

# STAFF REPORT



**Meeting:** December 5, 2016

**To:** Zoning Board of Adjustment

**From:** Jon James, AICP  
Director of Planning and Development Services

**Through:** Rebeca A. Guerra, AICP, LEED-AP, CPD  
Planning Manager

**Staff Planner:** Jeff Fisher  
Planner I

**Case:** Amendment to ZBA16-06

**Request:** Variance from 424.D of the Zoning Ordinance to allow a Radio Broadcast Tower, which exceeds 35 feet in height, to have a 34-foot setback from the boundary of a lot in a residential zoning district in lieu of 100 feet

**Location:** 901 North Main Street; generally located at the northwest corner of North Main Street and East 8<sup>th</sup> Street

**Size:** 0.982 acres

**Legal Description:** Specifically being 0.982 acres in the Exall Addition, Block 5, Lots 9-14

**General Information**

Zoning: Office Commercial (CO)  
Existing Land Use: 901 N. Main Street: Ninth & Main Church of Christ  
Future Land Use: Campus / Institutional

Surrounding Zoning/Land Use:

North:	Office Commercial (CO)	Concho Valley Baptist Association building
West:	Low Rise Multifamily Residence (RM-1)	Baptist Memorial Retirement Community AL-MC Houses
	Two-Family Residence (RS-2)	Baptist Memorial Geriatric Center
South:	General Commercial (CG)	Shell Gas and Convenience
East:	General Commercial (CG)	Auto Zone, new veterinarian clinic, Baptist Memorial Geriatric Center

District: SMD#3 – Harry Thomas

Neighborhood: Reagan Neighborhood

**History and Background:**

On April 18, 2016, the Zoning Board of Adjustment approved the applicant’s request for a Variance from Section 424.D of the Zoning Ordinance to allow the construction of a 90-foot radio broadcast tower on Lot 13 of the subject property, 41 feet from the residential zoning district to the west. The purpose of the tower is to provide a broadcast signal for a new church radio station on the property for the Church of Christ. Section 424.D of the Zoning Ordinance requires all telecommunication facilities, which include radio broadcast towers, to be setback a minimum of 100 feet “from the boundary of any lot or tract in a residential zoning district.” The site plan provided by the applicant at that time delineated a straight alley parallel to the rear property line, extending from Lot 9 to the end of Lot 14. The tower was shown setback 41’-6” to the residential lot immediately to the west of the alley, the Baptist Memorial Retirement Community AL-MC Houses zoned

Low Rise Multifamily Residence (RM-1). Based on the site plan provided at the time, it was assumed this property was the closest residential property to the future tower location, and the variance was approved to allow a 41-foot setback from this residentially zoned property.

On October 26, 2016, Planning Staff reviewed the building permit application for the associated tower and determined that the original site plan's depiction of the alley was incorrect. The Baptist Retirement Community AL-MC Houses, Section One Subdivision Plat delineated the correct alley as ending before the end of Lot 14 on a diagonal line parallel to the south lot line of the Baptist Memorial Geriatric Center to the northwest. This property is also zoned residential, Two-Family Residence (RS-2) and the tower would be setback only 34 feet from this residential property line, requiring an amendment to the original variance of 41 feet.

On November 16, 2016, the applicant submitted this amendment application to the original variance ZBA16-06. The revised site plan shows the correct alley with a 34-foot setback from the nearest residentially-zoned lot being the Baptist Memorial Geriatric Center to the northwest. The tower will still maintain a 41-foot setback from the AL-MC Houses lot to the west which was approved as part of the original request.

The proposed tower location will comply with all other tower setbacks of Section 424 of the Zoning Ordinance. The tower height has been increased from 90 feet to 98 feet requiring 19.6 side yard setbacks on Lot 13 and the revised site plan shows 20-foot side yard setbacks in compliance. The tower also requires a minimum 50-foot setback from an existing street right-of-way. The tower will be located 119 feet back from the front property line adjacent to the nearest street right-of-way, North Main Street in compliance.

The Permits and Inspections Division has reviewed the revised site plan and has no objections to the amended variance request.

The City Airport Director has also reviewed the revised site plan and has confirmed that a 98-foot radio broadcast tower in this location would not encroach into the city's airport flight path.

### **Analysis:**

Section 207(F) of the Zoning Ordinance requires that an applicant for a Variance must show that a hardship exists and that the Zoning Board of Adjustment make an affirmative finding that each and every one of the following six (6) criteria are met.

- 1. Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial.**

Staff believes that the limited amount of buildable space on the property, combined with the 100-foot setback requirement from the two residentially zoned lots to the west, create a special circumstance. The lots are only 150 feet wide and the telecommunication tower setbacks in the Zoning Ordinance require a 100-foot setback from the residential zoning districts to the west, and 50 feet to the east (front) property line facing North Main Street, requiring a variance under any scenario. The applicant requires new parking for the future church radio station and tower on Lots 13 and 14, and the Church of Christ building and existing parking lot consumes all of Lots 9-12. This leaves the subject location on Lot 13 as the only viable option, maintaining 41-foot and 34-foot setbacks from the residential districts to the west and northwest, respectfully.

- 2. These special circumstances are not the result of the actions of the applicant.**

The special circumstance is not the result of the applicant. The existing church building was built in 1959 according to the Tom Green County Appraisal District. According to Planning Division records, the AL-MC Houses property to the west has been zoned RM-1 since October 15, 2013, and was zoned RS-2 before that since at least 2000. The Geriatric Center property to the northwest has been zoned RS-2 since at least 2000. Given the residential zoning already in place, and the setback requirements for telecommunication facilities which are much greater than for buildings and other structures, the applicant requires a variance in order to construct a radio tower on their property in this particular location.

- 3. Literal interpretation and enforcement of the terms and provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship.**

Planning Staff believes that a literal interpretation of the Zoning Ordinance may deprive the applicants the rights enjoyed by others in the Office Commercial (CO) Zoning District. The tower is for a future radio church station for the existing church on the property: it is not intended to serve any other purpose. The CO zone allows religious institutions and broadcast towers for those institutions by-right. As indicated previously, the church has been on the property since 1959 and the tower would allow the church to broadcast church radio to residents of San Angelo. The applicant had received a letter of support from the Baptist Retirement Community for their original request. The applicant has also indicated on their application that their neighbors to the west are in agreement with the proposed location. Based

on the above, Staff believes that approval the proposed tower would be appropriate.

**4. Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of this Zoning Ordinance and substantial justice.**

As previously stated, the amended variance request is not changing the location of the tower, it is simply a “clean up” of the original request which did not show the correct setback based on an incorrect delineation of the abutting alley. The tower maintains a 41-foot setback from the west residential property as approved per the original request, as well as maintaining a substantial 34-foot setback from the northwest residential property, measured from the diagonal end of the alley. As indicated in the previous Staff Report, the new tower is approximately 58 feet to the nearest building, on the Baptist Geriatric Center lot.

**5. Granting the variance will not adversely affect adjacent land in a material way.**

Planning Staff does not believe any adjacent land will be affected in any material way. The radio tower is only 90 feet in height, unlike traditional telecommunications towers which can range from 150-180 feet in height. The substantial setback to the nearest building on the Baptist site provides further justification to support this Variance request. Finally, no objections have been received from any adjacent property owners.

**6. Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.**

Staff believes the proposed Variance is consistent with the purpose and intent of the Zoning Ordinance. Moreover, the proposed radio tower appears to comply with all development standards of the Zoning Ordinance in all other respects. The revised site plan shows 17 new parking spaces to be provided on Lots 13 and 14 for the church radio station. Whereas the tower is accessory to the church, no additional parking will be required for the tower, but any temporary parking for maintenance of the tower may utilize the existing Church of Christ parking area, or the new parking area on Lots 13 and 14. The applicant has shown a future 7-foot high privacy fence along the west property line as required by the Zoning Ordinance abutting the residential uses and zoning districts.

**Notification:**

On November 22, 2016, eight notifications were mailed out within a 200-foot radius of the subject site. As of November 23, 2016, there were no responses in favor and none in opposition of the request. Staff have reattached the letter of support from the Baptist Retirement Community located immediately west of the subject property. As of date of this Staff Report, Staff have no received any additional support letters.

**Staff Recommendation:**

Staff's recommendation is for the Zoning Board of Adjustment to **APPROVE** an Amendment to Case ZBA16-06 for a Variance from 424.D of the Zoning Ordinance to allow a Radio Broadcast Tower, which exceeds 35 feet in height to have a **34-foot setback** from the boundary of a lot in a residential zoning district in lieu of 100 feet, **subject to the following three Conditions of Approval:**

1. The applicant shall be required to install a minimum 6-foot high opaque privacy fence along the west property line adjacent to the residential Zoning District, prior to any future development on Lot 13 or Lot 14. A portion of the required 7-foot high tower security fence shown on the Site Plan may be used to satisfy this requirement, providing it is opaque and of wood, masonry, or metal construction.
2. The applicant shall demolish the existing accessory structure on Lot 14 prior to any development on this lot. A demolition permit shall be required from the Permits and Inspections Division with a final inspection completed.
3. The applicant is required to obtain a permit from the Permits and Inspections Division for the new radio tower.

**Effect of Variance:**

Per Section 207(H) of the Zoning Ordinance:

1. Issuance of a Variance shall authorize only the particular variation which is approved in the Variance. A Variance shall run with the land.
2. Unless otherwise specified in the Variance, an application to commence construction of the improvements that were the subject of the Variance request must be applied for and approved within 12 months of the date of the approval of the Variance; otherwise, the Variance shall automatically

become null and void. Permitted time frames do not change with successive owners. Upon written request, only one (1) extension from the 12-month period may be granted by the Planning Manager if it is determined that conditions of the site and immediately surrounding area are substantially unchanged.

**Attachments:**

Aerial Map  
Future Land Use Map  
Zoning Map  
Notification Map  
Letter of Support  
Full Site Plan  
Partial Site Plan  
Elevation  
Site Photos  
Application

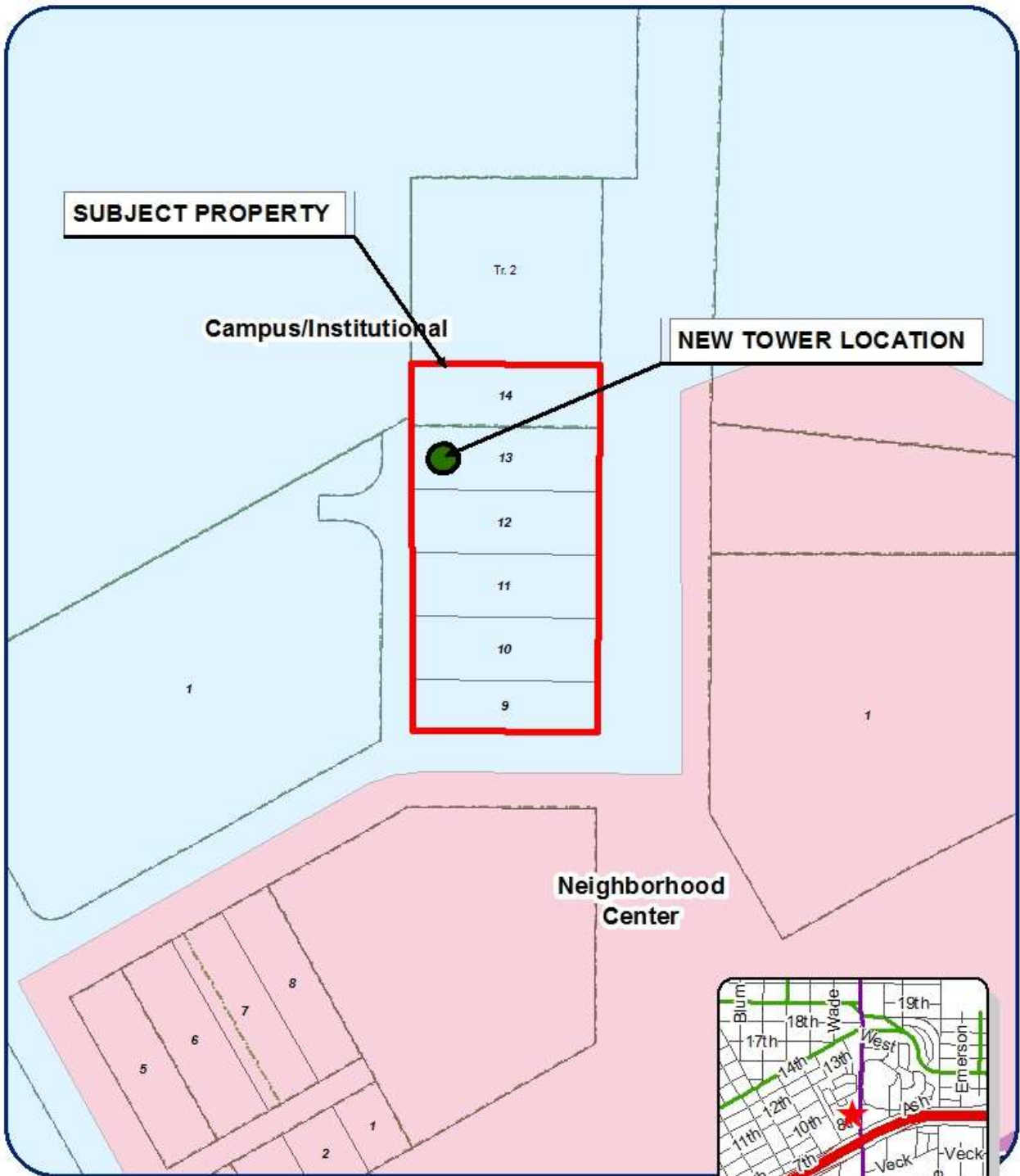


**Variance Case File**  
**Amendment to ZBA16-06**  
 Council District: Harry Thomas (SMD #3)  
 Neighborhood: Reagan  
 Scale: 1" approx. = 100 ft  
 Subject Property: 901 N. Main St.

**Legend**  
 Subject Properties:   
 Current Zoning: **CO**  
 Requested Zoning Change: **N/A**  
 Vision: **Campus/Institutional**



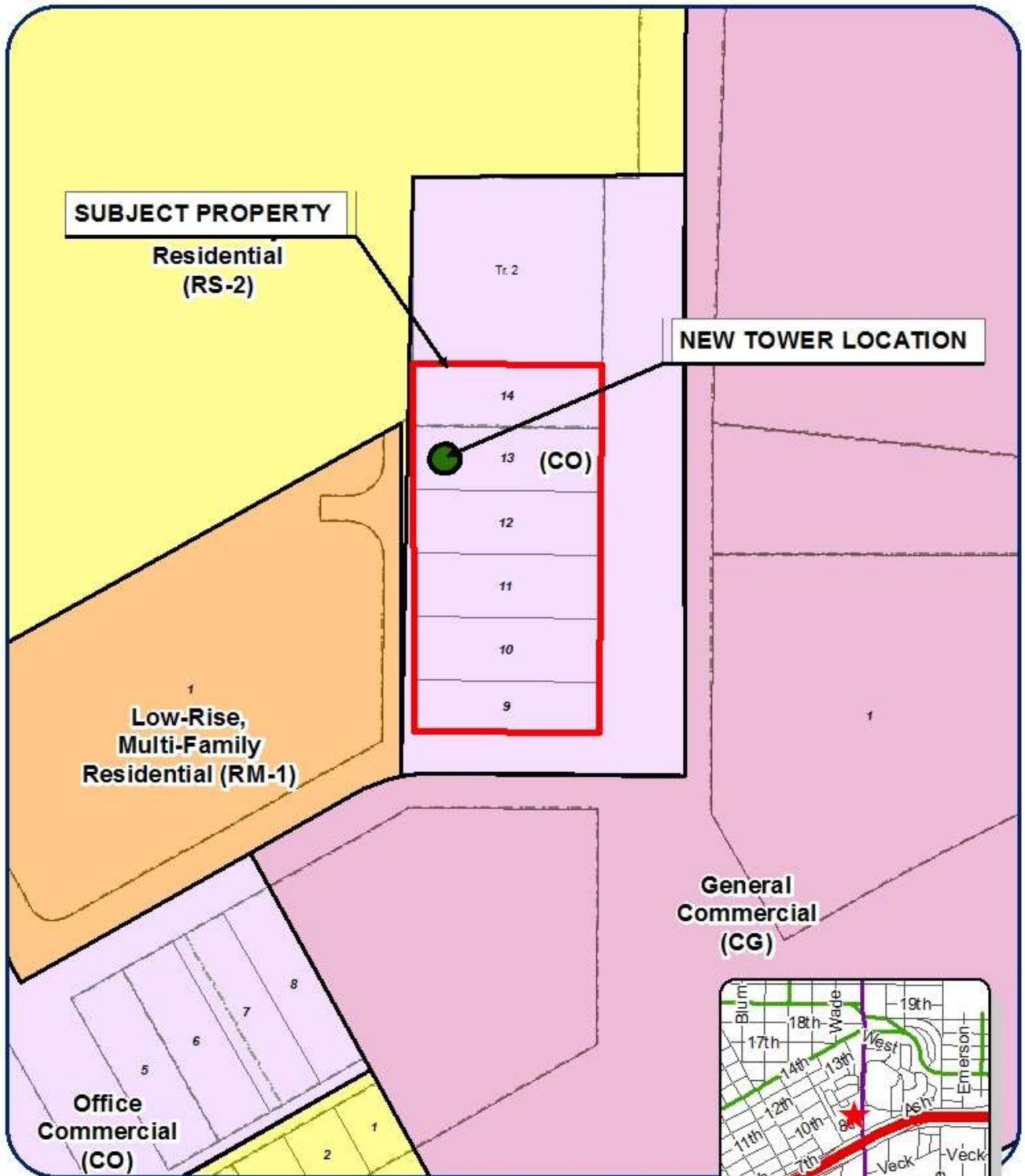




**Variance Case File**  
**Amendment to ZBA16-06**  
 Council District: Harry Thomas (SMD #3)  
 Neighborhood: Reagan  
 Scale: 1" approx. = 100 ft  
 Subject Property: 901 N. Main St.

**Legend**  
 Subject Properties:   
 Current Zoning: CO  
 Requested Zoning Change: N/A  
 Vision: Campus/Institutional

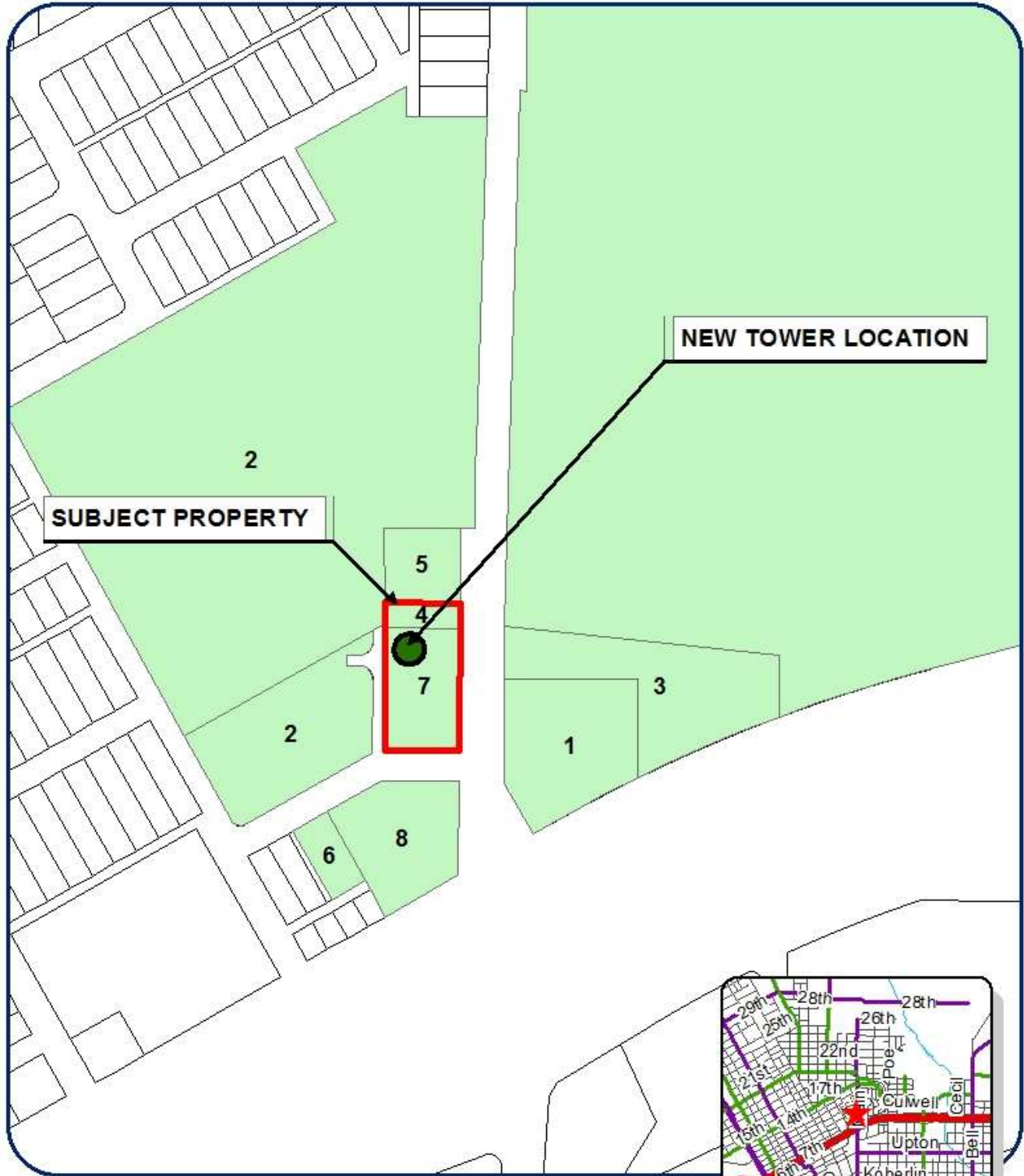




**Variance Case File**  
**Amendment to ZBA16-06**  
 Council District: Harry Thomas (SMD #3)  
 Neighborhood: Reagan  
 Scale: 1" approx. = 100 ft  
 Subject Property: 901 N. Main St.

**Legend**  
 Subject Properties: —  
 Current Zoning: **CO**  
 Requested Zoning Change: **N/A**  
 Vision: **Campus/Institutional**





**Variance Case File**  
**Amendment to ZBA16-06**

Council District: Harry Thomas (SMD #3)  
 Neighborhood: Reagan  
 Scale: 1" approx. = 250 ft  
 Subject Property: 901 N. Main St.

**Legend**

Subject Properties:   
 Current Zoning: CO  
 Requested Zoning Change: N/A  
 Vision: Campus/Institutional



## Dennis Reed

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**From:** Quinda Feil-Duncan <Quinda.Feil-Duncan@baptistretirement.org>  
**Sent:** Thursday, March 03, 2016 5:28 PM  
**To:** Dennis Reed  
**Subject:** RE: Radio Station and Tower

Dennis,

I hope this email can serve as an indication of Baptist Retirement Community's support of the radio station and tower which you wish to build along North Main Street. We appreciate what the church is doing to enhance the area and to serve a broader mission field. We look forward to seeing your progress as we too expand our services and invest in the neighborhood.

Thank you,

Quinda Feil-Duncan  
Executive Director  
Baptist Retirement Community

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**From:** Dennis Reed [<mailto:dennisreed@juno.com>]  
**Sent:** Thursday, March 03, 2016 2:46 PM  
**To:** Quinda Feil-Duncan  
**Subject:** Radio Station and Tower

Good afternoon Quinda,

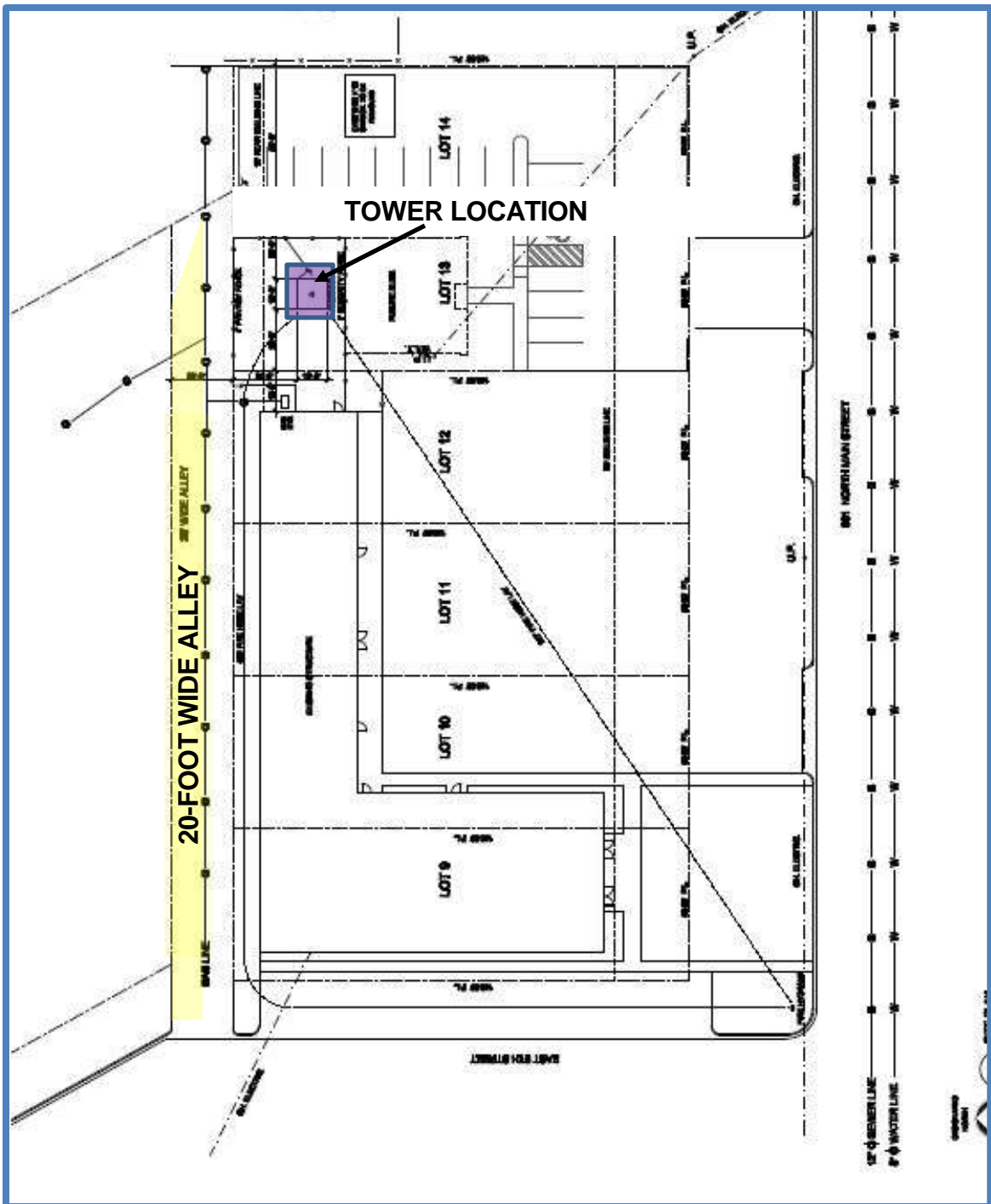
I have attached James' layout of the station and tower. We found out just today that if we can file the variance tomorrow, we can get on this month's agenda. If you can at all possible write the letter of support and e-mail it to me it would be greatly appreciated. Please give me a call if you have any questions.

Thanks so much,

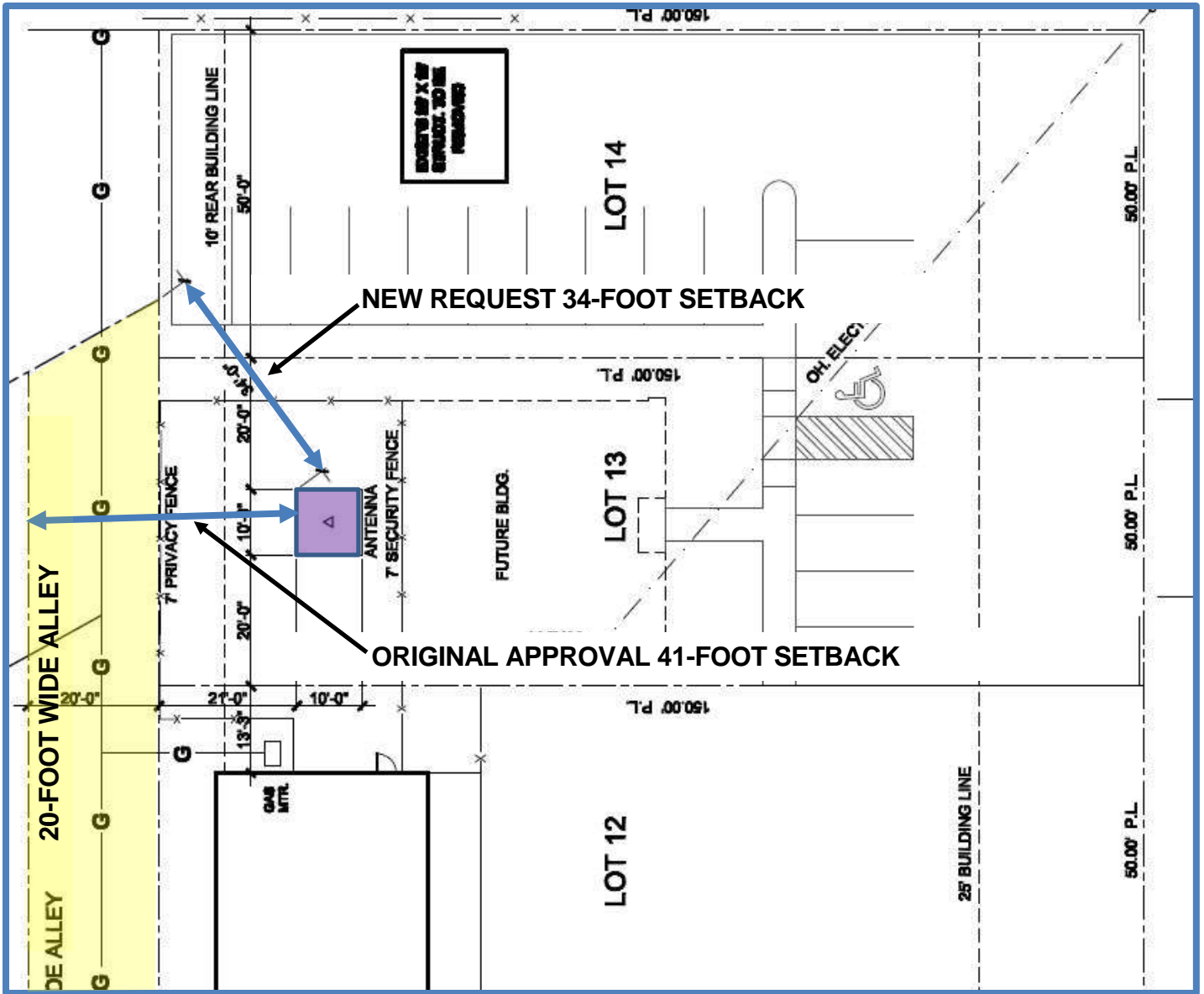
Dennis Reed

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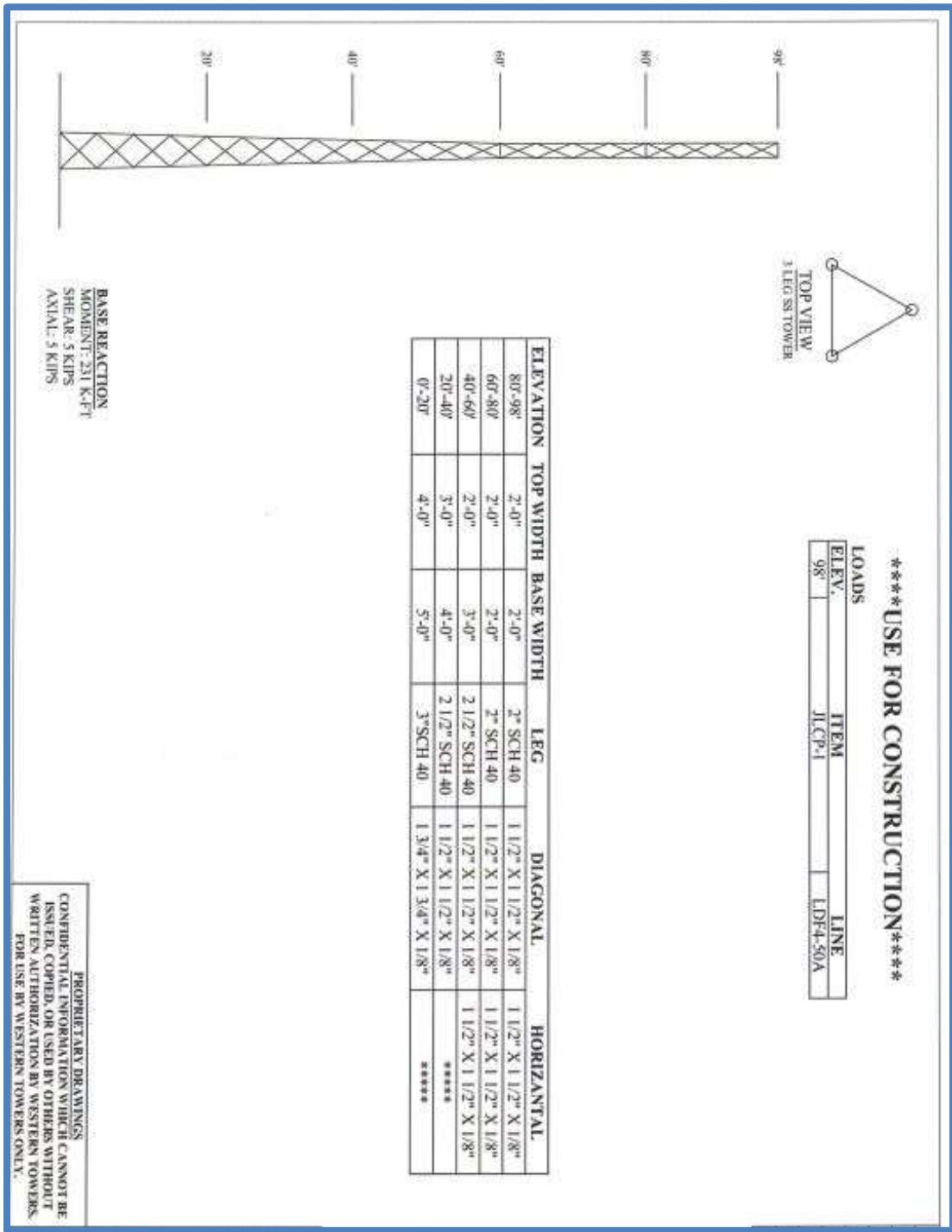
# Full Site Plan



# Partial Site Plan



## Elevation (98-foot radio tower)



**SITE PHOTOS**

**North**



**South**



**West**



**East**





**SITE PHOTOS - CONTINUED**

**West at Church (Lots 9-12)**



**West at Future Tower Location (Lot 13)**



### Application for Variance from Zoning Regulations

Name of Applicant(s): 9th & Main St Church of Christ

Owner       Tenant       Representative (Affidavit required)

Mailing Address: 901 N. Main St Telephone: (325)942-8984/(325)653-4642

City/State/Zip: San Angelo, TX 76903 Fax/other: (325)942-5751

Email Address: dennisreed@juno.com

Subject Property Address and/or Location\*:  
The 9th & Main St church of Christ located at the corner of 8th St and Main.  
Location includes lots 9 through 14 of Block 5, Exall addition.

Legal Description\*:  
Exall Addition, Block 5, Lots 9-14. This is the legal description of the lots where the variance is being requested.

Zoning: Office Commercial (CO)

Specific Description of Request\*:  
We are requesting a variance to allow the construction of our FM radio tower to be located 21' from our western most property line. With the inclusion of the alley allowance, the tower base will begin 41' from the western most line.  
Additionally the variance will allow the construction of our FM radio tower to be located 34' from the NW corner of the tower to the closest adjacent residential property line.  
\* use attachment, if necessary

I/We the undersigned acknowledge that the information provided above is true and correct, and have read the statements below.

  
\_\_\_\_\_  
Signature

11/14/16  
\_\_\_\_\_  
Date

- I understand that the Zoning Board of Adjustment is bound by criteria established by state law; I further understand that my request is not guaranteed to be approved and that it constitutes an exception from regulations of the City of San Angelo;
- I/We the undersigned acknowledge that the information provided above is true and correct. I/We understand that any variation(s) authorized by the Zoning Board of Adjustment will require me/us to obtain a building permit for that stated variation within twelve (12) months of the approval date by the Board, unless the Board has specifically granted a longer period;
- I understand that all drawings, pictures, documents or other information used during your testimony to the Board must be kept in the permanent files of the Planning Division; and
- I understand that any appeal of a decision made by the Zoning Board of Adjustment must be presented to a court of record with a verified petition stating that the decision of the Zoning Board of Adjustment is illegal in whole or in part and specifying the grounds of the illegality. This petition for appeal must be presented within ten (10) days after the date the decision is filed in the board's office.

I assert that my request for variance meets all of the required criteria based on my explanation(s) below:

- Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial;  
Explanation: This is an existing church property which will be using a portion of its' existing parking for the radio tower and station. It would be detrimental to place the tower in the center of the parking area. There is no financial benefit to us.
- These special circumstances are not the result of the actions of the applicant;  
Explanation: The current zoning setbacks for telecommunications towers force us to request a variance. With 100' and 50' setbacks on a lot 150' long there is no place to place the tower without a variance.
- Literal interpretation and enforcement of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship;  
Explanation: Given that the lot is 150' long we have no choice but to request the variance. Without the variance we will be deprived the right to construct and operate our FM radio station as granted by the FCC.
- Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of the Zoning Ordinance and substantial justice;  
Explanation: The radio tower and station are in accordance with the zoning of this property. The radio station will be operated in harmony with the existing property usage by the church.
- Granting the variance will not adversely affect adjacent land in a material way; and  
Explanation: We have spoken with our neighbors on the west side of Main St. They are in agreement with the proposed location. This location is obviously better for all neighbors aesthetically.
- Granting the variance will be generally consistent with the purposes and intent of the Zoning Ordinance.  
Explanation: The current usage as well as the operation of a radio station are and will be in compliance with the existing zoning of Office Commercial.

OFFICE USE ONLY	
Case no.: ZBA <u>Amendment to 16-06</u>	Date of application: <u>11/16/2016</u>
Fully-dimensioned site plan: <input type="checkbox"/> Nonrefundable fee \$ <u>200</u>	Date paid: <u>11/16/2016</u>
Date to be heard by ZBA: <u>12/5/2016</u>	Received by: <u>Jeff Fisher</u>
Receipt Number: <u>                    </u>	
Ordinance section(s) from which variance(s) is/are requested: <u>424-D.</u>	