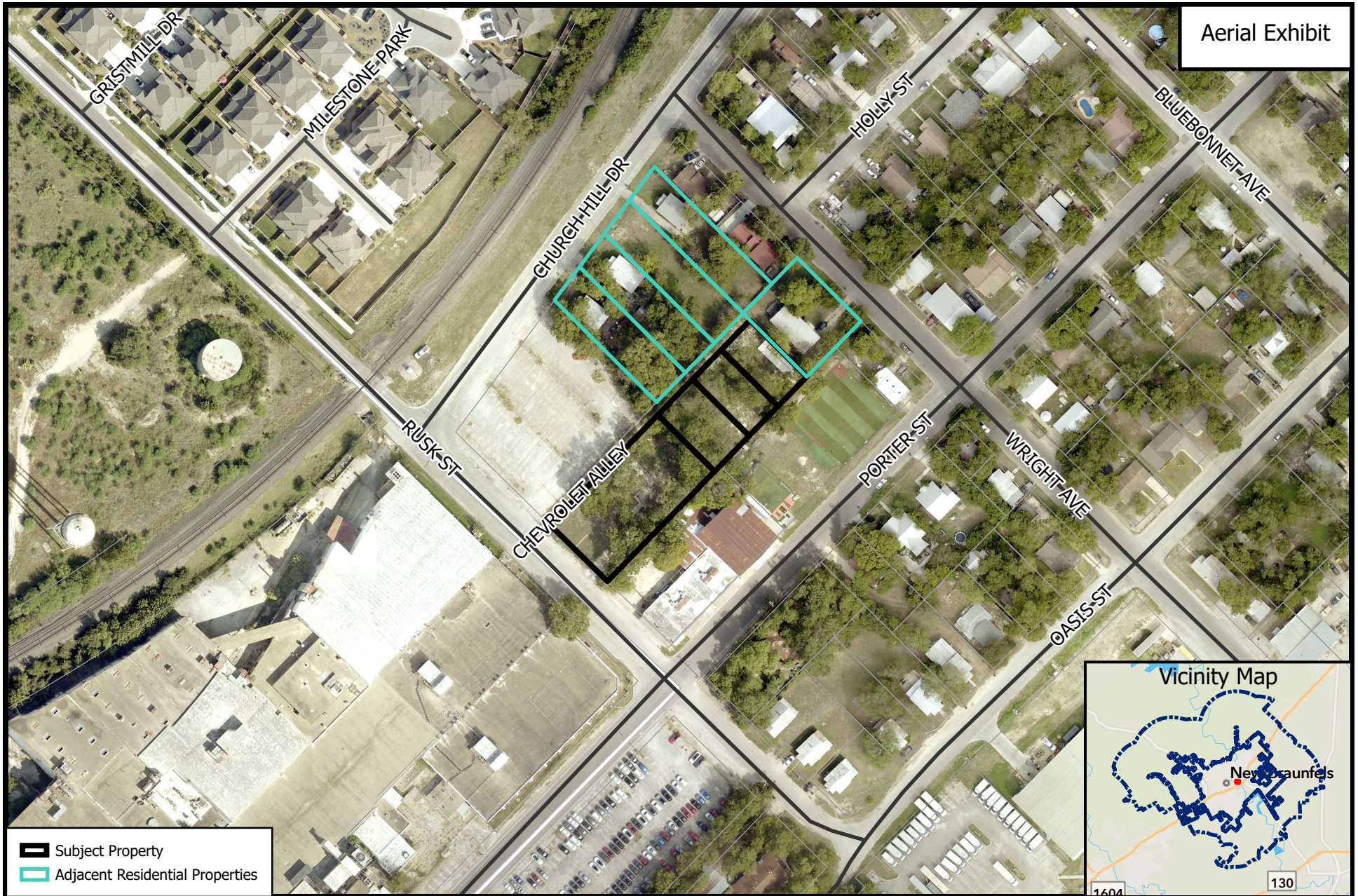
drawn by: S.S.
checked by: G.S.

drawing title:
SITE PLAN - ORIGINAL
PLAN

drawing number:

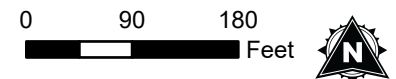
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ZB21-0010

Residential setback encroachment and waived buffering requirements



Source: City of New Braunfels Planning
Date: 11/9/2021

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ZONING BOARD OF ADJUSTMENT – NOVEMBER 18, 2021
CITY COUNCIL CHAMBERS

Address/Location: 548 Rusk Street

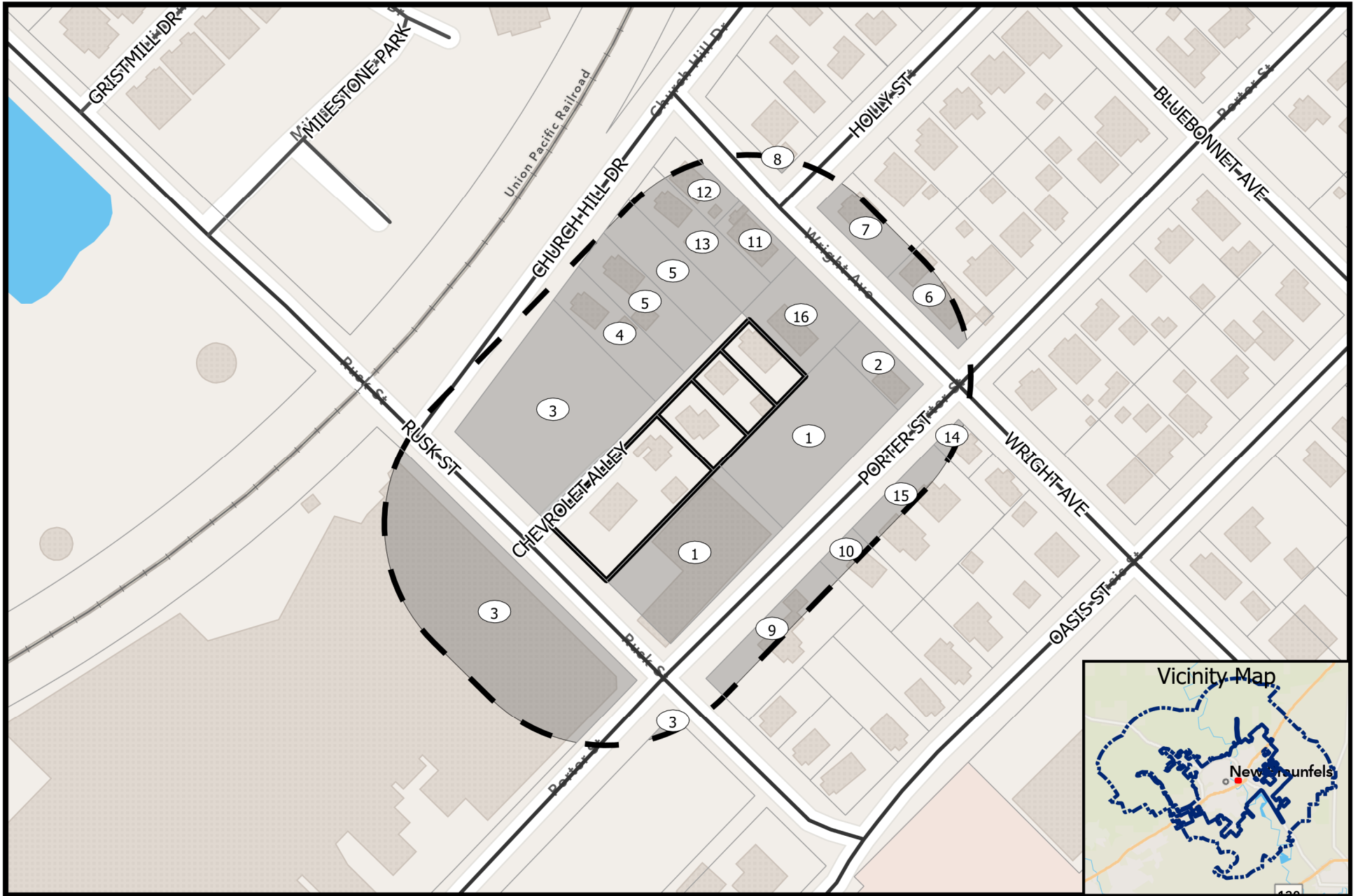
Applicant: Nik Petik

Case #: ZB21-0010

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. SPECKMAN FAMILY LTD & STADT
CORP | 8. MANDUJANO JOSE & TERESA |
| 2. URIAS FRANK & MARY | 9. MOORE ROLF E |
| 3. DRT-PMP LAND LLC | 10. MOORE ROLF EDWARD |
| 4. GUADALUPE AMARO
PARTNERSHIP | 11. TROTTER PATSY A |
| 5. A R V INDUSTRIAL ELECTRIC
COMPANY | 12. MINING REBECCA F |
| 6. KINCAID HARVEY D & RACHEL J | 13. KLE PROPERTIES LLC |
| 7. DAVIS TIMOTHY M | 14. DORRANCE CRAIG & LINDA TRUST |
| | 15. SPECKMAN FAMILY LTD |
| | 16. HEITKAMP AMBER |

SEE NOTIFICATION MAP



ZB21-0010

Residential setback encroachment and waived buffering requirements

3.4-17. "C-O" Commercial office district.

Purpose. The commercial office district is established to create a mixed use district of professional offices and residential use. The regulations set forth in this article are intended to encourage adaptive reuse of buildings or new office developments of the highest character in areas that are compatible and sensitive to the surroundings and ensure historic integrity. Such uses should not generate excess additional traffic or access problems.

(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 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)
- Dormitory (in which individual rooms are for rental)
- Duplex / two-family / duplex condominiums
- Hospice
- Multifamily (apartments/condominiums)
- One family dwelling, detached
- Residential use in buildings with the following non-residential uses
- Single family industrialized home (see Sec. 5.8)
- Townhouse (attached)
- Zero lot line / patio homes

Non-residential uses:

- Accounting, auditing, bookkeeping, and tax preparations
- Adult day care (no overnight stay)
- Answering and message services
- Antique shop (household items)
- Armed services recruiting center
- Art dealer / gallery
- Artist or artisan's studio
- Bakery (retail)
- Bank, savings and loan, or credit union
- Barber/beauty shop, haircutting (non-college)
- Barns and farm equipment storage (related to agricultural uses)
- Book store
- Cemetery and/or mausoleum
- Check cashing service
- Church/place of religious assembly
- Clinic (dental)
- Clinic (emergency care)
- Clinic (medical)
- Coffee shop
- Community building (associated with residential uses)
- Confectionery store (retail)

Contractor's temporary on-site construction office (only with permit from building official)
 Credit agency
 Electrical substation
 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)
 Garden shops and greenhouses
 Golf course (public or private)
 Governmental building or use
 Kiosk (providing a retail service)
 Laundry/dry cleaning (drop off/pick up)
 Locksmith
 Needlework shop
 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)
 Photographic printing/duplicating/copy shop or printing shop
 Photographic studio (no sale of cameras or supplies)
 Photographic supply
 Public recreation/services building for public park/playground areas
 Recreation buildings (public)
 Research lab (non-hazardous)
 Retirement home/home for the aged - public
 School, K-12 (public or private)
 School, vocational (business/commercial trade)
 Security monitoring company (no outside storage or installation)
 Shoe repair shops
 Telemarketing agency
 Telephone exchange buildings (office only)
 Tennis court (commercial)
 Travel agency
 University or college (public or private)
 Water storage (surface, underground or overhead), water wells and pumping stations that are part of a public or municipal system

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.* 35 feet.

(ii) *Front building setback.* 15 feet.

(iii) *Side building setback.* A side building setback of not less than five feet shall be provided for a single story building or structure in which there are no openings to the side yard. A minimum 10 foot side building setback shall be provided for a single story building or structure with openings to the side yard.

(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.* 60 feet.

(vii) *Corner lots.* Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street except when abutting any residential district where the side building setback shall then become a minimum of 25-feet.

(viii) *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)

(ix) *Parking.* See Sec. 5.1 for permitted uses' parking.

(2) 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 lines of the corner lots coincide with the side lot lines of the adjacent lots.

(iv) *Rear building setback.* 20 feet.

(v) *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.

(vi) *Lot area per family.* Every single-family dwelling hereafter erected or altered shall provide a lot area of not less than 6,600 square feet per dwelling for interior lots, and 7,000 square feet per dwelling for corner lots, provided that where a lot has less area 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. Where 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 not located over the recharge zone and one acre located over the recharge zone.

(vii) *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.* 35 feet.

(ii) *Front yards.* 25 feet.

(iii) *Side building setback.* There shall be a side building setback on each side of a building not less than 5 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 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 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) *Parking.* Two off-street parking spaces shall be provided for each two-family dwelling unit. See Section 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.* A side building setback of 20 feet shall be provided. 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.

(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) *Parking and accessory uses.* Parking may encroach into the interior side and rear building setback as long as a solid screening fence or wall of six to eight feet in height is erected along the interior side and rear property lines. Accessory uses such as swimming pools, tennis courts and playgrounds will not be permitted within any required yard.

(viii) *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.

(ix) *Density.* 24 units per acre.

(x) *Lot area.* 20,000 square feet.

(xi) *Lot coverage.* The combined area of all yards shall not be less than 50 percent of the total lot or tract; provided however, that in the event enclosed or covered parking is provided, the minimum total yard area requirement shall be 40 percent of the total lot or tract.

(xii) *Distance between structures.* There shall be a minimum of 10 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 20 feet between structures backing rear to rear. (See Illustration 2)

(xiii) *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.)

See Section 5.1 for other permitted uses parking.

(5) Townhouses.

(i) *Height.* 35 feet.

(ii) *Front building setback.* 10 feet. If front entry garages/carports are provided, a minimum front yard of 20 feet shall be provided to the garage/carport.

(iii) *Side building setback.* No side building setbacks are required for interior lots except the minimum distance between two building groups shall be 20 feet and the minimum distance between a building group and any abutting subdivision boundary or zoning district boundary line shall be 20 feet. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street, except where the rear lot line of a corner lot coincides with a side lot line of an adjacent lot, then 25-foot minimum side yards adjacent to the street shall be provided.

(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.* No building shall be constructed closer than ten feet from the rear property line. If the rear of the lots abut any other residential zoning district, the rear building setback shall have a minimum depth of 20 feet.

(vi) *Width of lot.* Interior lots shall have a minimum width of 25 feet. Corner lots shall have a minimum width of 40 feet except where the rear lot line of a corner lot coincides with a side lot line of an adjacent lot, then the corner lot shall have a minimum width of 50 feet.

(vii) *Lot depth.* 100 feet.

(viii) *Lot area per family.* 2,500 square feet.

(ix) *Common open space.* A minimum of 250 square feet of common open space per lot shall be provided within the townhouse project. In computing the required common open space, individually owned townhouse lots, required front, rear, or side setbacks, streets, alleys, or public rights-of-way of any kind, vehicular drives, parking areas, service drives, or utility easements containing or permitting overhead pole carried service shall not be included. Drainage easements and detention ponds may be used in computing common open space.

(x) *Building group.* There shall be no less than two nor more than eight individual dwelling units in each building or dwelling group. Each building group shall be at least 20 feet from any other building group, measured from the nearest points of their foundations. Each building or building group shall be at least 20 feet from any subdivision or zoning district boundary line.

(xi) *Accessory buildings.* Any detached accessory buildings permitted, except carports open on at least two sides, shall be set at least three feet away from the side lot line unless their walls are equal in fire resistance to the common walls of the main structure. Detached carports, open on at least two sides, may be built to the property line with no common wall required. Rear building setback for an accessory building shall be three feet. Any accessory building permitted in district "R-1" shall be permitted in district "TH."

(xii) *Parking.* There shall be at least two off-street parking spaces for each townhouse. See Section 5.1 for other permitted uses' parking.

(6) Zero lot line / patio homes.

(i) *Height.* 35 feet.

(ii) *Front building setback.* 10 feet. If front entry garages/carports are provided, a minimum front yard of 20 feet shall be provided to the garage/carport.

(iii) *Side building setback.* There shall be no side building setback required on one side of the lot and a minimum of 10 feet in the opposite side yard. If the side of the lot abuts any other residential zoning district, that side building setback shall have a minimum of ten feet. The dwelling on the "no side building setback required" side may be off-set from the property line by no more than one foot.

(iv) *Corner lots.* Buildings on corner lots shall provide a minimum exterior side building setback of 10 feet. If entry to a garage/carport is provided on the exterior side, a minimum yard of 20 feet shall be provided to the garage/carport.

(v) *Rear building setback.* If rear entry garages/carports are provided from an alley, the rear building setback shall have a minimum depth of 20 feet. If no alley is provided and garage/carport entries are from the front, the rear building setback shall have a minimum depth of 10 feet. If the rear of the lots abut any other residential zoning district, the rear building setback shall have a minimum depth of 20 feet.

(vi) *Width of lot.* 40 feet.

(vii) *Lot area.* 4,000 square feet.

(viii) *Lot depth.* 100 feet.

(ix) *Minimum area zoned.* Not less than three lots with common side lot lines will be zoned for zero lot line homes. When facing on the same street within the same block, mixing of ZH structures and other residential structures will not be allowed. However, this does not preclude other residential uses on one side of a street with ZH uses on the opposite side of the street within the same block or different blocks.

(x) *Zero lot line wall.* No door or window openings shall be built into the side wall facing the zero lot line except those that are more than three feet from the property line and screened by a masonry wall at least eight feet in height so that the opening(s) is not visible from the adjoining property. (See Illustration 3, "ZH-A" district)

(xi) *Maintenance, drainage and overhang easement.* A maintenance, drainage and overhang easement of five feet shall be provided on each lot that is adjacent to a lot with a zero setback allowance. This easement shall be for the purpose of maintaining the wall and foundation that is adjacent to one side property line to provide for proper maintenance and drainage.

(xii) *Overhang.* Eaves and gutters may overhang the zero lot line side of the lot by no more than 18 inches. If there is an overhang over the lot line, a gutter is required such that roof runoff shall not be deposited over the lot line onto adjoining property.

(xiii) *Parking.* There shall be at least two off-street parking spaces for each zero lot line home. See Section 5.1 for other permitted uses' parking.

(c) *Parking and off-street loading requirements.* The parking requirements for the permitted uses described herein are outlined in Section 5.1. In the case of mixed uses, i.e., residential and commercial, the parking requirements shall be additive.

Sec. 144-5.3. Landscaping, tree preservation, public trees, screening, fences, buffering and lighting.

5.3-1. Landscaping, tree preservation, public trees and screening.

(7) Minimum landscaping and screening requirements.

- (i) Parking lot screening and landscaping.* See Illustrations 9 and 10. Subject to the provisions of section 144-5.3-1, the following landscaping is required for parking lots:
 - 1. *Street frontage landscape buffer area.* Where a parking lot is adjacent to and within 50 feet of public street right-of-way, a minimum five-foot landscape buffer adjacent to the right-of-way of any street is required. Lots adjacent to two streets or more shall be required to observe the five-foot buffer on all frontages. Trees within street rights-of-way shall not count toward the number of trees required for a development site, unless approved by the director or designee.
 - 2. *Street frontage trees and shrubs.* Where a parking lot is adjacent to and within 50 feet of public street right-of-way, a minimum of one minimum one and one-half-inch diameter tree and four five-gallon or three-foot tall shrubs for every 40 feet (or portion thereof) of street frontage shall be installed using trees from the approved plant list (Appendix A). Shade trees must be used, unless under the canopy of an existing preserved tree, or near utility lines where ornamental trees must be used, as required in subsection 144-5.3-1(b)(6)ii. Trees shall be planted no closer than 20 feet apart. In no event may trees other than ornamental trees listed in Appendix A be planted under overhead power lines. All new trees shall be provided with a permeable surface of 60 square feet per tree under the drip line. All planting areas shall be a minimum of five feet in width.
 - 3. *Parking lot shading.* At least one minimum one and one-half-inch (1½") diameter tree per 14 parking spaces shall be planted in or adjacent to a parking lot. Shade trees must be used, unless under the canopy of an existing preserved tree, or near utility lines where ornamental trees must be used, as required in subsection 144-5.3-1(b)(6)(ii). All trees shall be planted in a minimum permeable area of 100 square feet per tree. These trees may be clustered for the purposes of existing tree preservation or to accommodate topographic constraints, but otherwise must be spread generally throughout the parking lot. Trees planted or preserved to meet this parking lot shading requirement are in addition to the required street frontage trees.
 - 4. *Turf.* No more than 30 percent of the parking lot landscaped area, not including detention ponds, shall be turf grasses, except buffalo and prairie grasses may be planted. Xeriscaping is preferred.
 - 5. *Residential buffer.* In addition to the masonry wall requirement in subsection 144-5.3-2(h), at least one tree per 25 linear feet of property, or part thereof, a minimum one and one-half inches (1½") in diameter, shall be planted along the common property line of the single-family or two-family property. Shade trees must be used, unless under the canopy of an existing preserved tree, or near utility lines where ornamental trees must be used, as required in subsection 144-5.3-1(b)(6)(ii). All new trees shall be provided with a permeable surface of 60 square feet per tree under the drip line. All planting areas shall be a minimum of five feet in width. Existing trees can be credited toward meeting the residential buffer requirement, per subsection 144-5.3-1(b)(6)(v), so long as the location and number of required trees is satisfied, or alternate compliance is demonstrated.



Zoning Board of Adjustment Agenda Item Report

550 Landa Street
New Braunfels, TX

11/18/2021

Agenda Item No. A)
