

## Legislation Text

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**File #:** 21-456, **Version:** 1

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**PRESENTER:**

Christopher J. Looney, AICP, Planning and Development Services Director

**SUBJECT:**

Approval of the second and final reading of an ordinance regarding a proposed rezoning to amend an existing Special Use Permit to allow an addition to a non-conforming single-family residence in the "M-1" Light Industrial District, addressed at 394 North Market Avenue.

**DEPARTMENT:** Planning and Development Services

**COUNCIL DISTRICTS IMPACTED:** Council District 5

**BACKGROUND INFORMATION:**

Applicant/Owner: Leonard & Kay Kobeski  
394 N. Market Avenue  
New Braunfels, TX 78130  
(832) 372-2733 kobeski@att.net

Staff Contact: Holly Mullins  
(830) 221-4054 hmullins@nbtexas.org

**City Council held a public hearing on April 26, 2021 and approved the first reading of this requested rezoning ordinance. (7-0-0)**

The subject property is located at the intersection of North Market Avenue and East Zink Street, in a predominantly residential block that is currently zoned M-1 (Light Industrial District). Residential is not allowed by right in industrial zoning districts, therefore in 2020, the applicants requested an SUP to make the existing home a conforming use, allowing them to obtain building permits for a planned addition to the house. That SUP was approved by City Council on January 11, 2021.

**ISSUE:**

The existing residence was constructed in 1896. While the use is now conforming, the structure remains legally non-conforming because it does not meet current building setbacks for a corner lot. The house encroaches 9 feet into the 25-foot front setback along Market Avenue, and almost 20 feet into the 25-foot street side setback along Zink Street. Non-conforming structures are allowed to remain but may not be enlarged without approval of a variance or SUP.

This SUP is being requested to authorize additions to the non-conforming structure. As proposed, a new sun porch at the rear of the house will continue the existing 5'-3" street side setback. The new two-story garage will meet the required 25-foot street side and 20-foot rear setbacks; however, a second floor deck is proposed to be 10 feet from the property line along Zink Street, an encroachment of 15 feet into the building setback.

Right-of-way from the property line to the edge of Zink Street pavement is shown to be 12'-9", which is not included in the setback measurement but does increase the separation between the structures and the roadway.

Surrounding Zoning and Land Use:

North - Across Zink Street, C-2/ Single-family residence

South - M-1 / Single-family residence

East - M-1/ Commercial

West - Across Market Ave, C-2/ Single-family residence with short-term rental

**FISCAL IMPACT:**

N/A

**RECOMMENDATION:**

**Commission Recommendation:**

The Planning Commission held a public hearing April 6, 2021 and voted to recommend approval of the request (6-0-0) with Commissioners Tubb, Mathis and Sonier absent.

**Staff Recommendation:**

Approval. Most of the residential structures in this area were constructed between 1890 and 1950, prior to implementation of zoning and setback standards, therefore building setbacks vary. Allowing improvements to a nonconforming structure in an established neighborhood is consistent with strategies of Envision New Braunfels to encourage fiscally responsible land use that takes advantage of existing infrastructure and discourages sprawl. The setback encroachment along Zink Street does not appear to pose a public safety or traffic visibility issue.

Notification:

Public hearing notices were sent to owners of 17 properties within 200 feet of the request. To date, the City has received 9 responses in favor and 0 in opposition.

Resource Links:

Chapter 144, Sec. 2-3 (Non-conforming Uses) of the City's Code of Ordinances:

[Nonconforming uses and structures. | Code of Ordinances | New Braunfels, TX | Municode Library](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH144ZO_ARTIIIZOPRAD_S144-2.3NOUSST)

[<https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH144ZO\\_ARTIIIZOPRAD\\_S144-2.3NOUSST>](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH144ZO_ARTIIIZOPRAD_S144-2.3NOUSST)

Chapter 144, Sec. 3.6 (SUP) of the City's Code of Ordinances:

[<https://library.municode.com/tx/new\\_braunfels/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH144ZO\\_ARTIIIZODI\\_S144-3.6SPUSPE>](https://library.municode.com/tx/new_braunfels/codes/code_of_ordinances?nodeId=PTIICOOR_CH144ZO_ARTIIIZODI_S144-3.6SPUSPE)

Attachments:

1. Aerial Map
2. Land Use Maps (Zoning, Existing, Future Land Use)
3. Application
4. Notification Map
5. Photographs
6. Ordinance