

## Legislation Text

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File #: 21-57, Version: 1

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Presenter/Contact  
*Applicant, Chad Nolte*  
(830) 708-4745 - [thenolte@swbell.net](mailto:thenolte@swbell.net)

**SUBJECT:**

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

**BACKGROUND / RATIONALE:**

**Case#:** Z-20-019

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

[thenolte@swbell.net](mailto:thenolte@swbell.net) <<mailto:thenolte@swbell.net>>

**Staff Contact:** Maddison O'Kelley, Assistant Planner

(830) 221-4056 - <[mokelley@nbtexas.org](mailto:mokelley@nbtexas.org)>

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

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

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

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

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

- 1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;*** (The applicant states the location of the proposed home has been designed to allow two heritage pecan trees to be preserved by encroaching into the corner side setback. The applicant further states the home would be constructed too close to the existing detached shed if the home is setback 25 feet from N. Union Ave. Staff acknowledges the location of one existing tree is within the buildable area of the lot.)

*and*

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

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

**GENERAL INFORMATION:**

**Size:**

13, 750 square feet;

Lot depth 125 feet

Lot width 110 feet

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

No

**Surrounding Zoning and Land Use:**

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

South - R-2 / Single-family residence

East - R-2 / Single-family residence

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

**NOTIFICATION:**

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

**ATTACHMENTS:**

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