

## Legislation Text

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**File #:** 22-679, **Version:** 1

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Presenter/Contact

*Applicant: The Gardens at New Braunfels LLC - Jameson Gips  
jpgips@gmail.com*

**SUBJECT:**

ZB22-0011 Hold a public hearing and consider a request for a variance to Sec. 3.3-2(b)(1)(v) to allow a proposed single-family dwelling to encroach up to 15 feet into the required 20-foot rear setback, addressed at 261 S. East Avenue.

**BACKGROUND / RATIONALE:**

**Case #:** ZB22-0011

**Applicant:** Jameson Gips  
541 Magazine Avenue  
New Braunfels, TX 78130  
jpgips@gmail.com

**Staff Contact:** Maddison O'Kelley  
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The subject property is located on S. East Avenue, south of the fair grounds and public library and west of the cemetery. The property is considered an interior lot and is zoned "R-2" Single Family and Two-Family District. The lot is approximately 7,064 square feet in area with a lot depth of approximately 107 feet and a varied lot width of 61 to 71 feet. The buildable area of the lot, within the required setbacks for interior lots in "R-2", is approximately 3,162 square feet. The property is currently vacant.

The applicant is proposing to build a new single-family home with an estimated 1,050 square foot footprint on the property. The applicant intends to preserve heritage live oak trees situated approximately at the center of the lot and the proposed home is proposed to be constructed behind the trees, toward the rear of the lot. Section 3.3-2(b)(1)(v) of the Zoning Ordinance requires a minimum rear building setback of 20 feet for main structures. The applicant is requesting a variance to allow the proposed dwelling to encroach up to 15 feet into the required 20-foot rear setback in order to preserve the existing heritage trees. Therefore, if the variance is approved, the main structure would be set back 5 feet from the rear property line.

The City's Zoning Ordinance does not currently protect trees within residential zoning districts. If the variance is granted, staff recommends a condition be included that site development is limited to the rear 50 feet of the lot to protect the trees at the front 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 special circumstance affecting the land is the 100 year-old live oak trees at the center of the property and that a residence of a reasonable size would need to be sited further back on the property than what is standard to ensure the trees can be preserved. Staff acknowledges heritage trees as special circumstances that impact the land itself.) **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states the variance is necessary to ensure the dwelling has adequate living space and is buildable without impact the existing trees. Staff acknowledges the heritage trees on the property reduce the buildable area of the lot, however, the substantial property right to use the property for a residential dwelling is not removed due to the rear 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 will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. Staff acknowledges the impact to the surrounding area is likely minimal and notes the subject property's rear yard abuts the adjacent property's side and rear yard.) **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 within the area. While granting the proposed variance does not appear to pose a potential negative effect preventing orderly use of other land within the area, all neighboring properties will still be required to comply with zoning ordinance standards for new construction.) **and**
- 5) **That an undue hardship exists;** (The applicant states the heritage oak trees centered on the lot as undue hardships of the land itself. Staff acknowledges the buildable area of the lot is 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 City's regulations. Staff notes the intent of the rear setback requirement is to preserve open space for the use and enjoyment on residential 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:**

Lot area: 7,064 square feet

Lot depth: 107 feet

Lot width: Varies 61 feet to 71 feet

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

No

**Surrounding Zoning and Land Use:**

North - R-2 / Vacant

South - R-2 / Vacant

East - R-2 / Vacant

West - Across S. East Avenue, R-2 / Single Family Dwelling

**Notification**

Public hearing notices were sent to 9 owners of property within 200 feet. Staff has not received any responses to date.