

ZONING BOARD OF ADJUSTMENT – November 6, 2017
STAFF REPORT



APPLICATION TYPE:		CASE:	
Variance		ZBA17-19: Tankersley	
SYNOPSIS:			
<p>This request is for variance from Section 509B.3. of the Zoning Ordinance, to build a 6-foot fence, along the west property line, with a zero foot front yard setback in lieu of a maximum four foot fence within the front yard setback. The applicants are seeking to rebuild a fence that was damaged during a recent storm. Originally, the fence was built within the front-yard setback at 17 feet, however, the applicants are requesting to move the fence to a zero foot setback and build directly on the property line. Their property is a corner lot, located at the intersection of Old Post Road and Forest Trail. As such, their lot is considered a double lot, and their side-yard, where they would like to build a 6-foot fence at the property line, is considered a front-yard with a 25-foot setback. A majority of the other homes that front along Old Post Road and Forest Trail were built consistent with the 25-foot front setback requirement.</p>			
LOCATION:		LEGAL DESCRIPTION:	
3553 Old Post Road; generally located at the southeast corner of the intersection of Old Post Road and Forest Trail		College Hills West Addition, Block 1, Lot 11 – Less the east two feet in Section 1	
SM DISTRICT / NEIGHBORHOOD:	ZONING:	FLU:	SIZE:
SMD District #6 – Billie DeWitt Sunset Neighborhood	RS-1 – Single Family Residential	N – Neighborhood	0.24 acres
THOROUGHFARE PLAN:			
<p>Old Post Road – Urban Local Street Required: 50' right-of-way, 40' pavement or 36' pavement with a 4-foot-wide sidewalk Provided: 55' right-of-way, 40' pavement with no sidewalk</p> <p>Forest Trail – Urban Local Street Required: 50' right-of-way, 40' pavement or 36' pavement with a 4-foot-wide sidewalk Provided: 55' right-of-way, 40' pavement with no sidewalk</p>			
NOTIFICATIONS:			
22 notifications were mailed out within a 200-foot radius on October 19, 2017. Staff has received one letter in support and one in opposition.			
STAFF RECOMMENDATION:			
Staff recommends that the Zoning Board of Adjustment DENY a Variance from Section 509B.3. of the Zoning Ordinance to allow for a six (6) foot fence, to be constructed along the west property line, with a zero (0) foot front yard setback in lieu of a maximum four (4) foot fence within the front yard setback.			
PROPERTY OWNER/PETITIONER:			
<p><i>Property Owners:</i> Laddell and Kristy Tankersley</p> <p><i>Agent:</i> None</p>			
STAFF CONTACT:			
Kristina Heredia, Planner (325) 657-4210, Extension 1546 Kristina.Heredia@cosatx.us			

Special Uses: 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.**

Though the applicant's lot is situated in a manner that the Zoning Ordinance deems to have double frontage, this setup is common throughout the City and there is no special circumstance that would disallow the applicant the ability to build or rebuild a fence within the required setback. The Zoning Ordinance allows all property owners the ability to build a 4-foot tall fence on the property line. However, the applicant wishes to build a six foot tall fence. Doing so would interrupt the cohesiveness of the street frontage and could be considered a safety hazard as the potential exists to block the view of any car parked in the adjacent property owner's driveway, a concern which was brought to the City's attention in the attached comment card from that same neighbor.

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

When the applicant purchased the home a few years ago, the current fence was already in place approximately 17 feet from the property line. The applicant learned of the status as double frontage lot upon seeking a permit to rebuild the fence after it was destroyed in a recent storm. The applicant has indicated that the purpose of the fence is to enclose the back-yard of their property. Unfortunately, to erect the fence at a zero foot setback will alter the streetscape in such a manner that the aforementioned circumstances, double frontage, are no longer applicable.

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.**

The applicant is requesting a variance that would allow for a "right" not commonly enjoyed by anyone else in the neighborhood or in similar circumstances. No other property has a fence constructed to the height and location the applicant is requesting. To allow one resident to build a fence contradictory to the Zoning Ordinance would create disruption to the streetscape and would effectively eliminate the consistent building line along Forest Trail.

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.**

The granting of this variance will allow the applicant to do what is requested. However, granting the variance to allow a zero foot setback appears to be contrary to the public interest. The surrounding neighborhood does not have any fences that protrude to the extent that the applicant is requesting. Furthermore, the fact remains that the applicant could have requested to rebuild the fence in the same location as it existed before the storm. Planning staff would recommend approval of such a variance, but to encroach closer, especially to the lot line as the applicant desires, is contrary to the letter and spirit of the Zoning Ordinance which establishes setback lines for the public's health, safety, and welfare, none of which are furthered by granting this variance.

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

By allowing the applicant to build a 6-foot tall fence at the property line, the line-of-sight is impeded for the adjacent property owner. The adjacent property's driveway is situated directly perpendicular to the location of the proposed fence. The potential exists for a driving hazard if the adjacent property owner is forced to exit the driveway with the limited visibility created by the proposed fence. This is, in fact, the basis of the letter of objection submitted by the neighbor who will be directly impacted by the fence's proposed location.

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

The Zoning Ordinance allows property owners the ability to build higher fences in the back and side yards to enclose their backyards, but not where a Double Frontage Lot exists that would negatively impact adjacent properties. To allow the applicant to build a 6-foot tall fence at the proposed location on the property line, is not only contrary to the intent of the Zoning Ordinance, it also creates a situation where safety and aesthetics are compromised.

Allowed Variances:

In exercising its authority to grant a variance, per Section 207D. of the Zoning Ordinance, the Zoning Board of Adjustment must affirmatively find that one or more of the following circumstances applies:

1. **SPECIAL CIRCUMSTANCES RESULTING IN UNNECESSARY HARDSHIP.** *Where special circumstances exist on the property related to the size, shape, area, topography, surrounding conditions or location that do not generally apply to other property in the same zoning district, and that the circumstances are such that strict application of this zoning ordinance would create an unnecessary hardship or deprive the applicant of reasonable use of the land or building.*

The applicants have indicated that they believe they have a special circumstance in that they have a double frontage lot, thereby requiring them to have two front yard areas, each with a 25-foot setback for fences over four (4) feet in height.

2. **OVERRIDING PUBLIC INTEREST.** *If the variance further an overriding public interest or concern, including, but not limited to: (a) Preserving the natural environment, (b) Promoting maintenance or reuse of older urban or historic buildings, or (c) Helping to eliminate a nonconforming use at another location.*
3. **LITERAL ENFORCEMENT.** *If it is found that the literal enforcement and strict application of this Zoning Ordinance will result in extraordinary circumstances inconsistent with the general provisions and intent of this ordinance, and that, in granting the variance, the spirit of the ordinance will be preserved and substantial justice done.*

Recommendation:

Staff recommends that the Zoning Board of Adjustment **DENY** a Variance from Section 509B.3. of the Zoning Ordinance for a six (6) foot fence, to be constructed along the west property line, with a zero (0) foot front yard setback in lieu of a maximum four (4) foot fence within the front yard setback.

Attachments:

Aerial Map
Future Land Use Map
Zoning Map
Notification Map
Aerial showing location of proposed fence and current fence
Comment Card Received in Opposition
Photographs




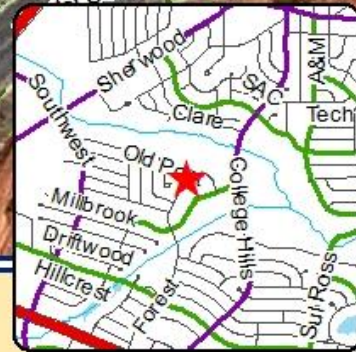
Aerial Map

Case ZBA17-19

Council District: Billie DeWitt
Neighborhood: Sunset
Scale: 1" approx. = 150 ft
Subject Property Legal Description(s): College Hills West Addition, North, Block 1, Lot 11

Legend

- Subject Properties: 
- Current Zoning: **RS 1**
- Requested Zoning Change: **N/A**
- Vision: **Neighborhood**





Future Land Use (FLU) Map

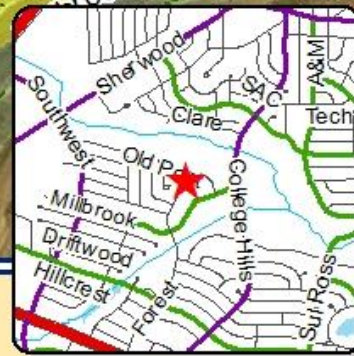
Case ZBA17-19

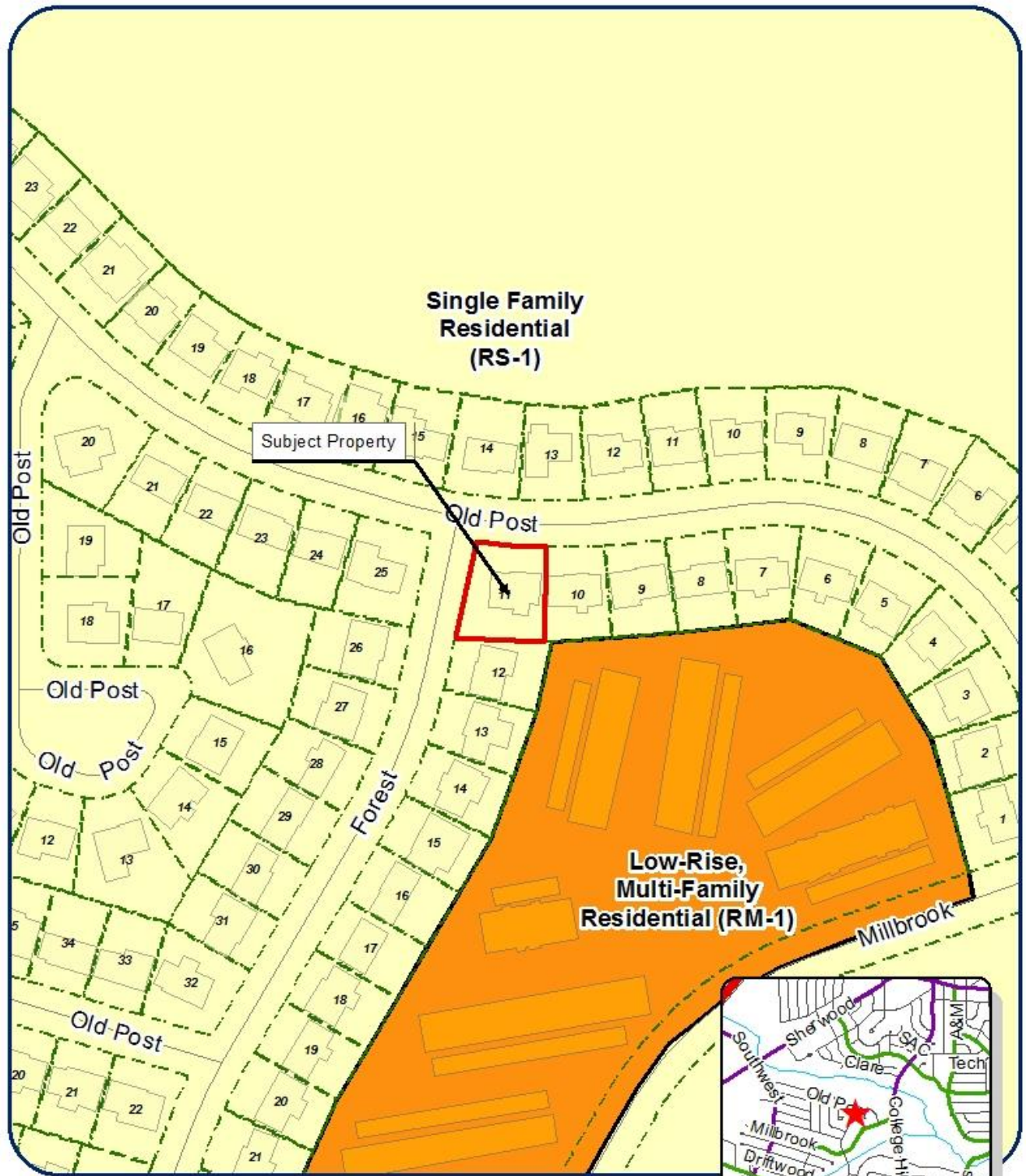
Council District: Billie DeWitt
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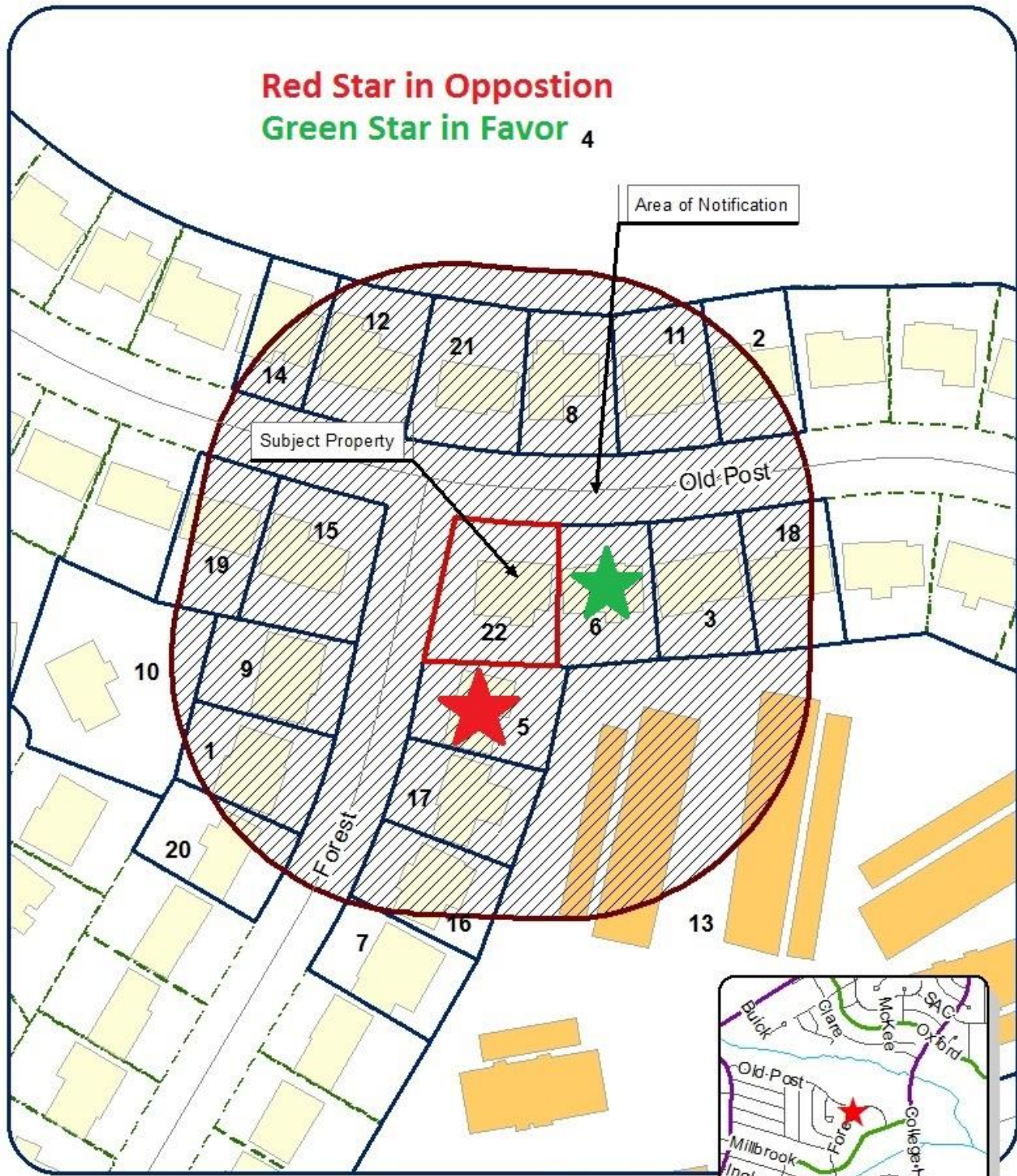
Zoning Map
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Red Star in Opposition
Green Star in Favor 4

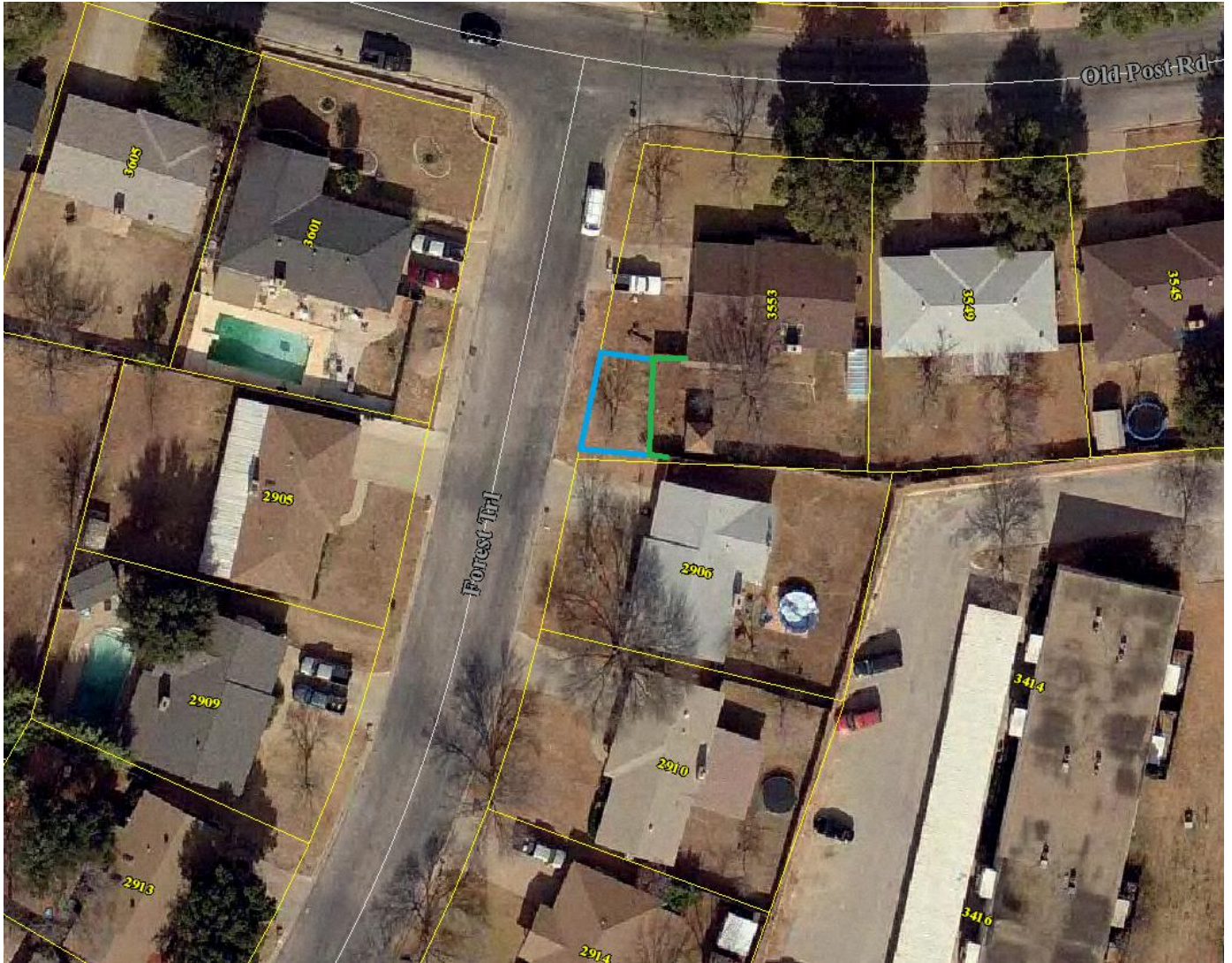
Notification Map
Case ZBA17-19

Council District: Billie DeWitt
Neighborhood: Sunset
Scale: 1" approx. = 100 ft
Subject Property Legal Description(s): College Hills West Addition, North, Block 1, Lot 11

Legend
Subject Properties: RS 1
Current Zoning: N/A
Requested Zoning Change: N/A
Vision: **Neighborhood**



AERIAL SHOWING CURRENT FENCE LOCATION AND STAFF'S PREFERENCE AT 17' (GREEN) AND APPLICANT'S REQUEST AT 0' (BLUE)



Letter Received in Opposition

TO BE FORMALLY ON RECORD IN FAVOR OR AGAINST THIS REQUEST, YOU MAY ALSO FILL OUT THIS FORM, SIGN IT AND MAIL IT BACK TO THE PLANNING DIVISION AT 52 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903.

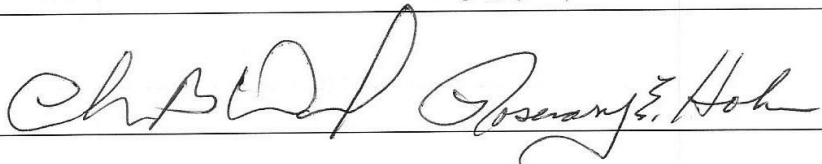
() IN FAVOR (X) IN OPPOSITION

REASON(S) Eliminating the set back
for fencing to 0 feet would
eliminate visability for cars backing
out of our Forest Trail property's
driveway. TRAFFIC coming from North
on Forest Trail is 2x more likely than
coming from south.

In addition to the above safety concern,
we believe this would also negatively
affect the value of our property.

NAME: Charles B. Daniel & Rosemary E. Holm

ADDRESS: 3009 GRANDVIEW
76904

SIGNATURE: 

ZBA17-19: Tankersley
Property Owner number: 5

If you have any questions about these proceedings, please call Kristina Heredia, Planner, with the City of San Angelo's Planning Division at telephone number 325-657-4210, ext. 1546. The Planning Division staff may also be reached by email at kristina.heredia@cosatx.us.

Photos of Site and Surrounding Area

FRONT ON OLD POST ROAD



SIDE ON FOREST TRAIL



LOOKING WEST ON OLD POST ROAD



LOOKING SOUTH ON FOREST TRAIL



Photos of Site and Surrounding Area

SIDE OF FENCE, 17' FROM PROPERTY LINE



MISSING FENCE

