

## Legislation Details (With Text)

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|-----------------------|---|----------------------|-----------------------|
| <b>File #:</b>        | 21-1211   | <b>Name:</b>         |                       |
| <b>Type:</b>          | Report  | <b>Status:</b>       | Individual Item Ready |
| <b>File created:</b>  | 11/3/2021   | <b>In control:</b>   | Board of Adjustment   |
| <b>On agenda:</b>     | 11/18/2021  | <b>Final action:</b> |                       |
| <b>Title:</b>         | 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. |                      |                       |
| <b>Sponsors:</b>      |   |                      |                       |
| <b>Indexes:</b>       |   |                      |                       |
| <b>Code sections:</b> |   |                      |                       |
| <b>Attachments:</b>   | 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  |                      |                       |

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
|------|------|-----------|--------|--------|

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  
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**Staff Contact:** Maddison O'Kelley  
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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