

ZONING BOARD OF ADJUSTMENT – March 4, 2019
STAFF REPORT



APPLICATION TYPE:		CASE:	
Variance		ZBA19-01: Wheat	
SYNOPSIS:			
<p>On February 1, 2019, the applicants who own the property submitted a variance requesting to allow a 2-foot rear yard setback in lieu of the required 20 feet in the Single-Family Residential (RS-1) Zoning District. The purpose of the request is to allow a rear expansion onto the existing single-family dwelling built in 1982, according to county records. The existing home is setback 18 feet from the rear property line. The current floor area is 1,432 square feet and the additional +/- 478-square feet of floor space will include a bedroom addition, living room addition, and great room. A small portion of the existing office will be removed to accommodate the living room addition (See additional information).</p>			
LOCATION:		LEGAL DESCRIPTION:	
211 Rio Concho Drive, located approximately 250 feet southeast of the intersection of Las Lomas Drive and Rio Vista Circle		0.718 acres in the P. Duffy Survey 171, Abstract 133, and 0.060 acres in the P.W. McNeese Survey No. 1 (Tract 59).	
SM DISTRICT / NEIGHBORHOOD:		ZONING:	FUTURE LAND USE:
SMD District #1 – Tommy Hiebert Nasworthy Neighborhood		RS-1	N- Neighborhood
SIZE:			
0.778 acres			
THOROUGHFARE PLAN:			
<p>Rio Vista Circle – Urban Local Street Required: 50’ right-of-way, 40’ pavement or 36’ feet with a 4’ sidewalk; Provided: 50’ right-of-way, 26’ (complied at the time of platting)</p> <p>Future Arterial Road east of property – Urban Arterial Street Required and to be provided: 80’ right-of-way, 64’ pavement</p>			
NOTIFICATIONS:			
11 notifications were mailed within a 200-foot radius on March 4, 2019. Four letters have been received in support (one outside the 200’ radius) and none in opposition of the request to date.			
STAFF RECOMMENDATION:			
Staff’s recommendation is for the Zoning Board of Adjustment (ZBA) to DENY a variance from Section 501.A of the Zoning Ordinance to allow for a rear yard setback of two feet in lieu of the required minimum rear yard setback of twenty (20) feet, for a house within the Single Family Residential (RS-1) Zoning District located at 211 Rio Vista Circle.			
PROPERTY OWNER/PETITIONER:			
Property Owners and Applicants: Mr. Neil and Julie Wheat			
STAFF CONTACT:			
Jeff Fisher, AICP Senior Planner (325) 657-4210, Extension 1550 jeff.fisher@cosatx.us			



Additional Information: The applicants purchased the property and the lot immediately north in 2001. They have utilized the barn on the lot to the north, as well as several accessory structures behind their property in City right-of-way outside City limits. They are in process of entering a 3-year lease until 2022 with the City for the first 50 feet of the right-of-way directly behind their properties. This right-of-way is identified as a future arterial road to connect F.M. 594 to the south to Foster through to Loop 306 to the north.

Variations: 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.**

The applicants' indicate a special circumstance that there are no neighbors behind their house and that they will be leasing an additional 50 feet from the City. The Planning Division does not believe that this situation meets the test for a special circumstance. From aerial photography, it was determined that this is the only lot of the 33 lots in the 1-mile stretch of Las Lomas where the single-family dwelling encroaches into the rear yard setback. Of these 33, four of them were in the same zoning district RS-1 and complied with the rear yard setback. The remaining 29 are zoned Ranch and Estate (R&E) which also requires the same 20-foot rear yard setback. The 33 lots studied all have similar configurations with their rear yards abutting the City Limit line. The applicant could have extended to the side of the home but decided to encroach into the rear yard setback further. While it is more practical to extend the existing living room to the rear as opposed to creating a separate living room, an inconvenience does not extend to the level of a hardship or special circumstance. In addition, the City's Master Thoroughfare Plan identifies the right-of-way behind the property for a new 64-foot wide arterial road which would allow high volumes – and high speed- traffic. The applicants' lease is only for three years and not indefinitely.

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

While the original house was built in 1982 it was close to meeting the current RS-1 zoning rear yard setback of 20 feet. By choosing to encroach into this already deficient setback to two feet, the applicant is creating this unnecessary circumstance. Allowing a two-foot setback could set a precedent in the future for the other 32 lots abutting the future arterial roadway to do the same. At such time this road is built, it would create an incompatible and potentially unsafe situation with high speed traffic driving perpendicular and in close proximity to homes. Maintaining the existing 18-foot rear yard setback would maintain an appropriate buffer and avoid an unnecessary encroachment, particularly when other options are available.

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 applicants indicate there are no neighbors behind them and there will never be. While this may be true, prohibiting further encroachment would not deprive the applicant the same rights as other property owners in the same zoning district. All other RS-1 properties abutting the City Limits are also subject to the same rear yard setback. A hardship could be avoided if the applicant built to the side or on top of the existing home.

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 applicants indicate that there is no other place to add the additional floor area. As indicated, the applicants could build to the sides or on top of the existing home. Therefore, the Planning Division does not believe this is the minimum action necessary.

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

The Planning Division concurs with the applicants that granting the variance will not adversely affect any adjacent land. However, the Division is concerned with the impact the variance will have at such time as a future arterial road is constructed. If the applicants and other property owners are granted variances, safety and traffic issues could arise once a future arterial road is constructed.

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

The Planning Division believes that the variance request is inconsistent with the intent of the Zoning Ordinance. Section 104.2 requires the protection of “the character and the established pattern of desirable development in each area.” The zoning ordinance requires a 20-foot rear yard to provide property owners with an uninterrupted rear yard area and view, as well as consistency in neighborhood design. Allowing a variance to only two feet would be contrary to the zoning ordinance including this purpose statement. In addition, Section 105.C.3 calls “to protect areas against heavy and hazardous trucking traffic”. The proposed arterial road located behind the property will extend over six miles. As a 64-foot wide road, it can accommodate large traffic volumes including truck traffic to and from Loop 306 at its north end. Allowing a rear yard encroachment of two feet to the property line contravenes this provision, creating a potentially dangerous scenario of truck and vehicular traffic close to homes.

It is noted that in the past 5 years, only 7 variances were granted for rear yard setbacks, one to allow a 13-foot rear yard to compensate for a permit issued in error, and the remaining 6 for 18-foot rear yard setbacks. The subject request would allow a 2-foot variance, which is a significant encroachment which has not been allowed in at least the past 5 years in San Angelo by variance.

Master Thoroughfare Plan and Similar Roads

The subject property is adjacent to a future minor arterial road which when built will be 64 feet in width with a 100-foot right-of-way. Once the road is constructed, there will be an 18-foot right-of-way on the west side of the street adjacent to the property. Factoring in for curbing, a sidewalk, and other street improvements, a minimum buffer would separate the proposed addition from the street.

Staff researched several other arterial roads of similar size which also intersected with predominantly residential development (see attached photos). The Chadbourne Street example illustrates an existing church in close proximity to the right-of-way. This however, is a non-residential building and acts as a front yard. The Planning Division is concerned with traffic and safety impacts on a residential building in a rear yard this close to an arterial roadway. Single-family residential neighborhoods are designed to provide adequate separation from arterial roads. Further, the Zoning Ordinance requires a minimum 20-foot rear yard to provide neighbors with adequate separation and visual aesthetics between neighbors. Approving this variance would set a precedent for other neighbors to do the same, defeating the purpose of rear yard setbacks.

Allowed Variances:

In addition to the above criteria, in exercising its authority to grant a variance, per Section 207.D 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' indicate a special circumstance that there are no neighbors behind their house and that they will be leasing an additional 50 feet from the City. For the reasons in Criteria #1 above, the Planning Division does not believe there is a special circumstance resulting in a hardship, only an inconvenience.

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's recommendation is for the Zoning Board of Adjustment (ZBA) to **DENY** a Variance from Section 501.A of the Zoning Ordinance to allow for a rear yard setback of two feet in lieu of the required minimum rear yard setback of twenty (20) feet, for a house within the Single Family Residential (RS-1) Zoning District located at 211 Rio Vista Circle.

However, should the ZBA decide to approve the Variance request, the Planning Division recommends the following **two Conditions of Approval**:

1. The applicant shall obtain a new building permit from the Permits and Inspections Division for the proposed building expansion.
2. The variance shall limit the expansion to the square footage shown on the attached plans provided by the applicant.


Attachments:



Aerial Map
Future Land Use Map
Zoning Map
Master Thoroughfare Plan Map
Other Arterial Roads – Traffic Patterns
Response Letter
Photographs
Site Plan
Floor Plans
Application

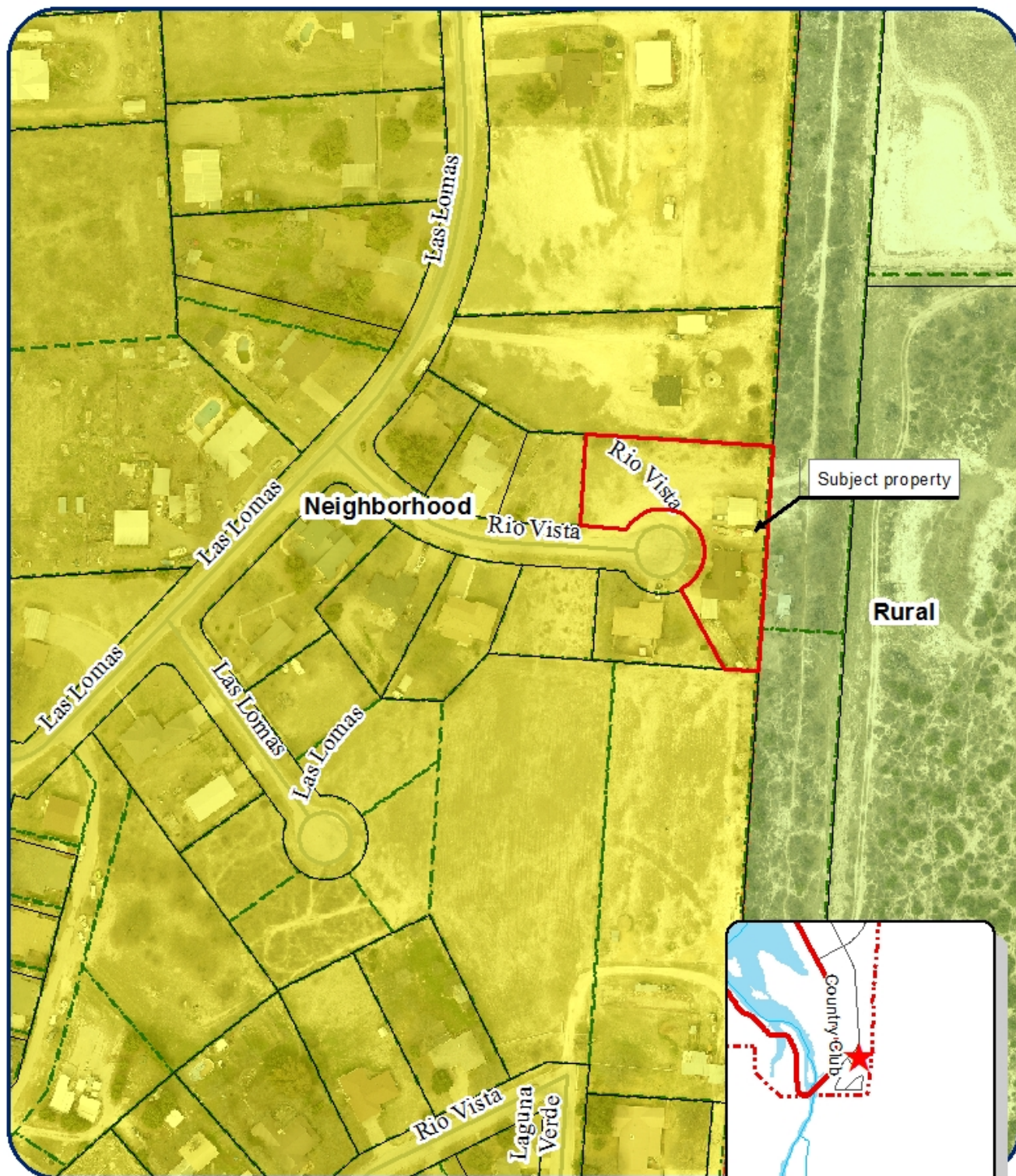


Variance Request ZBA 19-01 Aerial Map

ZBA 19-01:Wheat
Council District: Tommy Hiebert District #1
Neighborhood: Nasworthy
Scale: 1" approx. = 150 ft
211 Rio Vista Circle

Legend
Subject Properties: 
Current Zoning: **Single-Family Residence District (RS-1)**
Requested Zoning Change: **N/A**
Vision: **Neighborhood**





Variance Request ZBA 19-01 Aerial Map

ZBA 19-01:Wheat


Council District: Tommy Hiebert District #1

Neighborhood: Nasworthy

Scale: 1" approx. = 150 ft

211 Rio Vista Circle

Legend

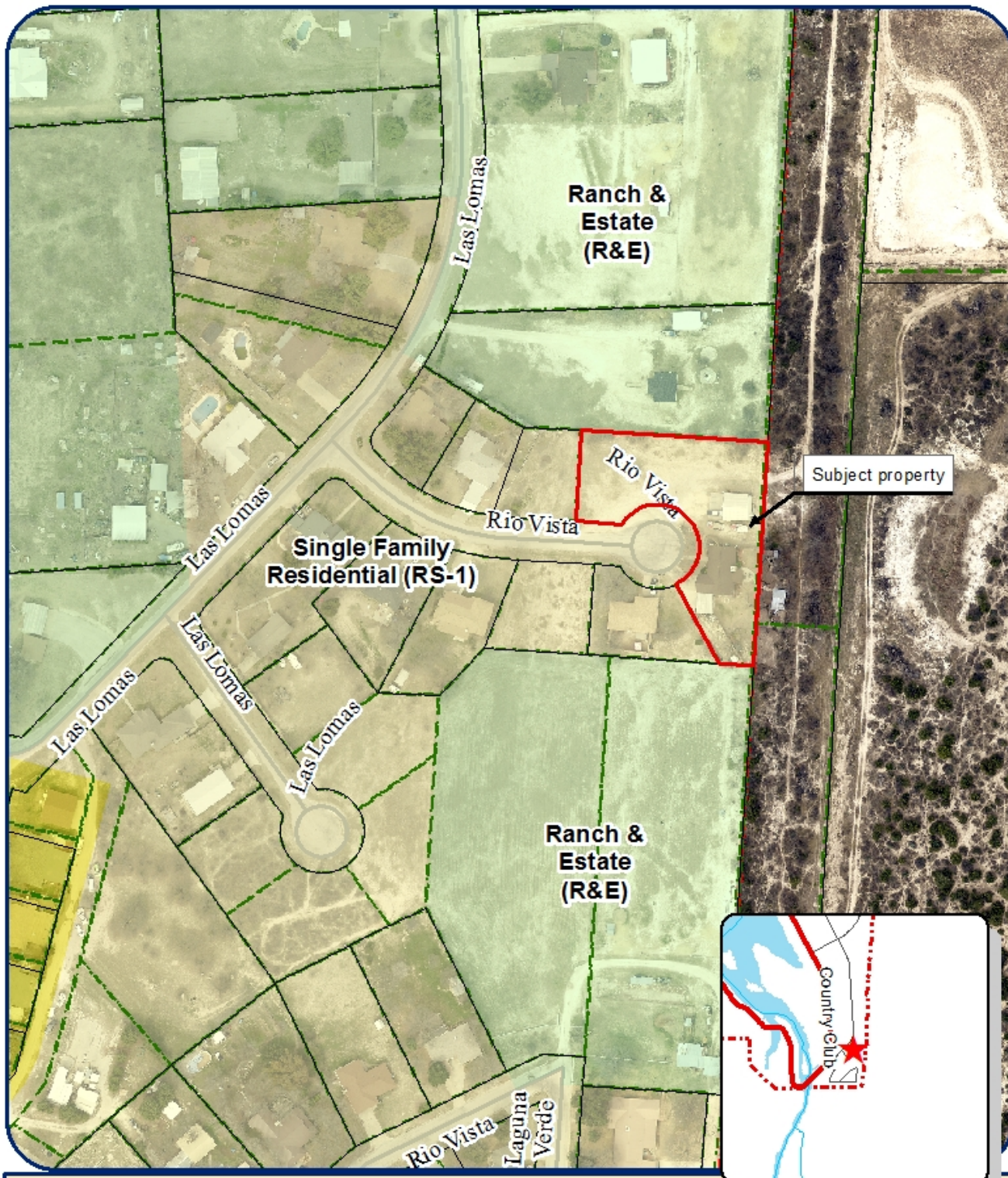
Subject Properties: 

Current Zoning: **Single-Family Residence District (RS-1)**

Requested Zoning Change: **N/A**

Vision: **Neighborhood**





Variance Request ZBA 19-01 Aerial Map

ZBA 19-01:Wheat

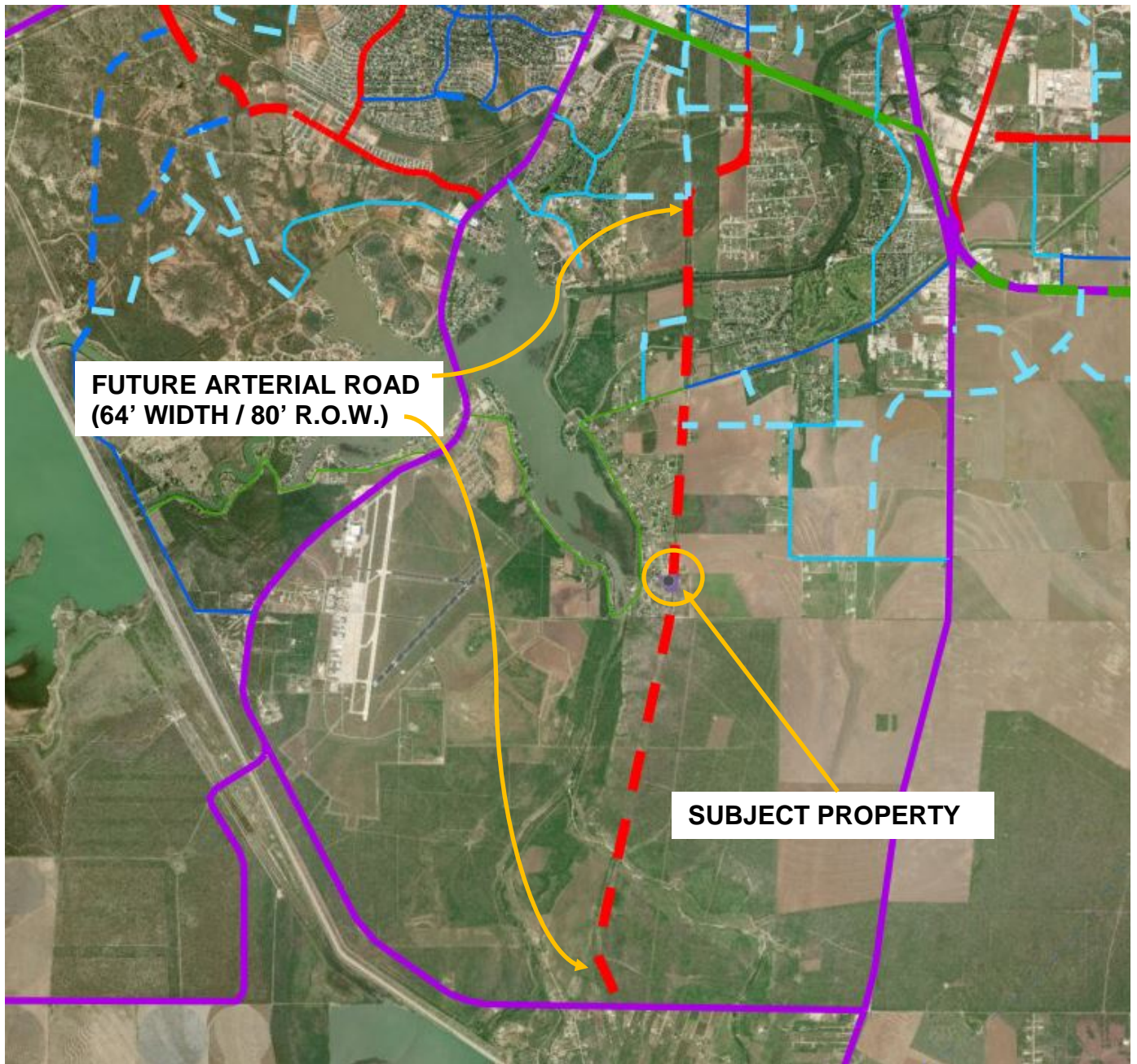
Council District: Tommy Hiebert District #1
Neighborhood: Nasworthy
Scale: 1" approx. = 150 ft
211 Rio Vista Circle

Legend

Subject Properties:  **Single-Family Residence District (RS-1)**
Current Zoning: **N/A**
Requested Zoning Change: **N/A**
Vision: **Neighborhood**



Master Thoroughfare Plan Map

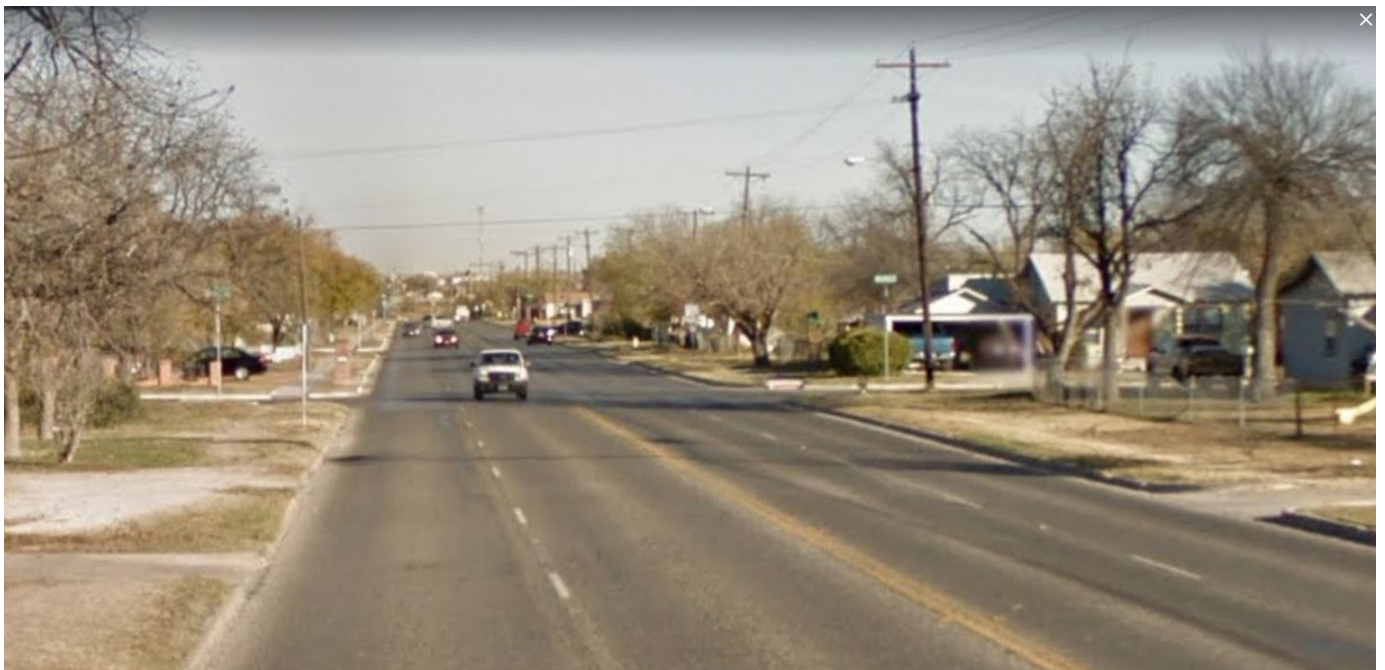


Other Arterial Roads – Traffic Patterns

Chadbourne Street (F.M. 1223) south of Oakes Street (Arterial Road, 64 feet as required)



North Bell Street at Belaire Street (Arterial Road, 50 feet, 64 feet required)



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 72 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903.

() IN FAVOR () IN OPPOSITION

REASON(S)

Because they are great neighbors
& this will not affect anyone
else adversely!

NAME: James B & Geraldine F Rollin's

ADDRESS: 202 Rio Vista Cir
San Angelo, TX 76904

SIGNATURE: James Rollin & Geraldine F Rollin

ZBA 19-01: Wheat
Property owner number: 8

If you have any questions about these proceedings, please call Sherry Bailey, Primary Planner, with the City of San Angelo's Planning Division at (325) 657-4210 or by email at sherrybailey@cosatx.us.

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 72 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903.

() IN FAVOR () IN OPPOSITION

REASON(S) _____

NAME: JAMES R. KEATING AND PRISCILLA M. KEATING

ADDRESS: 302 LAGUNA VERDE
SAN ANGELO, TX. 76904

SIGNATURE: James R. Keating Priscilla M. Keating

ZBA 19-01: Wheat
Property owner number: 6

If you have any questions about these proceedings, please call Sherry Bailey, Primary Planner, with the City of San Angelo's Planning Division at (325) 657-4210 or by email at sherrybailey@cosatx.us.

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() IN FAVOR () IN OPPOSITION

REASON(S) _____

We have no problem with this request. They have lived in their home for eighteen years and are wonderful neighbors. They take care of their home and yard. We hope that they will be granted their request. ~~to a~~

NAME: Jim and Sharda Ynostrosa

ADDRESS: 113 Las Lomas Drive
San Angelo, Tx 76904

SIGNATURE: Jim Ynostrosa Sharda Ynostrosa

ZBA 19-01: Wheat
Property owner number: 11

If you have any questions about these proceedings, please call Sherry Bailey, Primary Planner, with the City of San Angelo's Planning Division at (325) 657-4210 or by email at sherrybailey@cosatx.us.

Outside 200' Notification

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 72 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903.

() IN FAVOR () IN OPPOSITION

REASON(S) _____

NAME: Larry Casey
ADDRESS: 201 Rio Vista Circle
San Angelo, TX. 76904

SIGNATURE: Larry Casey
ZBA 19-01: Wheat
Property owner number: _____

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Photos of Site and Surrounding Area

WEST



EAST AT PROPERTY



NORTH



SOUTH



AREA OF PROPOSED REAR ADDITION (CLOSE-UP)



AREA OF PROPOSED REAR ADDITION



Photos of Site and Surrounding Area

**BEHIND PROPERTY LOOKING EAST
(STRUCTURES IN PUBLIC RIGHT-OF-WAY)**



FURTHER EAST (FUTURE ARTERIAL ROAD)



BARN BUILDING ON APPLICANTS' LOT TO NORTH

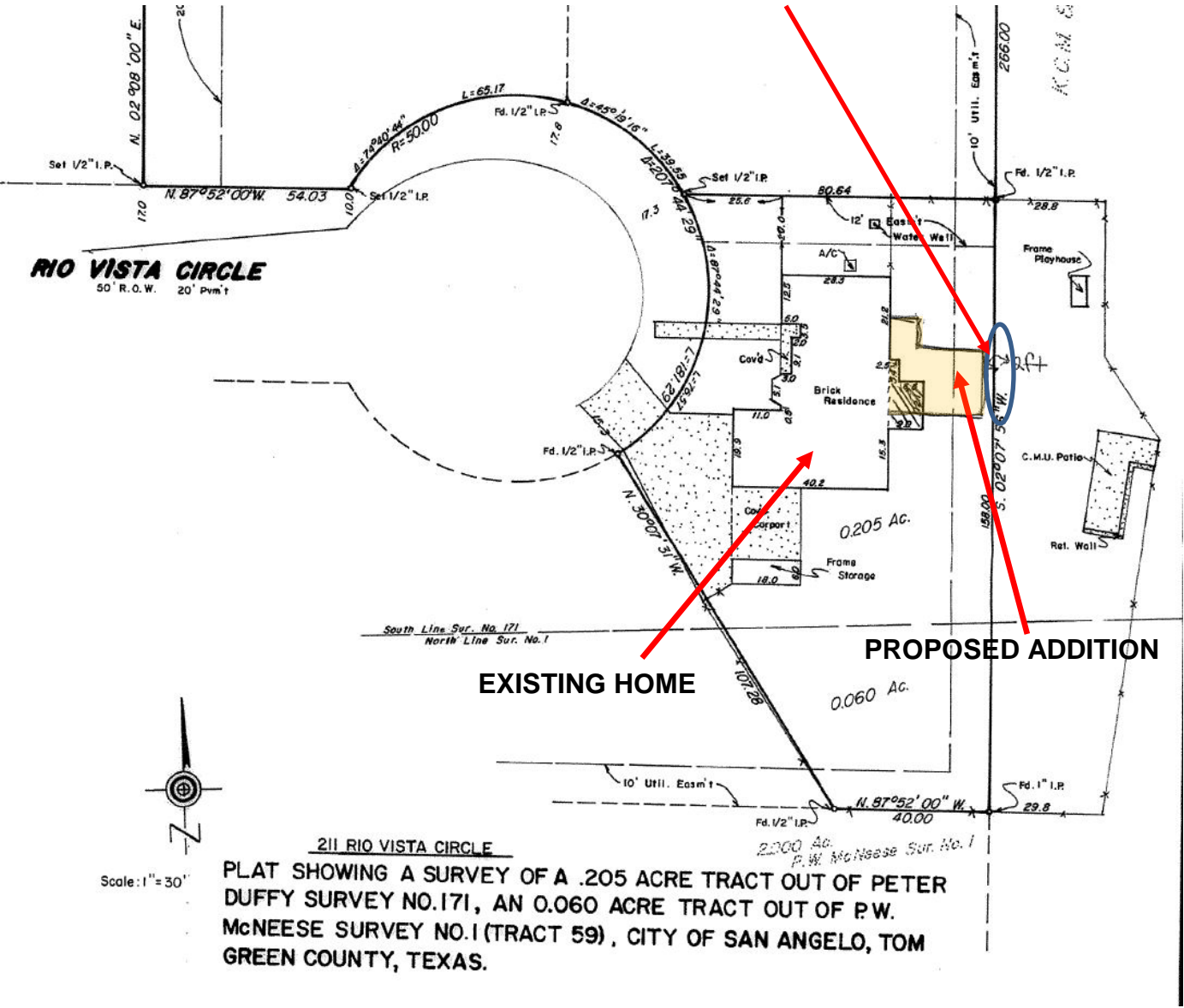


APPLICANT'S LOT TO NORTH



Site Plan

**PROPOSED 2-FOOT REAR
 YARD SETBACK**

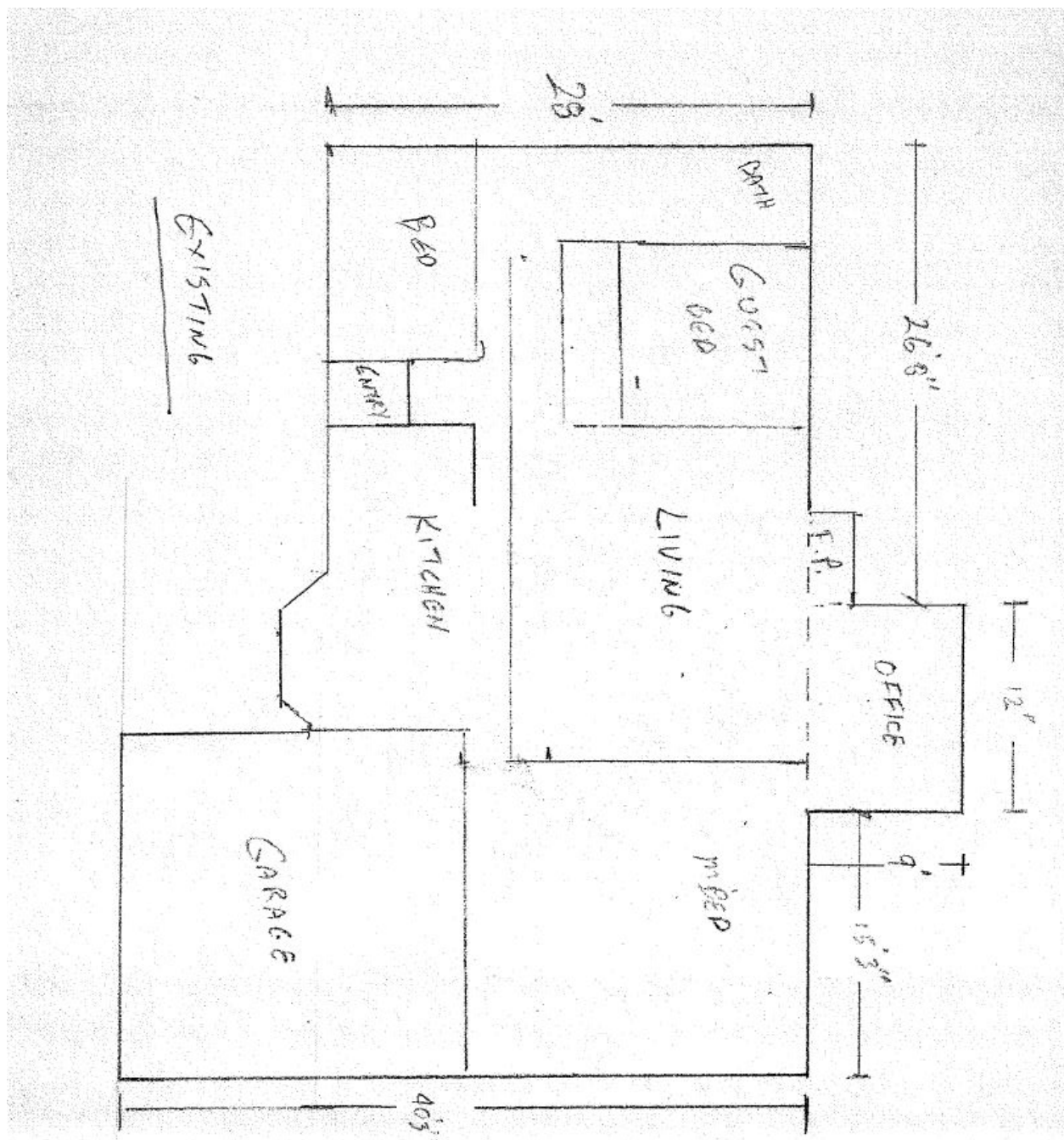


PROPOSED ADDITION

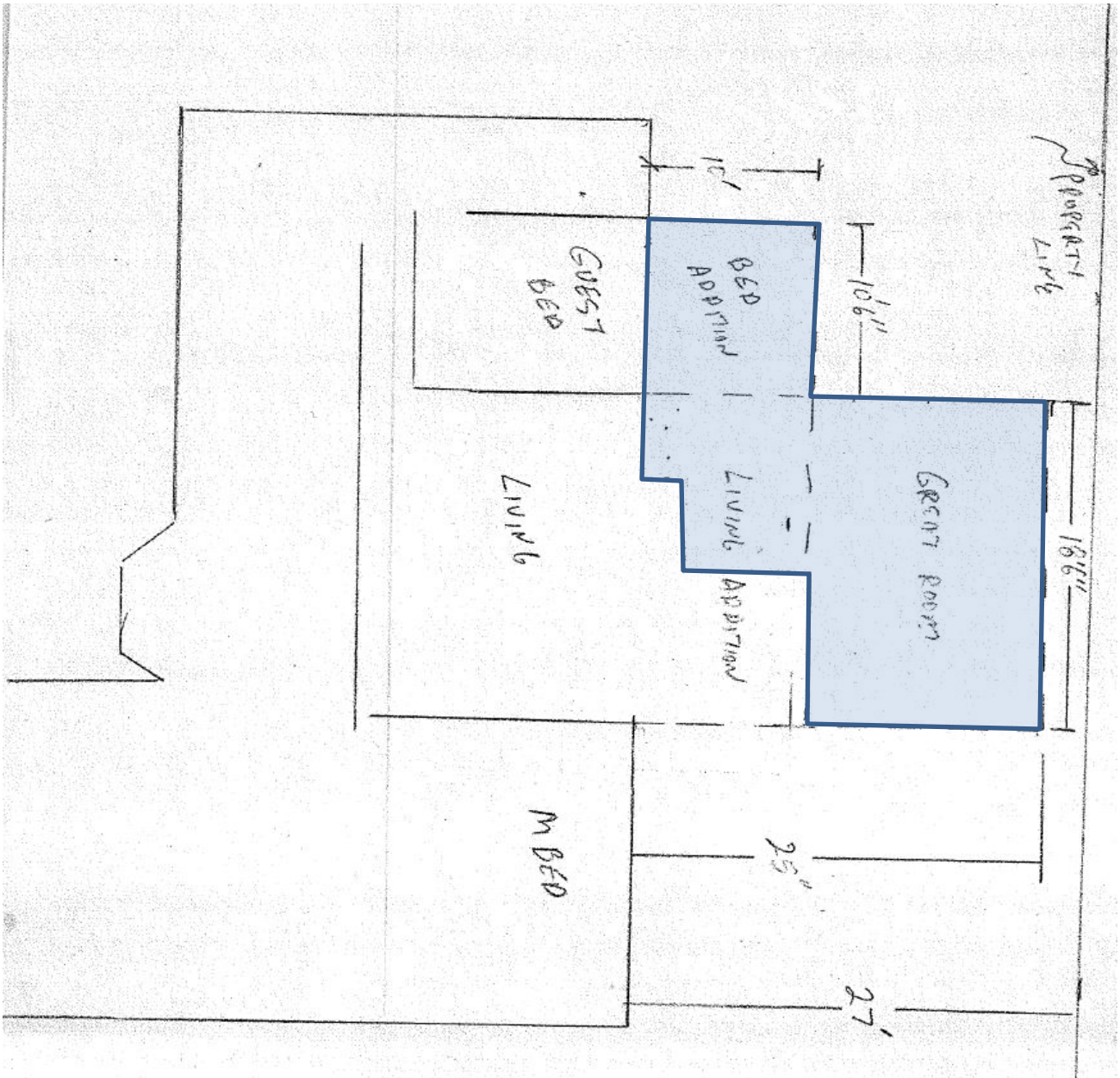
EXISTING HOME

211 RIO VISTA CIRCLE
 PLAT SHOWING A SURVEY OF A .205 ACRE TRACT OUT OF PETER DUFFY SURVEY NO.171, AN 0.060 ACRE TRACT OUT OF P.W. McNEESE SURVEY NO.1 (TRACT 59), CITY OF SAN ANGELO, TOM GREEN COUNTY, TEXAS.

Existing Floor Plan



Addition Floor Plan



Effective January 3, 2017

Section 3 continued: Variance Request Criteria

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

Explanation: We are not the original owner of the home. This house is already closer than 20 feet to the property line. Our backyard ~~with~~ is 45 feet from the property line. We ~~are~~ will be leasing the property that is in our current backyard.

3. 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: We own the adjacent property. There is a barn on the property already. There is nobody behind us & there never will be. We want to expand our living room and a bedroom.

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 the Zoning Ordinance and substantial justice;

Explanation: There is no other place that we can add to the current living area space on our home. We own a large piece of property, and we want to make a small addition to our home. Our fence will still be 45 feet away from the house.

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

Explanation: The land behind us is out of the city limits. We will be leasing the land currently in our back yard. There aren't neighbors that will be impacted by this.

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

Explanation: There is nobody behind or beside us. We have a large property. There will still be 45 feet between the addition and the fence of our current backyard.

Effective January 3, 2017

Section 4: Applicant(s) Acknowledgement

Please initial the following:

mw I/we understand that the Zoning Board of Adjustment (ZBA) 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;

mw I/we understand that any variation(s) authorized by the ZBA will require me/us to obtain a building permit for that stated variation within twelve (12) months of the approval date by the ZBA, unless the ZBA has specifically granted a longer period;

mw I/we understand that all drawings, pictures, documents or other information used during your testimony to the ZBA must be kept in the permanent files of the Planning Division; and

mw I/we understand that any appeal of a decision made by the ZBA must be presented to a court of record with a verified petition stating that the decision of the ZBA 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/We the undersigned acknowledge that the information provided above is true and correct.

Neil Wheat Julie Wheat
Signature of licensee or authorized representative

1-31-19
Date

Neil Wheat Julie Wheat
Printed name of licensee or authorized representative

Name of business/Entity of representative

FOR OFFICE USE ONLY:

Reviewed/Accepted by: Jeff Fisher

Date: 2, 1, 2019

Case No.: ZBA: 19-01

ZBA Hearing Date: 3, 4, 2019

Fully-Dimensioned and scaled Site Plan: Yes No

Date of Application: 2, 1, 2019

Non-Refundable Fee: \$ 250.00 Receipt #: _____

Date paid: 2, 1, 2019

Ordinance section(s) from which variance(s) is/are requested: 501.A

MEMO



Date: February 28, 2019
To: Zoning Board of Adjustment
From: Sherry Bailey
Principal Planner

Agenda Item: Zoning Board of Adjustment Proposed Bylaws

Background:

In October 2018 the City Council approved Article 2.07 “Boards and Commissions” Unification Ordinance. Much of what was originally in the Zoning Board of Adjustment’s bylaws was covered in Art. 2.07. At the direction of the City Council each board or commission is to approve new bylaws that incorporate Art. 2.07, where an item is unique to that board or commission identify it in their new bylaws. The restated by-laws are Exhibit A in your packet. Exhibit A is the last approved by-laws with the portions that pertain to the new Art. 2.07 Unification Ordinance deleted and some areas of the by-laws restated to make it easier to understand and to make sure all elements of state law are included in the ZBA by-laws. By approving them you are making sure that the ZBA by-laws conform to state law and do not conflict with the City’s Art. 2.07.

Attached you will find a copy of Art. 2.07 Exhibit B; Exhibit A the proposed restated bylaws for the Zoning Board of Adjustment that excludes those areas that duplicate or conflict with Art. 2.07. The Board will be reviewing these bylaws and approving them at your March 4, 2019 meeting. If you have questions or concerns please bring those to the meeting so that the board as a whole can address those issues.

Attachment:

Exhibit A Bylaws

Exhibit B Article 2.07 City of San Angelo Code of Ordinance “Boards and Commissions Unification – Ord.

Exhibit C Zoning Ordinance Sec. 207 - Variances

Exhibit D – Redline version

EXHIBIT A
BY-LAWS OF THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF SAN ANGELO

Article 1. General Governing Statutes, Ordinances and Rules

1.01 **Restated Articles.** These bylaws restate in their entirety and supersede the bylaws of the Board in effect upon their adoption and shall be effective upon approval by the City Council for the City of San Angelo.

1.02 **Governing law.** The Zoning Board of Adjustment shall be governed by the following statutes, ordinances and rules, as amended and supplemented from time to time and to the extent that such statutes, ordinances and rules remain in force and effect.

- Chapter(s) 211 of Texas Local Government Code.
- Article(s) 2.07 “Boards, Committees and Boards, Division I and Division 3 of the Code of Ordinances, City of San Angelo, Texas (hereinafter “Code of Ordinances”.
- Chapter 12 of the Code of Ordinances, Exhibit “A” Zoning Ordinance
- Appendix A to the Code of Ordinances, Fee Schedule
- Bylaws of the Zoning Board of Adjustment

Article 2. Membership of the Board

The following additional rules shall apply to the Board:

- 3.01 ***Removal For Cause.*** In compliance with Chapter 211 of the Texas Local Government Code, the City Council may remove a regular Board member or alternate Board member for cause, on a written charge and after a public hearing on the matter.
- 3.02 ***Resignation.*** When members propose to resign, they shall give notice of their intent to the Board chairman and secretary. When any member resigns or a position otherwise becomes vacant for other causes, the secretary shall promptly indicate to the City Council that a vacancy exists.
- 3.03 ***Board Members Record.*** The City Clerk shall maintain a record of Board members that includes the Board member’s designation as regular or alternate Board member, whether the nomination is by mayor or single member district council member, including the designated

single member district, the date of appointment by city council, and the date of expiration of the term of appointment.

Article 4. Meeting date, time and place.

Regular meetings of the Zoning Board of Adjustment shall be on the first Monday of each month, beginning at 1:30 p.m. in the City Council chambers of City Hall or other appropriate location in San Angelo, Texas.

- 4.01 Meeting Schedule. The number of meetings per month and schedule of meeting dates, as well as the place of meetings, may be altered or changed at any regularly scheduled meeting or upon call of the Chairman or Secretary.
- 4.02 Special Meetings. Special meetings may be held at any time, upon the call of the Board chairman or upon written request of three (3) Board members, following at least seventy-two hours' notice to each member of the Board. Call of special meeting to be held at a stated time and place, for a stated purpose, made at a regular meeting on the record shall be sufficient notice thereof to all Board members in attendance. Board members not then in attendance shall be provided written notice thereof. If a special meeting is called on a matter requiring notice of hearing, the required notice provisions for the hearing shall be met.

Article 5. Conduct of Meetings

- 5.01 Motion Approval. The concurring vote of a simple majority of members present (and constituting a quorum) is required to approve any motion on a matter except as otherwise required under Article 2.07 of the Code or Ordinance or Chapter 211 of the Texas Local Government Code.
- 5.02 Chairman Vote. It shall be customary for the chairman to vote on all matters pending before the Zoning Board of Adjustment except in case of recusal for conflict of interest.
- 5.03 Agenda Order. The following order of procedure shall generally be observed for the presentation of relevant evidence and information; however, it may be rearranged by the chairman for individual items, if necessary for the expeditious conduct of business:
- a. The chair shall introduce the matter described on the meeting agenda, summarizing the nature of the matter including location of subject property.
 - b. City staff shall describe in more detail the nature of the request and its relation to applicable ordinances and regulations. Other relevant evidence may be presented by staff and a recommendation made. If staff recommends approval of a variance, then

one or more criteria incorporated by reference in subsection 11.01 of these bylaws shall be identified as the basis for its recommendation.

- c. The Board may ask questions of the staff, concerning its presentation and report.
- d. The applicant/appellant shall outline the nature of the request and present supporting evidence including witnesses, if so desired.
- e. Board members may ask questions of the applicant/appellant and supporting witnesses.
- f. Members of the public in attendance shall be provided an opportunity to speak and present evidence in favor of or in opposition to the request.
- g. Staff may make rebuttal or add points not previously covered.
- h. The applicant/appellant may also cross-examine any witness or member of the staff.
- i. At the discretion of the Chairman, members of the public are given a second opportunity to make rebuttal or add points not previously covered.
- j. Board members may ask final questions of the applicant/appellant or staff, and proceed with deliberation and making a decision on the matter.

5.04 Orderly Procedure. The applicant, staff, witnesses, representatives, and members of the public shall speak only after being recognized by the chairman to proceed. Interruption of persons so recognized shall be avoided.

5.05 Questions during Hearing. During the hearing, the chairman, Board members and the staff may ask questions and make appropriate comment pertinent to the case; however, no member should debate or argue an issue with the applicant.

5.06 Question Pertaining to Facts. The chairman and Board members may direct any questions to the applicant/appellant or to any person speaking, in order to bring out all relevant facts, and may call for questions from members of the staff.

5.07 Evidence Procedure. The Board shall not be bound by strict rules of evidence, or be limited to consideration of such evidence as would be admissible in a court of law, but may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The chairman shall rule on all questions relating to admissibility of evidence, but may be overruled by a majority of board members present.

5.08 Motion Requires a Show of Hands. All decisions of the Board shall be made at a public meeting by a motion made and seconded, and by a show of hands.

- 5.09 Chair's Hearing Discretion. The chair may elect, subject to being overruled by a majority of the Board members in attendance, on a motion duly passed, to:
- a. Proceed immediately to determination and decision, on conclusion of the hearing on the particular case; or
 - b. Defer determination and decision until later in the same meeting; or
 - c. Defer determination and decision until another specified regular or special meeting of the Board, in order to obtain additional information or for other good cause.
- 5.10 Recess. Any regular or special meeting may be recessed or adjourned from day to day, or to the time of any previously announced regular or special meeting.
- 5.11 Cancellation. If no business is scheduled before the Board, or if it is apparent that a quorum will not be available, any meeting may be canceled by the chairman.

Article 6. Minutes

- 6.01 Minute Book. The Board shall maintain a minute book which shall be kept posted to date. In the minute book shall be recorded the Board's proceedings, showing attendance and all absences, any disqualifications of members, the records of its examinations and all other official actions, as well as the vote of each member voting on every question.
- 6.02 Approval of Draft Minutes. The draft minute record of a Board meeting shall be presented for approval at a subsequent scheduled meeting of the Board. The draft minute record must be approved by a majority of the members who were present at the meeting for which the minutes are transcribed. If this not possible due to resignations, deaths, or the fact that alternate members were present at the applicable meeting and not present at the current meeting, then a majority of the members present and voting shall be all that is necessary to approve the minutes.
- 6.03 Filed Minutes. The minutes shall be considered filed after each of the following has occurred: a) the minutes have been approved by the Board, b) the Chairman or Vice Chairman has signed the minutes, and c) the Secretary has posted the minutes in the record book kept in the office of the Planning and Development Services Department.

Article 7. Requests to Withdraw, to Defer or Continue Hearings, or to Amend Applications and Appeals

- 7.01 Withdrawn Appeal. On written request from the applicant/appellant or authorized agent, an

application or appeal may be withdrawn at any time before the Board makes its decision in the case.

7.02 Deferral or Continuance. On its own motion, or on approval of request by an applicant/appellant or authorized agent, the Board may defer the hearing or provide for continuance. Deferral or continuance of a hearing shall be permitted only for good cause, stated in the motion, shall require re-notice, and shall be conditioned upon repayment of fees by applicant/appellant when deferral or continuance is at the applicant's/appellant's request or is the result of applicant's/appellant's action.

7.03 (a) Application Amendment. An applicant/appellant or authorized agent, may amend an application or appeal as a matter of right on written notice of the amendment received by the secretary of the Board not less than fifteen (15) days prior to the scheduled hearing date. An applicant/appellant or authorized agent may submit a written motion to the Board to accept an amendment to an application or appeal less than fifteen (15) days prior to the scheduled hearing date. The Board, shall consider potential prejudice to any other interested party or the public and consider if there is just cause in support of the applicant's/appellant's motion. Granting of such motion shall require the vote of at least four of the Board members present.

(b) Amendment Once Advertised. On deliberation of an applicant's/appellant's motion to amend, the Board shall make findings regarding: (1) whether there is a substantive difference between the matter as described in public notice and as amended; and, (2) whether the motion to amend includes more restrictive conditions than described in the public notice. If the motion substantively amends the pending application such that prior public notice of the purpose of the hearing is deemed ineffective by the Planning Department Director, re-notice of hearing shall be required, and additional fees shall be paid by the applicant/appellant. Counsel and Planning Department staff shall be permitted to file an amended or updated report and recommendation to the Board prior to deliberation and decision of the Board on an amended application or appeal. Should the Board determine that the proposed amendment involves no substantive change or seeks more restrictive conditions than the application or appeal initially filed, then the Board may waive re-notice and proceed with the hearing as scheduled.

Article 8. Second Hearings

Second Application or Appeal. The Director of the Planning and Development Services Department, or his/her designee, shall determine whether a second application is substantially different from an application or appeal which has been denied during the previous six months and which affects the same piece of property. If the second application or appeal is determined by the Director to be substantively different from and not the same as the former application, it may be deemed by the Director as being an initial application for different relief rather than a second application for the same relief.

Article 9. Officers

- 9.01 Election of Chairman and Vice-Chairman. Annually, as the first item of new business at the first regular meeting of the Board, the Board shall elect a chairman and vice-chairman. The election shall be determined by a majority vote of those members present and constituting a quorum at said meeting. If such regular meeting is canceled or a quorum is lacking, the election shall be held at the next regular meeting of the board, subject to call of a special meeting for that purpose. If no quorum can be obtained within thirty-six (36) days of the first regularly scheduled annual meeting, the secretary shall notify the City Council which shall appoint a chairman and vice-chairman to serve until the next annual regular election.
- 9.02 Succession of Vice-Chairman to office of Chairman. If the chairman resigns his office or the office of chairman otherwise becomes vacant, the vice-chairman shall succeed to office of chairman for the remainder of the chairman's term. If the vice-chairman succeeds to the office of chairman and resigns his office, or the office of vice-chairman otherwise becomes vacant, a special election shall be held at the next regular meeting of the Board to select a vice-chairman to serve for the remainder of the term.
- 9.03 Presiding at Meetings. (a) The chairman shall preside at all meetings and hearings. If the chairman is absent or unable to preside, the vice-chairman shall preside. If both the chairman and vice-chairman are absent or unable to preside, the members present shall by majority vote appoint a temporary chairman to preside.
- (b) In accordance with these and other applicable rules, the presiding officer shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on motion duly made and passed. The presiding officer shall maintain order and decorum, and to that end, may order removal of disorderly or disruptive persons. Subject to exception for presentations by city staff, the presiding officer shall administer oaths to all witnesses or arrange for such oaths to be administered before a person authorized to administer oaths.
- 9.04 Other Responsibilities and Duties of Chairman. The chairman shall have additional duties to:
- a. Designate members of the Board to make personal inspections of premises, when necessary or desirable for the proper consideration of matters coming before the Board.
 - b. Assign duly appointed alternates to serve in the absence or disability of regular Board members, or refer this duty to the secretary of the Board.
 - c. Appoint such committees as may be found desirable by the Board relating to duties of the Board or matters coming before the Board.

- 9.05 Delegation to Vice-Chairman. The chairman may delegate specific duties generally to be performed by the vice-chairman, or may authorize the vice-chairman to perform specific duties of the chairman, during the chairman's absence or disability, so that necessary Board functions are performed in a timely manner. The vice-chairman shall perform all duties so delegated. In case of absence or incapacity of the chairman, and on approval by a majority of the Board, the vice-chairman shall perform any or all duties of the chairman, whether or not so delegated.
- 9.06 Appointment of Secretary; Duties. The Director of the Planning and Development Department, or designee, shall serve as secretary to the Zoning Board of Adjustment. The secretary shall attend to all correspondence of the Board; provide for service or cause to be published all notices required; attend all Board meetings and hearings (except when excused by the chairman and with temporary services arranged); receive and distribute staff reports; assist the Board in articulating and transcribing proper findings and motions; scrutinize all matters to assure compliance with the Zoning Ordinance and these rules; compile all required records; maintain the necessary scheduled, files and indexes; and generally, perform or supervise all clerical work of the Board.

Article 10. Conduct of Board Members

- 10.01 Expressions of Bias, Prior to Hearing. Board members may receive information from the Secretary, counsel to the Board or staff serving the Board, as well as from applicants or appellants, prior to public hearing; however, a Board member shall not express an opinion, bias, or prejudice on a matter coming before the Board prior to its consideration in an open meeting.
- 10.02 No Representation by a Board Member. No member of the Board shall represent an applicant or appellant on any matter that may come before the Board. This provision does not limit the right of a Board member to represent himself or herself, on his or her own application or appeal.
- 10.03 Members Not to Vote Unless Present at Hearing. A Board member shall not vote on any matter deciding an application or appeal, except upon attending the scheduled public hearing on the application or appeal. Should an application or appeal be decided at a meeting of the Board other than when heard at the scheduled public hearing, a board member not being in attendance at the scheduled hearing and not voting pursuant to this provision shall not participate in the Board discussion or deliberation on the matter for a vote, but shall remain and be counted for quorum purposes.

Article 11. Findings and Other Considerations for Approval of Variances from Zoning Regulations

11.01 *Criteria.* In exercising its power to grant a variance in accordance with zoning regulations, the Zoning Board of Adjustment, in making its findings, shall articulate and reflect in its minute record the specific findings required in support of its decision as required under applicable provisions of the Zoning Ordinance.

Article 12. Miscellaneous

12.01 *Submission Deadline.* The deadline for submission of a complete application for consideration of an appeal, variance or special exception shall be no less than twenty-one (21) days before the regularly scheduled meeting of the Zoning Board of Adjustment at which application is to be considered. A complete application fee, as determined by City Council must accompany the application.

12.02 All maps, plats, site plans, photographs or any other exhibits (or copies thereof) presented to the Board shall become the property of the City and maintained by the Board as part of the file record for that matter subject to city policies for retention and disposal.

Article 13. Amendment of Bylaws

13.01 *Amending Bylaws.* These bylaws may be amended at any regular or special called meeting of the Zoning Board of Adjustment, by a majority of a quorum of Board members present, provided that each of the following conditions is met:

- a. The amendment is not in conflict with applicable State law or City ordinance.
- b. Written notice of the proposed amendment is furnished to each Board member at least seven (7) days prior to the open meeting at which the amendment is to be considered.
- c. The amendment is approved by city council.

13.02 *Suspension of Rule of Procedure.* A rule of procedure set forth in the bylaws may be suspended at any meeting by a majority vote of all Board members present, unless suspension of the procedure would be in conflict with applicable State law or City ordinance.

DULY ADOPTED by the Zoning Board of Adjustment,

SUBJECT TO APPROVAL of the City Council of the City of San Angelo, Texas,
this 4th day of March, 2019.

, Chairperson
Date: March 4, 2019

APPROVED AND ADOPTED BY the City Council for the City of San Angelo, Texas,
this 19th day of March, 2019.

Brenda Gunter, Mayor

ATTEST:

Julia Antilley, City Clerk

APPROVED AS TO CONTENT

APPROVED AS TO FORM

Jon Janes, Planning and Development
Services Director

Dan Saluri, Deputy City Attorney

ORDINANCE 2018-121

AN ORDINANCE AMENDING THE CODE OF ORDINANCES FOR THE CITY OF SAN ANGELO, TEXAS BY DELETING AND REPLACING CHAPTER 2 "ADMINISTRATION AND PERSONNEL", ARTICLE 2.07 "BOARDS, COMMITTEES, AND COMMISSIONS"; DELETING CHAPTER 4 "BUILDING AND CONSTRUCTION"; ARTICLE 4.02 "ADMINISTRATION", SECTION 4.02.01 "CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS"; DELETING SECTION 4.02.002 "APPEALS"; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

BE IT ORDAINED BY THE CITY OF SAN ANGELO:

- 1) **THAT**, Chapter 2, Article 2.07, is hereby deleted and replaced as shown on Exhibit "A".
- 2) **THAT**, Chapter 4, Article 4.02, Sections 4.02.001 and 4.02.002 be deleted in the entirety.
- 3) **THAT**, all Boards and Commissions of the City of San Angelo are hereby instructed to revise their bylaws to conform with these changes within six months of the passage of this ordinance.
- 4) **THAT** the City Clerk is hereby instructed to create staggered terms for the City of San Angelo Development Corporation Board and to adjust all other boards as necessary to ensure appropriate of members.

5) **THAT**, all remaining provisions not amended by this ordinance remain in full force and effect.

6) **THAT**, the following severability clause is hereby adopted with this amendment:


SEVERABILITY:

That the terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

7) **THAT**, this Ordinance shall be effective on, from, and after the date of its passage and publication as required by law.


INTRODUCED on the 18th day of September, 2018, and finally **PASSED, APPROVED** and **ADOPTED** on this the 2nd day of October, 2018.

THE CITY OF SAN ANGELO:

DocuSigned by:


65CCT21DA4BB40F...
 Brenda Gunter, Mayor

ATTEST:

DocuSigned by:


EE8995EDAE1475...
 Bryan Kendrick, City Clerk

APPROVED AS TO FORM:

DocuSigned by:


E822428D610A4D4...
 Theresa James, City Attorney

Exhibit A**ARTICLE 2.07 BOARDS, COMMITTEES AND COMMISSIONS****Division 1. Generally**

Sec. 2.07.001 Organization and Procedure. Unless otherwise required by statute or this article, all boards and commissions shall be governed as follows:

(1) *Appointment.* Members shall be appointed by a vote of City Council. One member shall be nominated by the mayor. Each of the six remaining member seats shall be designated for a single member district one through six respectively, to be filled by nomination of the councilmember representing the designated single member district. Should any nominee not secure at least four affirmative votes of councilmembers, the mayor or single member district city council member having made the nomination shall schedule a new nomination for vote of the council.

(2) *Attendance.* Any member who fails to attend at least 2/3 of the meetings in a rolling one year period shall be deemed to have automatically resigned from office unless such absences are considered excused as set forth in the board or commission's bylaws.

(3) *Number of members.* Boards shall be composed of seven members.

(4) *Compensation.* All members shall serve without compensation.

(5) *Conflict of interest.*

(A) No member of the board shall participate in any case in which he or she has financial or personal interest in the property concerned, or will be directly affected by the decision, or has any other conflict of interest as defined by applicable law. The determination of "substantial" interest in a business entity, as well as rules affecting participation of board members in cases affected thereby, are described in chapter 171 in the Texas Local Government Code, as amended.

(B) No member of the city council, or person related to a councilmember within the second degree by consanguinity or affinity, shall be eligible for a grant or assistance from any board during his/her tenure or for six months thereafter.

(C) None of the following persons or entities shall be eligible for a grant or assistance from any board during his/her tenure or for six months thereafter.

1) The member of the board;

2) A person related to a board member within the second degree by consanguinity or affinity;

3) A legal entity owned by or under the control of the board member or for which the board member serves as an officer, director or member;

4) A legal entity owned by or under the control of a person related to the board member within the second degree by consanguinity or affinity or for which such person serves as an officer, director or member.

(D) No employee of the department associated with the board, or person related to an employee or supervisor of this department within the second degree by consanguinity or

affinity, shall be eligible for assistance from the board during his/her employment or for six months thereafter.

(E) A member may disqualify himself/herself from voting whenever any requestor, or his/her agent, has sought to influence the vote of the member in any setting, other than in the public meeting.

(6) *Election of Officers.* Each board shall include in the adopted bylaws the manner in which officers and committees will be selected. Each board shall have at a minimum a chair, vice-chair, and secretary.

(7) *Meetings.* Each board shall hold regular monthly meetings on a day to be selected by the commission and on other such occasions as may be called by the chairman. Additional meetings may be called as needed. Meetings may be cancelled in months where there is no business to be transacted. All meetings shall be open to the public and held in accordance with the Texas Open Meetings Act. All meetings shall be held within the city limits.

(8) *Minutes.* Board liaisons shall keep a permanent record of all minutes.

(9) *Qualifications.* Members shall be at least 18 years of age and a resident of the City.

(10) *Quorum.* A quorum shall consist of a simple majority of the appointed members, excluding any ex-officio members.

(11) *Removal.* Members may be removed at any time by a 2/3 vote of the City Council without cause.

(12) *Rules, regulations and bylaws.* Each board shall have the power to make rules, regulations and bylaws for its own government and in conformity with the laws of the state and this article. All said rules, regulations, and bylaws shall be approved by the city council.

(13) *Term:* The term of office for each member of the boards shall be two years.

(14) *Term Limit.* No member may serve more than 3 consecutive terms, not including an unexpired term. Members who term out of a position are eligible for reappointment after one year. For the purposes of this Article, the current number of terms held as of the date of passage of this Article stands, with respect to established term limits.

(15) *Vacancies.* All vacancies shall be filled for unexpired terms in the same manner as original appointment. Vacancies for unexpired terms shall be filled for the remainder of the unexpired term.

Secs. 7.02.002 through 7.02.010 Reserved

Division 2. Planning Commission

Sec. 2.07.011 Creation; members; terms

(a) There is hereby created within the city a planning board to be known as the planning commission which shall serve for all purposes as the zoning commission required under Chapter 211 of the Texas Local Government Code, as amended.

(b) All members of the board shall be representative, insofar as possible, of different businesses, professions or occupations.

(c) No more than three (3) members of the commission shall be in the same, similar or related business, profession or occupation.

Sec. 2.07.012 Removal or resignation of members. Members of the planning commission may be removed by the mayor with the approval of the city council after a public hearing and for cause assigned in writing.

Sec. 2.07.013 Ex-officio members. The director of planning and the director of public works shall be ex-officio, nonvoting members of the planning commission. The director of planning, assisted by staff, shall furthermore serve as recording secretary for the planning commission.

Sec. 2.07.014 Meetings

If a quorum is not present on any regular meeting day in which there is business to be transacted, the chairman shall call a special meeting in order to transact said business with minimum delay. Said chairman shall continue to call special meetings until a quorum is present.

Sec. 2.07.015 Additional duties

In addition to duties delegated to the planning commission by other laws of the city, it shall be the duty of the planning commission to prepare, amend and keep current a master plan for the development of the city, and to make recommendations to the city council relative to long-range planning of all phases of city development that it deems necessary.

Secs. 2.07.016–2.07.025 Reserved

Division 3. Zoning Board of Adjustment

Sec. 2.07.026 Creation and Appointment of Members

(a) There shall be a zoning board of adjustment that consists of seven (7) regular board member seats and four alternate board member seats to be filled by nomination and appointment by the city council as follows:

(1) Four alternate board member seats shall be designated to be filled by nominations of the mayor and mayor pro-tem with each nominating two of the alternates

(b) Each case before the zoning board of adjustment must be heard by at least six (6) members.

(c) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the board's office and are public records.

(d) Removal for Cause. The city council may remove a regular board member or alternate board member for cause on a written charge after a public hearing.

Sec. 2.07.027 Authority

(a) The zoning board of adjustment may:

- (1) Hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this division or the zoning ordinance.
 - (2) Hear and decide special exceptions to the terms of the zoning ordinance when the ordinance requires the board to do so.
 - (3) Authorize in specific cases, and subject to appropriate conditions and safeguards, a variance from the terms of the zoning ordinance, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the regulation is observed and substantial justice is done.
- (b) In exercising its authority under subsection (a), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for the purpose of the board has the same authority as the administrative official.
- (c) The concurring vote of six (6) members of the board is necessary to:
- (1) Reverse an order, requirement, decision, or determination of an administrative official;
 - (2) Decide in favor of any applicant on a matter on which the board is required to pass under the zoning ordinance; or
 - (3) Authorize a variation from the terms of the zoning ordinance;

Sec. 2.07.028 Appeal to the board

- (a) Any of the following persons may appeal to the zoning board of adjustment a decision made by an administrative official:
- (1) A person aggrieved by the decision; or
 - (2) Any officer, department, board, or bureau of the city affected by the decision.
- (b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed within a reasonable time as determined by the rules of the board. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.
- (c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.
- (d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within a reasonable time.
- (e) Prior to the public hearing in which the zoning board of adjustment shall hear an appeal, the following actions shall be made by the board at a separate public hearing:

- (1) Designating of the parties in interest;
 - (2) Setting of a reasonable time and date for the appeal hearing;
 - (3) Giving of due notice of the appeal hearing to parties in interest;
 - (4) Giving of public notice of the appeal hearing; and
 - (5) Establishing of protocol for conducting the appeal hearing.
- (f) The public hearing for any appeal shall follow the following procedural order except as may otherwise be directed by consensus of the board:
- (1) Identification of parties.
 - (2) Identification of documents constituting the record on appeal to the board.
 - (3) Identification and admission as evidence of pre-filed documents and any additional documents offered into evidence.
 - (4) Presentation by city staff.
 - (5) Presentations by identified parties in interest.
 - (6) Public comment.
 - (7) Rebuttals.
 - (8) Discussion and deliberation by board members.
 - (9) Motion and decision to affirm, modify, or reverse the decision of the administrative official, with supporting findings of fact applicable under the zoning ordinance.

Sec. 2.07.029 Judicial review of board decision

- (a) Any of the following persons may present to a court of record 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:
- (1) A person aggrieved by a decision of the board;
 - (2) A taxpayer; or
 - (3) An officer, department, board, or bureau of the city.

(b) The petition and procedure must be in compliance with Texas Local Government Code section 211.011, as amended.

Sec. 2.07.030 Fee

- (a) No application to the zoning board of adjustment shall be processed unless such application is accompanied with the appropriate processing fee as established by the city council.
- (b) In the case of a second hearing, the fee, or a portion thereof, may be waived by the board.

Sec. 2.07.031 Notification of property owners

(a) The zoning board of adjustment shall mail notices of each hearing to the petitioner and to the owners of property lying within two hundred feet (200') of any point of the lot, or portion thereof, on which a variance or special exception is desired, and to all other persons deemed by the board to be affected thereby, such owners and persons being determined according to the current tax rolls of the Tom Green County tax appraisal district.

(b) Written notice of the public hearing shall be sent within not less than ten (10) days before any such hearing is held. Depositing such written notification in the mail shall be deemed sufficient compliance.

Sec. 2.07.032 Second hearing.

(a) An appeal of a denial by the zoning board of adjustment shall not be allowed on the same piece of property prior to the expiration of six months from a ruling of the board, unless other property in the same zoned area shall have been, within such six (6) month period, altered or changed by a ruling of the zoning board of adjustment.

(b) Such circumstance shall permit the allowance of a second hearing but shall in no way have any force in law to compel the zoning board of adjustment, after a hearing, to grant the variance or special exception; such request shall be considered on its individual merits.

Sec. 2.07.033 Time limitation on approved requests.

(a) Unless otherwise specified in the minute record of the zoning board of adjustment's action on a request, an application to commence construction of improvements that were the subject of the request must be applied for and approved within 12 months from the date of approval of that request; otherwise, the board's action on that request shall automatically become null and void. Permitted time frames do not change with successive owners.

(b) Upon written request, only one extension of the 12-month period may be granted by the planning director if it is determined that conditions of the site and immediately surrounding area are substantially changed.

Sec. 2.07.034 Enforcement. In addition to other remedies provided under this Code of Ordinances and this Division, the Director of planning or designee may institute appropriate action to:

- (1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;
- (2) restrain, correct, or abate the violation;
- (3) prevent the occupancy of the building, structure, or land; or
- (4) prevent any illegal act, conduct, business, or use on or about the premises

Secs. 2.07.035–2.07.045 Reserved.

Division 4. Airport Advisory Board

Sec. 2.07.046 Creation; members. There is hereby created an airport advisory board.

Sec. 2.07.047 Officers; quorum; rules. Three (3) members shall constitute a quorum and said board.

Sec. 2.07.048 Duties. The board shall act as an advisory board to the airport manager and the city council, and is expressly directed and empowered to make a complete study of all phases of the airport operations and make recommendations from time to time for the most efficient operation of the airport.

Secs. 2.07.049–2.07.060 Reserved

Division 5. Design and Historic Review Commission

Sec. 2.07.061 Creation; members

(a) A design and historic review commission is hereby created and established within the city.

(b) *Qualifications.* Candidates shall have a known or demonstrated interest in, general knowledge of, and experience relevant to historic preservation or other professional design field within the city.

(c) To the extent that candidates are available among the residents of the community, appointments shall be made by the city council based upon the following qualifications:

- (1) At least two (2) members shall be licensed or otherwise recognized as professional in architecture, landscape architecture, design, engineering, surveying, or related profession;
- (2) At least one (1) member shall be recognized as a historian or a member of a local historic preservation group;
- (3) At least one (1) member shall be an owner of real property within the River Corridor;
- (4) At least one (1) member shall own real property designated or recognized as a community landmark, or within a designated historic district; and
- (5) At least one (1) member shall be a member of a downtown development organization under contract with the city.

Sec. 2.07.062 Ex-officio members. The planning manager and the building official of the city shall serve as nonvoting ex-officio members of the commission.

Sec. 2.07.063 Duties. The duties of the design and historic review commission shall include acting as an advisory commission to the city council in matters of design review relating to historic preservation in the city and development along the Concho River. The responsibility of the commission within the scope of its general authority shall include the authority to:

- (1) Adopt criteria for the designation of historic, architectural, and cultural landmarks and delineation of historic districts, which shall be ratified by the city council.
- (2) Prepare and present to the city council recommendations for policies and ordinances regarding development and all types of signage along the Concho River and other similar bodies of water as designated, which shall be ratified by the city council.
- (3) Conduct surveys and maintain an inventory of significant historic, architectural, and cultural landmarks and all properties located in historic districts within the city.
- (4) Recommend the designation of landmarks, historic districts, and other types of districts.

- (5) Recommend conferral of recognition upon the owners of landmarks or properties within districts by means of certificates, plaques, or markers.
- (6) Increase public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public educational programs.
- (7) Increase public awareness of the value of open spaces, public spaces, natural habitats, and wildlife along the Concho River and other similar bodies of water as designated by developing and participating in public educational programs.
- (8) Make recommendations to the city council concerning the utilization of state, federal, or private funds to promote the preservation of open and public spaces along the Concho River and other similar bodies of water as designated.
- (9) Make recommendations to the city council concerning the utilization of state, federal, or private funds to promote the preservation of landmarks and historic districts within the city.
- (10) Approve or deny applications for certificates of appropriateness pursuant to provisions of the city zoning ordinance.
- (11) Prepare specific design guidelines for the review of landmarks, districts, and construction and demolition of historic buildings.
- (12) Recommend the acquisition of a landmark structure by the city where its preservation is essential to the purpose of this division and where private preservation is not feasible.
- (13) Recommend the acquisition of land along the Concho River and other similar bodies of water as designated by the city where its proximity to the river is vital to the purpose of this division.
- (14) Recommend to the city council tax abatement and other economic development programs for the preservation of landmarks or historic districts.
- (15) Recommend to the city council tax abatement and other economic development programs for sustainable developments along the Concho River and other similar bodies of water as designated.
- (16) Recommend to the city council the acceptance of the donation of preservation easements and development rights as well as any other gift of value for the purpose of historic and environmental preservation.
- (17) Carry out other duties as specifically delegated to the commission by the city council.

Sec. 2.07.064 Officers. The commission shall elect from the appointed members of the commission a chairperson and a vice-chairperson to serve in the absence of the chairperson. The chairperson and vice-chairperson shall serve in their respective capacities for one (1) year terms or until their term of appointment to the commission expires, whichever shall first occur. No chairperson or vice-chairperson shall serve in such capacity for more than three (3) consecutive years. The planning manager for the city, or the manager's designee, shall serve as secretary to the commission. The commission shall elect such other officers as the commission may establish in its bylaws.

Sec. 2.07.065 Historic preservation officer. The city council or its designee shall appoint a city official, city staff person, or resident of the city having a known or demonstrated interest in, general knowledge

of and experience relevant to historic preservation or other professional design field to serve as the historic preservation officer (HPO) for the city, to facilitate the administration of this division and serve as an advisor to the commission on request of the commission. The historic preservation officer, in coordination with the secretary for the commission and the planning manager or his/her designee, shall coordinate the preservation efforts of the commission with applicable state and federal agencies and nonprofit organizations.

Sec. 2.07.066 Quorum and voting. Five (5) duly appointed regular members of the commission shall constitute a quorum. The affirmative vote of four members is required to approve any item brought before the commission.

Sec. 2.07.067 Minutes. The commission shall keep minutes of its proceedings in a permanent record, and a certified copy of said minutes shall be filed with the secretary for the commission.

Secs. 2.07.068–2.07.080 Reserved

Division 6. Economic Development Corporation*

Sec. 2.07.081 Creation. There is hereby created a corporation known as the city development corporation.

Sec. 2.07.082 Powers. The corporation shall have the powers and duties and be subject to the limitations set out in Chapters 501, 502, and 505 of the Texas Local Government Code, as amended.

Sec. 2.07.083 Board of directors

(a) Each member of the board of directors (“board” hereinafter) of the corporation shall:

(b) No person shall be appointed as a director who is an employee, officer or member of the city council of the city, or a member of any board or commission of the city, except that a director may be appointed to serve as a member of the water advisory board.

(c) A director who is a member of any other boards or commissions of the city, except the water advisory board, shall elect the board on which he will continue to serve within fourteen (14) days of the effective date of this section. If he fails to designate the board on which he will continue to serve within the specified time period, the city council shall make the designation.

Sec. 2.07.084 Registered agent; corporate office. The corporation’s registered agent must be an individual resident of the state and the corporation’s registered office must be within the boundaries of the city.

Sec. 2.07.085 Administrative services. The corporation shall contract with the city for the provision of administrative services.

Sec. 2.07.086 Levy, use and termination of sales tax.

(a) In accordance with the results of the November 2, 2010, sales tax election held under section 4B of article 5190.6 V.A.C.S, the city shall continue to levy and collect a one-half cent sales and use tax for the purposes and projects authorized by said election.

(b) In accordance with the results of the September 11, 2004, sales tax election held under section 4B of Vernon's Ann. Civ. St. article 5190.6 ("act" hereinafter), the city shall continue to levy and collect a one-half cent sales and use tax for the purposes authorized by said election.

Secs. 2.07.087–2.07.095 Reserved.

Division 7. Tax Increment Reinvestment Zone Board

Sec. 2.07.096 Organization and procedure.

(a) There is hereby created within the city a tax increment reinvestment zone board that consists of nine (9) regular board members to be filled by nomination and appointment as follows:

- (1) One (1) board seat shall be appointed by city council from a nomination of the mayor;
- (2) Each of six board member seats shall be appointed by city council, designated for city council single member districts one through six respectively, from nomination of each councilmember representing each designated single member district;
- (3) Two (2) board member seats shall be appointed by the county commissioners court;

(b) In addition, there shall be five (5) nonvoting, ex-officio members who will attend and participate in an advisory capacity. Each one of the five will be a representative of each of the following organizations: San Angelo Chamber of Commerce, Downtown San Angelo, San Angelo Independent School District, Goodfellow Air Force Base, and Angelo State University.

Sec. 2.07.097 Qualifications.

(a) All regular and alternate board members shall be at least eighteen (18) years of age and be a resident of the county in which the zone is located or a county adjacent to that county; or own real property in the zone, whether or not the individual resides in the county in which the zone is located or a county adjacent to that county.

(b) *Vacating position.* Any regular board member who ceases to possess such qualifications shall automatically be deemed to have vacated his or her position on the board.

Sec. 2.07.098 Terms. All appointments for regular members made after the initial appointments shall be for a term of two (2) years, except vacancies for unexpired terms, which shall be filled for the remainder of the unexpired term, thereby maintaining staggered terms. Ex-officio members will not have terms or term limitations.

Sec. 2.07.099 Duties.

(a) The TIRZ board shall act as an advisory board to the city council in the operation and administration of the TIRZ

(b) All action by the board is subject to city council approval.

(c) The authority and responsibility of the board expressly includes:

- (1) Make recommendations to the city council regarding the administration of this division.

- (2) Make recommendations to the city council regarding agreements that are necessary or convenient to implement the project plan and reinvestment zone financing plan.
- (3) Make recommendations to the city council regarding agreements with local governments or political subdivisions for management of the zone or implementing the project plan and reinvestment zone financing plan.
- (4) Make recommendations to the city council regarding establishing and providing for the establishment of programs that:
 - (A) Develop and diversify the economy of the zone;
 - (B) Eliminate unemployment and underemployment in the zone;
 - (C) Develop or expand transportation, business and commercial activity in the zone;
 - (D) Make grants and loans; and
 - (E) Stimulate business and commercial activity in the zone.
- (5) Contract with the city regarding allocation from the tax increment fund to pay for the incremental costs of providing municipal services incurred as a result of the creation of the zone or the development or redevelopment of land within the zone.
- (6) Make recommendations to the city council regarding the expenditure of TIRZ funds, in conformance with the following process:
 - (A) An affirmative recommendation to expend TIRZ funds for a project in the same area as that from which the funds are derived requires a simple majority vote of the TIRZ board members present when the matter is voted upon. The city council may approve expenditures under this subsection by a simple majority vote if such expenditure is recommended by the TIRZ board.
 - (B) An affirmative recommendation to expend TIRZ funds for a project located in the area outside that from which the funds are derived requires an affirmative vote by three-quarters of the TIRZ board members present when the matter is voted upon. The city council may only approve expenditures under this subsection when such expenditures are recommended by the TIRZ board and with an affirmative vote of six (6) members of the city council.
- (7) Providing a progress report to the city council annually, or as requested by the city council.

Sec. 2.07.100 Officers. The city council shall appoint a chair, as established in section 311.009.f of the Local Government Code, as amended, for a term of one year, beginning in January.

Sec. 2.07.101 Minutes. The board shall keep a record of its proceedings in a permanent book.

Sec. 2.07.102 Absent members. In the event of three (3) consecutive absences or a cumulative total of four (4) absences by a member within a calendar year from regularly scheduled meetings, a board member shall be deemed to have resigned unless the board excused such absences by procedures established in its bylaws.

Secs. 2.07.103–2.07.115 Reserved.

Division 8. Water Advisory Board

Sec. 2.07.116 Creation; members. There is hereby created a water advisory board ("board"), which shall be composed of nine (9) members, seven (7) of whom shall be voting members and two (2) of whom shall be non-voting members appointed or designated as follows:

(a) Voting members; appointment or designation.

(1) City Council shall appoint four (4) voting members to the board. For city council appointments, the city manager shall conduct a review of potential appointees to identify the most qualified candidates for board membership and make recommendations to city council for city council appointment of appointees to serve as members of board. Of the four (4) city council appointees:

(2) One (1) member shall be an individual who is either an engineer, a hydrologist, a meteorologist or a water well driller;

(3) One (1) member shall be an individual who is involved in either the industry of banking, accounting or financial services with a specialization in agricultural lending or water financing;

(4) One (1) member shall be an individual involved either in agriculture or rural water issues; and

(5) One (1) member shall be an individual who is either an attorney, a former municipal water district or other governmental officer, a legislator or a person who has experience in legal issues related to water.

(6) The city development corporation board shall appoint one (1) voting member to the board who shall be an individual who is either a member of the city development corporation board or a city employee who performs staff services by contract for the city development corporation;

(7) The county commissioners court shall appoint one (1) voting member to board who shall be an individual who is a member of the commissioners court, including the county judge; and

(8) One (1) voting member who shall be an individual employed by the Upper Colorado River Authority as director of operations.

(b) Non-voting members; appointment or designation.

(1) The chamber of commerce shall appoint one (1) non-voting member to board who shall be an individual who is a member of the chamber of commerce board or a staff employee of the chamber of commerce.

(2) One (1) non-voting member who shall be an individual employed by the city as water utilities director or a designee of such director. Furthermore, the water utilities director or a designee of such director shall serve as secretary for board.

Sec. 2.07.117 Duties. The board shall act as an advisory board to the city council and city manager on water related matters which the city council directs it to investigate, study and make recommendations on from time to time.

Sec. 2.07.118 Staff representative. The city manager or his designee shall act as staff representative to the board.

Sec. 2.07.119 Meetings. The board shall meet when directed by Council.

Sec. 2.07.120 Absenteeism of members. In the event of two (2) unexcused absences from regularly scheduled meetings, a board member shall be deemed to have resigned. The city manager shall recommend a policy for excusing absences to be adopted by the board in its bylaws.

Sec. 2.07.121 Minutes. The board shall keep minutes of its proceedings in a permanent record and a certified copy of said minutes shall be filed with the secretary for the board.

Secs. 2.07.122–2.07.130 Reserved.

Division 9. Civic Events Board

Sec. 2.07.131 Creation. There is hereby created a civic events board.

Sec. 2.07.132 Duties. The board shall act as an advisory board to the city council as to matters of policy and to the city manager or his/her representatives as to administrative matters in regard to operation of the convention center, Foster Communications Coliseum, Bill Aylor Sr. Memorial River Stage, Farmer's Market, City of San Angelo Indoor Arena, Pecan Creek Park Pavilion, and El Paseo de Santa Angela. The board may enact rules and regulations regarding the operation of the above-named facilities which shall take effect after review by the city council; however, the city council may take action to enact different rules and regulations at any time.

Sec. 2.07.133 Minutes. The board shall keep a record of its proceedings.

Sec. 2.07.134 Absent members. Any member who shall be absent from three (3) meetings, regular or special, in a calendar year, unless excused by the board by procedures established in its bylaws, shall be deemed to have resigned, and the board shall immediately notify the city council that a vacancy exists.

Secs. 2.07.135–2.07.145 Reserved.

Division 10. Fort Concho Museum Board

Sec. 2.07.146 Creation. There is hereby created a Fort Concho Museum board of the city, which board shall be composed of fifteen (15) members. Fourteen (14) members shall be appointed by the city council. The remaining position shall be filled by the Army Commander at Goodfellow Air Force Base or designee.

Sec. 2.07.147 Vacancies. Vacancies on the board, whether by expiration of term or for other reason, shall be filled by the city council upon recommendation by the remaining board members, provided that the city council can reject any nomination and request additional nominations for any reason.

Sec. 2.07.148 Duties. The board shall act as an advisory board to the city in the operation and administration of all the Fort Concho Museum properties of the city. The authority and responsibility of the board expressly includes:

- (a) Establishing goals, objectives and operational policies for the fort which are consistent with city council policies and objectives.
- (b) Approving all budget proposals made to the city manager's office and the city council.

(c) Establishing guidelines for acquisition, restoration, preservation and maintenance of Fort Concho and museum property so long as those procedures do not conflict with existing objectives and policies of the city council.

(d) Determining regulations, guidelines, and procedures for staffing, operation and programs for Fort Concho.

Sec. 2.07.149 Qualifications. All members of the board shall meet the following qualifications:

- (1) Shall be twenty-one years of age or older at the time of appointment; and
- (2) Shall have demonstrated experience or interest in heritage education, historic preservation, and community service and/or tourism promotion.

Secs. 2.07.150–2.07.160 Reserved.

Division 11. Public Art Commission

Sec. 2.07.161 Creation; members.

- (a) There is hereby created a city public art commission.
- (b) To the extent available, the city council shall appoint to the commission:
 - (1) At least one (1) member who is a teacher or professor of art.
 - (2) At least one (1) member who is a member of the San Angelo Cultural Affairs Council or the San Angelo Museum of Fine Arts.
 - (3) At least one (1) member who is an artist.
 - (4) At least one (1) member who is a landscape architect, architect, engineer, or other type of design professional.
- (c) There may be one (1) ex-officio nonvoting member who represents the parks and recreation department or parks and recreation advisory board as designated by the city council from time to time.

Sec. 2.07.162 Duties. The commission shall act as an advisory board to the city council and city manager on the selection and placement of art on city owned or controlled property, and this shall be accomplished through:

- (1) Developing a plan for the appropriate location for works of art;
- (2) Developing a plan for the type of art that will be recommended at the different locations;
- (3) Evaluating and making recommendation on art that is proposed for donation to the city; and
- (4) Assisting with related projects which the city council directs it to investigate, study and make recommendations on from time to time.

Sec. 2.07.163 Staff representative. The city manager or his designee shall act as staff representative to the commission.

Sec. 2.07.164 Meetings. Meetings shall be scheduled only as needed.

Secs. 2.07.165–2.07.175 Reserved.

Division 12. Parks and Recreation Advisory Board

Sec. 2.07.176 Creation; members. A parks and recreation advisory board is hereby created and established within the city. Said parks and recreation advisory board shall be composed of eight (8) members, seven (7) of whom shall be appointed by the city council. The eighth member shall be a member of the park commission, nominated by the park commission and approved by the city council. The appointments to the board shall be on the basis of the nominee's educational and professional qualifications and general knowledge of, interest in, and experience relevant to youth or adult sports, senior activities, recreation activities, other organized social activities, parks, nature or conservation.

Sec. 2.07.177 Duties. The parks and recreation board shall act as an advisory board to the city council in matters of oversight, policy and administration relating to city parks, recreation programs and facilities, with the exception of the Santa Fe Parks, for which the parks commission shall continue to act as the advisory commission to the city council. The responsibility of the parks and recreation board within the scope of its general authority shall include to:

- (1) Communicate with and make recommendations to the city manager and parks and recreation director regarding parks, recreation programs and senior services programs.
- (2) Make recommendations to the city manager, parks and recreation director and city council regarding the administration of parks, recreation programs and senior services programs.
- (3) Make recommendations to the city manager, parks and recreation director and city council regarding the creation of a parks and recreation system.
- (4) Make recommendations to the city manager, parks and recreation director and city council regarding maintenance of parks and park improvements.
- (5) Make recommendations to the city manager, parks and recreation director and city council regarding maintenance of recreation and/or senior facilities.
- (6) Make recommendations to the city manager, parks and recreation director and city council regarding the acquisition of physical improvements and equipment for parks, recreation and senior services programs.
- (7) Make recommendations to the city manager, parks and recreation director and city council regarding rules or regulations for parks, recreation and senior services programs.

Sec. 2.07.178 Quorum and voting. Five (5) duly appointed members of the board shall constitute a quorum. The affirmative vote of a majority of the members present at a properly called meeting with a quorum present shall be the act of the board.

Secs. 2.07.179–2.07.190 Reserved.

Division 13. Animal Shelter Advisory Committee

Sec. 2.07.191 Committee created. In accordance with the authority granted under Texas Health and Safety Code chapter 823, there is hereby created the animal shelter advisory committee.

Sec. 2.07.192 Purpose. The committee shall perform the state law advisory committee functions contemplated in section 823.005 of the Health and Safety Code, as amended by rendering advice and assistance to the animal services manager regarding the city's compliance with the requirements of chapter 823 of the Health and Safety Code.

Sec. 2.07.193 Composition.

- (a) The committee shall consist of seven members which shall be designated as positions one through seven.
- (b) The members shall be appointed by the city council. The following membership criteria shall apply:
 - (1) Position one shall be filled by a veterinarian.
 - (2) Position two shall be filled by a municipal or county official.
 - (3) Position three shall be filled by a person whose duties include the daily operation of an "animal shelter" as that term is defined in section 823.001 of the Health and Safety Code.
 - (4) Position four shall be filled by a person who is an officer or employee of an animal welfare organization.
 - (5) Positions five through seven shall be filled by residents of the city.

Sec. 2.07.194 Terms. The members of the committee in positions one through three shall serve an indefinite term until a successor is duly appointed.

Sec. 2.07.195 Removal of members. Members of the animal shelter advisory committee in positions four through seven may be removed for good cause by the city council after hearing.

Sec. 2.07.196 Officers. At the first meeting of each calendar year, the members of the committee shall select a chairperson. The member serving in position two of the committee shall be the ex-officio secretary of the committee.

Sec. 2.07.197 Meetings. The committee shall meet from time to time at the call of the chairperson, provided that the committee shall meet not less than three times per calendar year.

Secs. 2.07.198–2.07.205 Reserved.

Division 14. Civil Service Commission

Sec. 2.07.206 Creation. In accordance with chapter 143 of the Texas Local Government Code, which was adopted by the qualified voters of the city, there is hereby established a civil service system for firefighters and police officers; and pursuant thereto, there is hereby established a civil service commission (fire and police), which shall consist of three (3) members.

Sec. 2.07.207 Appointments; vacancies.

- (a) Members of the commission shall be appointed by the City Manager, and such appointments shall be confirmed by the city council before such appointments shall be effective.
- (b) Any vacancies in said commission, caused by death, resignation or otherwise, or by failure of any appointee to qualify within ten (10) days after appointment, shall be filled in the manner hereinabove

specified, and such appointment shall be for the unexpired term of the retiring commissioner or the appointee failing to qualify.

Sec. 2.07.208 Qualifications. All such commissioners shall be of good moral character and resident citizens of the city, shall have resided in the city for a period of more than three (3) years, shall be over the age of twenty-five (25) years, and shall not have held any public office within the preceding three (3) years.

Sec. 2.07.209 Terms. The term of office of each member shall be for three (3) years, or until a successor is appointed, confirmed and qualified.

Sec. 2.07.210 Removal of members. Any member of the commission may be removed by 2/3 vote of the governing body for any act contrary to the best interest of the service or failure to act in a manner to promote the best interest of the service, having first given to such member a copy of the charges against him. Such action of the governing body shall be final.

Sec. 2.07.211 Meetings. The members of the civil service commission shall, at a date, hour and place set by the commission, hold meetings as needed or required to properly discharge its duties.

Sec. 2.07.212 Quorum. Two (2) members of said commission shall constitute a quorum to transact business.

Sec. 2.07.213. Duties. The duties of the civil service commission, as a body, are as follows:

- (1) *Commission's operational rules.* To prepare and in open meeting to adopt such rules and regulations for the proper conduct of its business as it shall find necessary and expedient.
- (2) *Limits on rules for hiring.* To refrain from the adoption of any rule or regulation which will permit the appointment or employment of any person without good moral character, any person unfit mentally or physically or any person incompetent to discharge the duties of such appointment or employment.
- (3) *Substantive rules for employees.* To make rules and regulations as authorized by civil service law, including, but not limited to, rules regarding promotion, removal, and leaves of absence, with and without pay. Such rules shall be consistent with city ordinances.
- (4) *Written and published rules.* To reduce to writing and publish any rules it makes in accordance with civil service law.
- (5) *Standards and qualifications for employees.* To formulate minimum standards and qualifications for each classified position in the classified service.
- (6) *Development of classification and compensation plans.* In open meeting to adopt, modify or reject such classification and compensation plans for firefighters and police officers, together with rules for their administration, as may be recommended by the director of civil service after a thorough survey of the personnel and departmental organization of the fire department and police department. No such plans or any amendments thereof shall be effective until adopted by ordinance of the governing body, which body shall have the authority to originate or make such changes to any such plans as it may deem fit.

- (7) *Competitive examinations.* To make provisions for open, competitive and free examinations for persons making proper application and meeting the requirements as prescribed in the civil service law, this division and the rules and regulations of the commission.
- (8) *Maintenance of eligibility lists.* To maintain an eligibility list for each classified position.
- (9) *Temporary appointments.* To authorize temporary appointments to the classified service in the event no eligibility list has been prepared for the position and to limit such temporary appointments to a maximum period of three (3) continuous months.
- (10) *Enforcement of civil service law.* To require compliance with the provisions of the civil service law.
- (11) *Hearings of disciplinary appeals.* To hear appeals of disciplinary suspensions to determine whether there is just cause for any such suspension.
- (12) *Hearings of promotional examination appeals and demotions.* To hear appeals of promotional examinations and to consider demotions recommended by the fire and police chiefs.
- (13) *Hearings of various complaints.* To hear and determine complaints respecting the administrative work of the director of civil service, the rejection of an applicant for admission to an examination, and such other matters as may be referred to the commission by the director of civil service.
- (14) *Format of decisions.* To render written decisions, signed by each commissioner.
- (15) *Conducting investigations.* To conduct investigations either on request of a citizen, a public official or on its own initiative concerning the enforcement and effect of civil service law or rules and to require observance of them. In such investigations, the commission shall have the power to administer oaths, subpoena witnesses and evidence relevant to such investigations, and require depositions.
- (16) *Technical services for commission.* To contract or arrange, within its budgetary allowance, for such technical services in connection with personnel selection and administration as may be necessary, including the preparation and conduct of examinations.

Sec. 2.07.214 Powers and duties of director. A director shall be appointed pursuant to Chapter 143 of the Texas Local Government Code, as amended. It shall be the duty of the director of firefighter's and police officers' civil service:

- (1) To attend the regular and special meetings of the commission, to act as its secretary and to record its official actions.
- (2) To prepare and recommend rules and regulations for the administration of this division, which shall become effective after approval by the civil service commission and the governing body of the city as provided in this division; to administer such rules and regulations; and to propose amendments thereto.
- (3) To establish and maintain in card or other suitable form a roster of officers and employees in the classified service of the city. Such roster shall include items specified by the commission in its rules and regulations.

- (4) To recommend, as soon as practicable after this division takes effect, with such outside assistance as may be authorized, a classification plan, which when adopted by the governing body of the city shall become the official classification plan for the city.
- (5) To make a study of the rates of compensation being paid for each class of position in the classified service and prepare a compensation plan for submission to the commission when called upon. No such plan shall be effective until it is approved by the governing body of the city.
- (6) To formulate and hold competitive examinations to determine the relative qualifications of persons who seek employment and as a result thereof establish eligibility lists for the various classes of positions.
- (7) When a vacant position is to be filled, to certify to the appointing authority on written request the name of the three (3) persons highest on the reinstatement list or eligibility list for the class.
- (8) To submit to the governing body recommendations as to uniform standards in respect to attendance and leave regulations, employee training and welfare, duties and salary classification and other personnel matters.
- (9) To establish records of performance and a system of service ratings to be used in determining increases and decreases in salaries, promotions, the order of layoffs and reinstatement.
- (10) To keep such records as may be necessary for the proper administration of this division and rules and regulations.
- (11) To make investigations concerning the administration and effect of this division and the rules made thereunder and report his findings and recommendations to the commission.
- (12) To make an annual report to the commission, and such interim reports as may be requested by the commissioner or the governing body.
- (13) To perform such other work relevant to the civil service system as may be required by the commission.
- (14) If directed by the governing body, to provide a system of checking payrolls, estimates and accounts for payment of salaries to employees so as to enable the commission, upon satisfactory evidence, to certify or cause to be certified that the persons whose names appear thereon have been regularly employed in the performance of the duties indicated at the compensation rates and for the periods for which compensation is claimed or are on authorized leave before payment may be lawfully made to such employees.

Sec. 2.07.215 Civil suits. It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of this division and of the rules of the commission and to defend all civil suits which may be brought against the commission. The commission shall be represented in such suits by the city attorney or other counsel designated by the governing body.

Secs. 2.07.216 through 2.07.225 Reserved.

Division 15. Construction Board of Adjustment and Appeals.

Sec. 2.07.226 Creation. There is hereby created a Construction Board of adjustments and appeals.

Sec. 2.07.227 Definitions.

(a) "Contractor" defined. For the purposes of this Contractor means any person engaged in any occupation regulated by this chapter who has registered with the building official and paid the annual registration fee as set forth in the fee schedule found in appendix A of this code and holds a valid state license for his occupation.

Sec. 2.07.228 Composition. Composition. The construction board of adjustments and appeals created pursuant to section 112.1 of the International Building Code shall include:

- (1) One architect or engineer.
- (2) One commercial building contractor.
- (3) One residential building contractor.
- (4) One electrical contractor.
- (5) One plumber.
- (6) One mechanical contractor.
- (7) One realtor, real estate inspector or real estate appraiser (member at large building industry).
- (8) One homeowner (member at large from the public).
- (9) One commercial business owner.

Sec. 2.07.229 Removal of members. The city council may remove any member of the board for good cause shown after hearing.

Sec. 2.07.230 Duties and powers. The board shall submit to the council such recommendations for the improvement and revision of this code as it may from time to time deem necessary or proper in light of the development of new materials, methods, or techniques which would result in a safer and more economical construction system or construction work. All requests for use of materials or methods not covered in this code shall be fully supported by factual evidence, or prior approval, from a recognized testing agency or other impartial, qualified, non-local authority.

Sec. 2.07.231 Appeals.

(a) The owner of a building, structure or service system, or the owner's duly authorized agent, may appeal a decision of the building official or code official to the board under the conditions and pursuant to the procedures set forth in section 112 of the International Building Code, section 112 of the International Residential Code, section 109 of the International Mechanical Code and section 108 of the International Fire Code.

(b) Building official is defined as that official designated in the International Building Code. Code official is defined as that official designated in each of the codes adopted in article 4.04 and article 6.03 of this code.

(c) Any appeals pending before or eligible to be heard by the former board of appeals at the time of adoption of this amendment, and any appeals that become eligible to be heard by the board before all of its members are appointed, shall be heard by the board upon appointment of all of the members.

Secs. 2.07.232 through 2.07.250 Reserved.

Division 16. Airport Zoning Board

Sec. 2.07.251 Creation. There is hereby created the San Angelo-Tom Green County joint airport zoning board, which board shall have the powers and exercise the duties set forth in Texas Local Government Code Section 241.014.

Sec. 2.07.092 Members; appointments. The San Angelo-Tom Green County joint airport zoning board shall be composed of five (5) members, two (2) to be appointed by the commissioner's court of the county and two (2) members to be appointed by the city council. The fifth member shall be elected by a majority of the members so appointed and said fifth member shall serve as chairman of the San Angelo-Tom Green County joint airport zoning board.

Sec. 2.07.093 Meetings. The board shall convene meetings as needed.

EXHIBIT C – Zoning Code of Ordinances

Sec. 207. - Variances

- A. *Purpose* . Variances are deviations from the applicable standards for the zoning district where existing or proposed development is located, that would not be contrary to the public interest and, due to special conditions of the site or its surroundings, a literal enforcement of the provisions of this Zoning Ordinance would result in unnecessary hardship. Variances ensure that the spirit of this Zoning Ordinance is observed and substantial justice done. A variance shall not be granted to allow a use that is not allowed in the specific district in question by the use regulations in Article 3.
- B. *Submission of Application* . A complete application for a variance shall be submitted to the Planning Director on a form prescribed by the Director, along with the appropriate application fee.
- C. *Hearing and Action by Zoning Board of Adjustment* . After due notice, the Zoning Board of Adjustment shall hold a public hearing on an application for a Variance. At the public hearing, the Zoning Board of Adjustment shall consider the application, the relevant support materials and the public testimony given at the public hearing in light of the criteria below. After the close of the public hearing, the Zoning Board of Adjustment shall vote to approve, approve with conditions or deny the application for a Variance, pursuant to the criteria below.
- D. *Allowed Variances* . In exercising its authority to grant a variance, the Zoning Board of Adjustment shall affirmatively find that one or more of the following circumstances applies. In each instance, the Zoning Board of Adjustment shall further state in its minute record the specific nature of those circumstances which justify the variance.
 1. *Special circumstances resulting in unnecessary hardship* . A variance may be granted 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.
 2. *Overriding Public Interest* . A variance may be granted if it will 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* . A variance may be granted 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.

Editor's note— Subsection 3. was repealed and the following subsection redesignated by Ordinance adopted 2-15-05.

- E. *Variances Not Allowed* . In exercising its authority, the Zoning Board of Adjustment shall not grant a variance that would create any of the following effects.
 1. The effect of the variance on the specific property would adversely effect the land use pattern as outlined by any City land use plan or policy.
 2. The variance would be a material detriment to the public welfare or create injury to the use, enjoyment or value of property in the vicinity.
 3. The variance is not the minimum variance that will relieve the proven hardship.

4. The variance would allow a use not allowed in the use table for the district in which the parcel is located.
 5. The variance will relieve the applicant of conditions or circumstances that are caused by the illegal subdivision of land, which subdivision of land caused the property to be unusable for any reasonable development under the existing regulations.
 6. The variance will relieve the applicant of conditions or circumstances that are self-imposed.
 7. The variance is grounded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.
 8. The variance will modify any condition imposed by the Planning Commission or City Council as part of a conditional use, special use, Planned Development District or Planned Industrial Park.
 9. The variance would not only affect a specific parcel, but would be of such general nature as to constitute, in effect, a change in zoning of the parcel or a larger area, or would merit an amendment to this Zoning Ordinance.
- F. *Variance Criteria* . To approve an application for a Variance, the Zoning Board of Adjustment shall make an affirmative finding that each and every one of the following 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.
 2. These special circumstances are not the result of the actions of the applicant.
 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.
 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.
 5. Granting the variance will not adversely affect adjacent land in a material way.
 6. Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.
- G. *Conditions* . The Zoning Board of Adjustment may impose such conditions on a variance as are necessary to accomplish the purposes of this Zoning Ordinance, to prevent or minimize adverse impacts upon the public and neighborhoods, and to ensure compatibility of the site with its surroundings. These conditions may include but are not limited to limitations on size, bulk and location; standards for landscaping, buffering and screening, lighting and adequate ingress and egress; cash deposits, bonds and other guarantees of performance; other on-site improvements; and limitations on the duration or hours of operation of an allowed use.
- H. *Effect of Variance* .
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 extension of the 12-month period may be granted by the Planning Director if it is determined that conditions of the site and immediately surrounding area are substantially unchanged.

EXHIBIT D –Redline Version

BY-LAWS OF THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF SAN ANGELO

Article 1. General Governing Statutes, Ordinances and Rules

1.01 Restated Articles. These bylaws restate in their entirety and supersede the bylaws of the Board in effect upon their adoption and shall be effective upon approval by the City Council for the City of San Angelo.

1.02 Governing law. The Zoning Board of Adjustment shall be governed by the following statutes, ordinances and rules, as amended and supplemented from time to time and to the extent that such statutes, ordinances and rules remain in force and effect.

- Chapter(s) 211 of Texas Local Government Code.
- Article(s) 2.07 “Boards, Committees and Boards, Division I and Division 3 of the Code of Ordinances, City of San Angelo, Texas (hereinafter “Code of Ordinances”).
- Chapter 12 of the Code of Ordinances, Exhibit “A” Zoning Ordinance
- Appendix A to the Code of Ordinances, Fee Schedule
- Bylaws of the Zoning Board of Adjustment

The Zoning Board of Adjustment, hereinafter referred to as the “Board,” shall be governed by the following statutes and rules, to the extent that they remain in force and effect, as they are amended, and as they may be added to:

- ~~1.01 The State of Texas Local Government Code.~~
- ~~1.02 Vernon’s Annotated Revised Civil Statutes (V.A.R.C.S.) of the State of Texas.~~
- ~~1.03 The Official Code of the City of San Angelo.~~
- ~~1.04 The By laws of the Zoning Board of Adjustment, as set forth herein.~~

~~Article 2. Authority of the Board~~

~~The Zoning Board of Adjustment shall:~~

- ~~2.01 Hear and decide an appeal which alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of the City of San Angelo.~~
- ~~2.02 Hear and decide special exceptions to the terms of the Zoning Chapter, when that ordinance requires the Board to do so.~~
- ~~2.03 Authorize in specific cases and subject to appropriate conditions and safeguards, a variance from the terms of the Zoning Chapter, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the regulation will result in unnecessary hardship, and so that the spirit of the regulation is observed and substantial justice is done.~~

Article 3. Membership of the Board

~~The Zoning Board of Adjustment shall consist of seven (7) regular [boardBoard](#) member seats and two (2) alternate [boardBoard](#) member seats to be filled by nomination and appointment by the City Council. All [boardBoard](#) members and alternates shall be residents within City limits of San Angelo.~~
The following additional rules shall apply to the [boardBoard](#):

- ~~3.01 The term of each member shall be (2) years.~~
- 3.02 In compliance with Chapter 211 of the Texas Local Government Code, ~~the~~ the City Council may remove a regular [boardBoard](#) member or alternate [boardBoard](#) member for cause, on a written charge and after a public hearing on the matter.
- 3.03 When members propose to resign, they shall give notice of their intent to the chairman and secretary. When any member resigns or a position otherwise becomes vacant for other causes, the secretary shall promptly indicate to the City Council that a vacancy exists.
- ~~3.04 Any vacancy on the [boardBoard](#) in a regular [boardBoard](#) member seat or in an alternate [boardBoard](#) member seat shall be filled for the unexpired term in the same manner as provided for nomination and appointment of a member to fill such member seat.~~
- ~~3.05 No [boardBoard](#) member shall serve more than three (3) consecutive two-year terms, either as a regular and/or an alternate member. However, in the event that a successor is not named (by City Council) to serve in place of a member whose term has expired, said member shall continue to serve as [boardBoard](#) member until the City Council duly appoints a successor.~~
- ~~3.06 Any member who fails to attend at least two thirds (2/3) of the meetings in any one year period shall be deemed to have automatically resigned from office, unless such absences were excused as set forth as follows: The absence shall be termed unexcused by notification to the Board Secretary no later than 12:00 noon on the Friday before the regularly scheduled~~

~~Zoning Board of Adjustment meeting. The Director of the Planning & Development Services Department, or his/her designee, shall make periodic attendance reports to the Zoning Board of Adjustment, and a replacement shall be appointed in the manner provided above for any Zoning Board of Adjustment member who has automatically resigned.~~

3.07 ~~Member Seats to be filled by nomination and appointment by the city council shall be as follows:~~

~~One (1) regular [boardBoard](#) member seat shall be designated to be filled by a nomination of the mayor.~~

~~Two (2) alternate [boardBoard](#) member seats shall be designated to be filled by nominations of the mayor.~~

~~a. Each of six regular [boardBoard](#) member seats shall be designated for a single member district one through six respectively, to be filled by nomination of the council member representing the designated single member district.~~

~~b. The appointment of any regular [boardBoard](#) member or alternate [boardBoard](#) member nominated pursuant to this section shall be made by vote of the City Council. Should any nominee not secure at least four affirmative votes of council members, the mayor or single member district city council member having made the nomination shall make a new nomination for vote of the council.~~

~~e.a. The City Clerk shall maintain a record of [boardBoard](#) members that includes the [boardBoard](#) member's designation as regular [boardBoard](#) member or as alternate [boardBoard](#) member, whether the nomination is by mayor or single member district council member, including the designated single member district, the date of appointment by city council, and the date of expiration of the term of appointment.~~

~~d. For purposes of expanding the regular [boardBoard](#) membership from five regular members to seven regular members after the effective date of this ordinance, the City Clerk shall, based on the record of current appointments to the [boardBoard](#), designate each current regular member of the [boardBoard](#) as representative of mayor or specific single council member district. Each of the two additional regular [boardBoard](#) member seats shall be designated by the City Clerk for nomination by the mayor or specific single member district council member so as to provide the mayor and each single member district council member with a designated regular [boardBoard](#) member seat and the right to make nominations for vacancies or expired terms for such designated regular [boardBoard](#) member seat.~~

Article 4. Meeting date, time and place.

~~One regular meeting date and time of the~~Regular meetings of the Zoning Board of Adjustment shall be on the first Monday of each month, beginning at 1:30 p.m. in the City Council chambers of City Hall or other appropriate location in San Angelo, Texas.

4.01 The number of meetings per month and schedule of meeting dates, as well as the place of meetings, may be altered or changed at any regularly scheduled meeting or upon call of the Chairman or Secretary.

4.02 Additional special meetings may be held at any time, upon the call of the ~~board~~Board chairman or upon written request of three (3) other members, following at least seventy-two hours notice to each member of the ~~board~~Board. Call of special meeting (at a specified time and place and for specified purposes) at a regular meeting shall be notice thereof to members in attendance at such regular meeting, but other members shall receive written notice thereof. If a special meeting is called on a case or cases subject to notice of hearing, the required notice provisions for the hearing shall be met.

Article 5. Conduct of Meetings

5.01 ~~Each case heard before the Zoning Board of Adjustment must be heard by at least six (6) but no more than seven (7) members, regular or alternate.~~

5.02 ~~The concurring vote of at least six (6) members is necessary to:~~

~~Reverse an order, requirement, decision or determination of an administrative official;~~

~~Decide in favor of an applicant ~~applicant/appellant~~ on a matter which the Board is required to pass, under the terms of the Zoning Chapter, including requests for special exception as set forth in the Zoning Chapter;~~

~~Authorize a variation from the terms of the Zoning Chapter.~~

The concurring vote of a simple majority of members present (and constituting a quorum) is required to approve any motion on a matter ~~except as otherwise required under Chapter 2.07 of the Code or Ordinance or Chapter 211 of the Texas Local Government Code~~except as otherwise required under Chapter 2.07 of the Code or Ordinance or Chapter 211 of the Texas Local Government Code~~other than specified directly above and herein this paragraph 5.02.~~

5.03 It shall be customary for the chairman to vote on all matters pending before the Zoning Board of Adjustment ~~except with respect to recusal in the case of conflict of interest, except whereas he or she may otherwise be disqualified from voting.~~

5.04 ~~All meetings of the board ~~Board~~ shall be open to the public and in compliance with the open meeting requirements of Vernon's Annotated Revised Civil Statutes (V.A.R.C.S.) of the~~

~~State of Texas. This requirement for open meetings does not prevent the board~~Board ~~from convening in executive session, under the limitations of said Statutes.~~

5.05 ~~Robert's Rules of Order, Newly Revised shall be adopted as the regular rule for the conduct of meetings, provided such rules do not conflict with the bylaws adopted herein, in which case these bylaws shall supersede Robert's Rules of Order. Furthermore, such rules of order are accepted to be advisory and shall not be binding should the board~~Board~~, by its determination, vary or change such rules of conduct for its meeting.~~In addition to bylaws, the Board may adopt rules governing its procedures.

5.06 Order for consideration of each agenda item, except appeals. The following procedure shall generally be observed for the presentation of relevant evidence and information; however, it may be rearranged by the chairman for individual items, if necessary for the expeditious conduct of business:

- a. The chair introduces the item to be considered, summarizing the nature of the request and its location, as described on the meeting agenda.
- b. The City staff describes in more detail the nature of the request and its relation to applicable ordinances and regulations of the City. Other relevant evidence available is presented by the staff and a recommendation is provided. If the staff recommends approval of a variance, then one or more criteria listed in subsection 11.01 of these by-laws shall be identified as the basis for its recommendation.
- c. The ~~board~~Board may ask questions of the staff, concerning its presentation and report.
- d. The ~~applicant~~applicant/appellant or appellant outlines the nature of the request and presents supporting evidence including witnesses, if so desired.
- e. Board members may ask questions of the ~~applicant~~applicant/appellant~~(appellant)~~applicant/appellant and supporting witnesses.
- f. Members of the public, in attendance at the meeting, are given an opportunity to speak and present evidence in favor or in opposition to the request.
- g. ~~Applicant~~Applicant/appellant~~(appellant)~~Applicant/appellant makes rebuttal or adds points not previously covered. The ~~applicant~~applicant/appellant~~(appellant)~~applicant/appellant may also cross-examine any witness or member of the staff.
- h. Objectors are also given an opportunity to make rebuttal or add points not previously covered.
- i. Board members may ask any final questions it may have of the applicants, appellants,

opponents or staff, and then make a decision on the matter.

5.07 ~~Prior to the public hearing in which the zoning ~~board~~Board of adjustment shall hear an appeal, the following actions shall be made by the ~~board~~Board at a separate public hearing:~~

- ~~a. Designating of the parties in interest;~~
- ~~b. Setting of a reasonable time and date for the appeal hearing;~~
- ~~c. Giving of due notice of the appeal hearing to parties in interest;~~
- ~~d. Giving of public notice of the appeal hearing; and~~
- ~~e. Establishing of protocol for conducting the appeal hearing.~~

5.08 ~~The public hearing for any appeal shall follow the following procedural order:~~

~~Identification of Parties~~

~~Identification of documents constituting the record on appeal to the
—Board~~

~~Identification and admission as evidence of pre-filed documents and any additional documents
offered into evidence~~

~~Presentation by City staff~~

~~Presentations by identified Parties in Interest~~

~~Public comment~~

~~Rebuttals by identified Parties in Interest~~

~~Discussion and deliberation by Board members~~

~~Motion and decision to affirm, modify, or reverse the decision of the administrative official, with
supporting findings of fact applicable under the Zoning Ordinance~~

5.09 Orderly procedure requires that each side shall proceed without interruption by the other.

5.10 During the hearing, the chairman, ~~board~~Board members and the staff may ask questions and

make appropriate comment pertinent to the case; however, no member should debate or argue an issue with the applicant.

5.11 The chairman and [boardBoard](#) members may direct any questions to the [applicant applicant/appellant](#) or to any person speaking, in order to bring out all relevant facts, and may call for questions from members of the staff.

5.12 The [boardBoard](#) shall not be bound by strict rules of evidence, not limited to consideration of such evidence as would be admissible in a court of law, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The chairman shall rule on all questions relating to admissibility of evidence, but may be overruled by a majority of board members present.

5.13 All decisions of the [boardBoard](#) shall be made at a public meeting by a motion made and seconded, and by a show of hands.

5.14 The chair may elect, subject to being overruled by a majority of the [boardBoard](#) members in attendance, on a motion duly passed, to:

- a. Proceed immediately to determination and decision, on conclusion of the hearing on the particular case; or
- b. Defer determination and decision until later in the same meeting; or
- c. Defer determination and decision until another specified regular or special meeting of the Board, in order to obtain additional information or for other good cause.

5.15 Recess. Any regular or special meeting may be recessed or adjourned from day to day, or to the time of any previously announced regular or special meeting.

5.16 Cancellation. If no business is scheduled before the [boardBoard](#), or if it is apparent that a quorum will not be available, any meeting may be canceled by the chairman.

Article 6. Minutes

6.01 The [boardBoard](#) shall maintain a minute book which shall be kept posted to date. In the minute book shall be recorded the [boardBoard](#)'s proceedings, showing attendance and all absences, any disqualifications of members, the records of its examinations and all other official actions, as well as the vote of each member voting on every question.

6.02 The draft minute record of a [boardBoard](#) meeting shall be presented for approval at any subsequent meeting of the Zoning Board of Adjustment. This minute record must be approved by a majority of the members who were present at the meeting applicable to the

subject minutes. If this not possible due to resignations, deaths, or the fact that alternate members were present at the applicable meeting and not present at the current meeting, then a majority of the members present and voting shall be all that is necessary to approve the minutes.

- 6.03 The minutes shall be considered filed after each of the following has occurred: a) the minutes have been approved by the Board, b) the Chairman or Vice Chairman has signed the minutes, and c) the Secretary has posted the minutes in the record book contained in the office of the Planning & Development Services Department. The minutes of the ~~board~~Board shall be a public record, kept in the offices of the Planning & Development Services Department.

Article 7. Requests to Withdraw, to Defer or Continue Hearings, or to Amend Applications and Appeals

- 7.01 On written request from the ~~applicant~~ applicant/appellant(~~appellant~~)-applicant/appellant or authorized agent, an application or appeal may be withdrawn at any time before the ~~board~~Board makes its decision in the case.

- 7.02 On its own motion, or on approval of requests by ~~an~~ applicant/appellants (~~appellants~~) or ~~their~~ authorized agents, the ~~board~~Board may defer the hearing ~~of cases~~ or provide for ~~later~~ continuance ~~of cases on which hearings have begun~~. ~~Such~~Deferrals or continuances ~~of a hearing~~ shall be permitted only for good cause, stated in the motion, ~~and~~ shall require ~~new~~ ~~public~~ notice, ~~and~~ ~~shall be conditioned upon repayment of~~ with fees ~~paid~~ by applicant/appellants ~~or~~ appellants ~~if when~~ deferrals or continuances ~~is~~ at their applicant's/appellant's request or ~~is the result from their~~of applicant's/appellant's actions. ~~No such additional fees shall be required of applicants, if their request to defer a public hearing results from there being less than six (6) board~~Board members attending the meeting at which said hearing is scheduled.

- 7.03 (a) ~~An~~ Applicant/appellants (~~appellants~~) or ~~their~~ authorized agents, may amend any ~~previously accepted~~ application or appeal ~~as a matter of right~~; on written ~~request~~ notice of the ~~amendment delivered to~~received by the secretary of the ~~board~~Board; not less than fifteen days prior to the scheduled hearing date. ~~As an~~In the alternative, ~~a~~An applicant applicant/appellant (~~appellant~~) or authorized agent may ~~submit a written motion~~request to the ~~board~~Board to accept an amendment to an application or appeal ~~less than fifteen days prior to the scheduled hearing date~~. The Board, shall consider ~~any~~ potential prejudice to any other interested party or the public and consider if there is just cause in support of the applicant's/appellant's motion. ~~A~~ceptanceGranting of such motion shall require the vote of at least four of the ~~board~~Board members present, ~~to the board~~ at the hearing, and shall include a written description of the nature and purpose of the proposed amendment.

~~(b) In the latter circumstances described immediately above~~On deliberation of an applicant's/appellant's motion to amend, the ~~board~~Board shall make ~~a~~ findings as to: (1)

whether there is a ~~substantial-substantive~~ difference between the case as it has been described in public notice and ~~the case~~ as amended, and (2) whether the ~~motion to amended request~~ is seeking more restrictive conditions than ~~the request~~ described in ~~the~~ public notice. If ~~the motion substantially-substantively amends the pending application such that prior notice of the purpose of the hearing is considered not ineffective notice, difference is found and/or the amended request seeks less restrictive conditions than the request described in public notice, a new public~~ notice of hearing shall be ~~required~~ requested, ~~with~~ and additional fees shall be paid by the ~~applicant~~ applicant/appellant or appellant, before the hearing on the case may proceed. ~~The board shall also determine whether the nature of the proposed amendment is such as to require referral for re-examination by eCounsel or and city-Planning Department staff members having made reports on the original application or appeal shall be permitted to file an amended or updated reports and recommendations to the Board prior to deliberation and decision of the board~~ Board on an amended ~~application~~ application or appeal. ~~If such referral is found necessary, the board may proceed with the hearing or may defer it to a time and place specified, but the board shall not decide the case until it has considered the response from counsel or staff. If Should the board~~ Board determine that the proposed amendment involves no ~~substantive~~ ~~change~~ ~~and~~ or seeks more restrictive conditions than the ~~request~~ application or appeal initially ~~publicized~~ filed, then the ~~board~~ Board may waive ~~re~~ no new public notice and or referral is necessary, and the board may proceed with ~~a~~ the hearing ~~as scheduled~~ and decision on the amended request.

Article 8. ~~Rules for Rehearings~~ Second Harings

A request for rehearing of an application or appeal denied by the Zoning Board of Adjustment shall not be allowed on the same piece of property, prior to the expiration of six (6) months from the initial ruling of the ~~board~~, unless other property in the same district shall have been (within the same six month period) altered or changed by a ruling of the Zoning Board of Adjustment. Such circumstances shall allow a second hearing, but in no way have any force in law to compel the Zoning Board of Adjustment, after a hearing, to grant the application or appeal; such request shall be considered on its individual merits.—The Director of the Planning & Development Services Department, or his/her designee, shall determine whether a ~~new~~ second application is substantially different from an application or appeal which has been denied during the previous six months and which affects the same piece of property. ~~If said the second~~ application or appeal is determined to be ~~substantively~~ different and not the same as the former application, it may be deemed by the Director as being significantly different from the earlier application such that it is not a second application for the same relief then it may be heard and decided by the board.

Article 9. Officers of the Zoning Board of Adjustment

9.01 Election of Chairman and Vice-Chairman. Annually, as the first item of new business at the first regular meeting of the ~~board~~ Board in the month of January, the ~~board~~ Board shall elect a chairman and vice-chairman. The election shall be determined by a majority of those members present and constituting a quorum at said meeting. If such regular meeting is

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canceled or a quorum is lacking, the election shall be held ~~within 36 days thereafter~~ at the next a regular ~~or special~~ meeting, subject to call of a special meeting for that purpose. If no quorum can be obtained within 36 days, the secretary shall notify the City Council which shall appoint a chairman and vice-chairman to serve until the next regular election in the month of January.

9.02 *Succession of Vice-Chairman to office of Chairman.* If the chairman resigns his office ~~or the office of chairman otherwise becomes vacant~~ or becomes no longer a member of the board, the vice-chairman shall succeed ~~him into~~ office of chairman for the remainder of the term ~~of the chairman~~. If the vice-chairman succeeds to the office of chairman, resigns his office, ~~or the office of vice-chairman otherwise becomes vacant~~ or becomes no longer a member of the board, ~~or succeeds to the chairman's office~~, a special election shall be held at the next regular meeting of the ~~board~~ Board to select a vice-chairman to serve for the remainder of ~~complete~~ the term.

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9.03 *Presiding at Meetings.* (a) If present and able, the chairman shall preside at all meetings and hearings. If the chairman is absent or unable to preside, the vice-chairman shall preside. If both are absent or unable to preside, the members present shall appoint a temporary chairman to preside.

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(b) In accordance with these and other applicable rules, the presiding officer shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on motion duly made and passed. The presiding officer shall maintain order and decorum, and to that end, may order removal of disorderly or disruptive persons. Subject to exception for presentations by city staff, ~~the~~ presiding officer shall administer oaths to all witnesses or arrange for such oaths to be administered before a person authorized to administer oaths, ~~if so desired by the board, or arrange for such oaths to be administered~~.

9.04 *Other Responsibilities and Duties of Chairman.* The chairman shall have ~~further additional duties and responsibilities, as indicated below~~ to:

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a. ~~The chairman may d~~Designate members of the ~~board~~ Board to make personal inspections of premises, when necessary or desirable for the proper consideration of ~~eases~~ matters coming before the Board.

b. ~~The chairman shall a~~Assign duly appointed alternates to serve in the absence or disability of regular ~~board~~ Board members, or ~~the chairman shall assign~~ refer this duty to the secretary of the ~~board~~ Board.

c. ~~The chairman shall a~~Appoint such committees as may be found desirable by the Board relating to duties of the Board or matters coming before the Board ~~necessary~~.

9.05 *Delegation to Vice-Chairman.* The chairman may delegate specific duties generally to be performed by the vice-chairman, or may authorize the vice-chairman to perform specific

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duties of the chairman, during the chairman's absence or ~~in case of his other~~ disability, so that necessary ~~board~~Board functions are performed in a timely manner. The vice-chairman shall perform all duties so delegated. In case of absence or incapacity of the chairman, and on approval by a majority of the ~~board~~Board, the vice-chairman shall perform any or all duties of the chairman, whether or not so delegated.

- 9.06 *Appointment of Secretary; Duties.* The Director of the Planning ~~& and~~ Development Department, or ~~his/her~~ designee, shall serve as secretary to the Zoning Board of Adjustment. The secretary shall ~~in general~~ attend to all correspondence of the ~~board~~Board; ~~send out~~provide for service or cause to be published all notices required; attend ~~all~~all Board meetings ~~of the board~~ and all hearings (except when excused by the chairman and with temporary services arranged); ~~prepare receive and distribute~~ staff reports; ~~and make recommendations on individual cases to be heard by the board~~ assist the Board in articulating and transcribing proper findings and motions; ~~including reasons for recommending approval of a variance, based on criteria contained in subsection 11.01 of these by laws~~; scrutinize all matters to assure compliance with the Zoning Chapter and these rules; compile all required records; maintain the necessary scheduled, files and indexes; and generally, perform or supervise all clerical work of the ~~board~~Board.

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Article 10. Conduct of Board Members

- 10.01 *Conflict of Interest.* No member of the ~~board~~Board shall participate in any case in which he or she has financial or personal interest in the property concerned, or will be directly affected by the decision, or has any other conflict of interest as defined by applicable law. The determination of a substantial interest in a business entity, as well as rules affecting participation of ~~board members~~ in cases affected thereby, are described in the State of Texas Local Government Code.
- 10.02 *Influence Other Than at Public Hearing.* A member may disqualify himself from voting whenever any applicant, or his agent, has sought to influence the vote of the member on his appeal or application, other than in the public hearing.
- 10.03 *Expressions of Bias, Prior to Hearing.* Board members may ~~seek receive~~ information from ~~other members~~, the Secretary, counsel to the ~~board~~Board or staff serving the ~~board~~Board, as well as from applicants or appellants, prior to public hearing; ~~but however no member a Board member shall not~~ express an opinion, bias, or prejudice ~~or individual opinion on proper judgment of the case on a matter coming before the Board~~ prior to its consideration in an open meeting~~hearing~~.
- 10.04 *No Representation by a Board Member.* No member of the ~~board~~Board shall represent an applicants or appellants on any matters ~~that may come before the for which the board Board is to make determinations~~. This provision does not limit the right of a ~~board~~Board member to represent himself or herself, on his or her own application or appeal to the Zoning Board of

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Adjustment.

10.05 *Members Not to Vote Unless Present at Hearing.* No ~~board~~Board member shall vote on any matter deciding an application or appeal, except ~~after upon~~ attending ~~the scheduled the~~ public hearing on the application or appeal. ~~Should an application or appeal be decided at a meeting of the Board other than when heard at the scheduled time, a board member not being in attendance at the scheduled hearing and not voting pursuant to this provision shall not participate in the Board discussion or deliberation on the matter for a vote, but shall remain and be counted for quorum purposes.~~

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Article 11. Criteria, Required Findings and Other Considerations for Approval of Variances From Zoning Regulations

11.01 Criteria. In exercising its power to grant a variance in accordance with zoning regulations, the Zoning Board of Adjustment, in making its findings, shall ~~articulate and reflect show~~ in its minute record ~~the specific findings required in support of its decision as required under applicable provisions of the Zoning Ordinance. that one or more of the following circumstances exist:~~

- a. ~~Special Conditions Resulting in Unnecessary Hardship. A variance may be granted if there are special circumstances existing on the property (for which the application is made) related to size, shape, area, topography, surrounding conditions or location that do not apply generally to other property in the same zoning district, and that said circumstances or conditions are such that the strict application of the zoning regulations will deprive the application of reasonable use of such land or building.~~
- b. ~~Special Reasons of Public Interest or Concern. A variance may be granted if such variance will further an identifiable public interest of concern, such as:~~
 - 1) ~~Saving trees,~~
 - 2) ~~Promoting maintenance and reuse of older urban or historic buildings,~~
 - 3) ~~Helping to eliminate a nonconforming use at another location.~~
- e. ~~Equity. A variance may be granted to permit modifications of height or yard regulations as may be necessary to secure equity in the development of a parcel of land where it has been demonstrated that, due to the existence of nonconforming structures, a substantial proportion of the other properties in the same area and zoning district are legally enjoying the conditions which the applicant is requesting.~~
- d. ~~Minor encroachment. A variance may be granted to:~~
 - 1) ~~Permit the placement of air conditioners and other similar equipment and machinery within minimum side yard areas contrary to the setback~~

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~~regulations of the zoning regulations, where circumstances would render such placement unobjectionable;~~

- ~~2) Permit architectural or other projections of a minor extent beyond a height limit or into required front, side or rear yard areas, provided the board determines that the variance will not be contrary to the intent of the zoning code.~~
- ~~3) Literal Enforcement. A variance may be granted if it is found that the literal enforcement and strict application of this provision of the zoning ordinance will result in extraordinary circumstances or conditions inconsistent with the general provisions and intent of this ordinance and that, in granting such variance, the spirit of the ordinance will be preserved and substantial justice done. The board shall state in the minute record the nature of the circumstance or condition which justifies the variance.~~

~~11.02 Considerations. In exercising its authority, the board shall be mindful that a variance shall not be granted where:~~

- ~~a. The effect of this variance on the specific property will adversely affect the land use pattern as outlined by any City land use plan or policy; or~~
- ~~b. The variance, if granted, will be a material detriment to the public welfare or injury to the use, enjoyment or value of property in the vicinity; or~~
- ~~c. The variance to be granted is not the minimum variance that will relieve the proven hardship.~~
- ~~d. The variance will operate to relieve the applicant of conditions or circumstances:
 - ~~1) Which are caused by the illegal subdivision of land after the effective date of subdivision regulations, which subdivision of land caused the property to be unusable for any reasonable development under the existing regulations, or~~
 - ~~2) Which are otherwise self-imposed;~~~~
- ~~e. The variance is grounded solely upon the opportunity to make the property more profitable or to reduce expense to the owner; or~~
- ~~f. The variance will modify any provision of a special permit; or~~
- ~~g. The variance will not only affect a specific parcel of property, but would be of such general nature as to constitute, in effect, a change in zoning of said parcel or a larger area, or would merit consideration or an amendment to the zoning regulations.~~

Article 12. Miscellaneous

- 12.01 The deadline for submission of a complete application for consideration of an appeal, variance or special exception (by the Zoning Board of Adjustment) shall be no less than 21 days before the regularly scheduled meeting of the Zoning Board of Adjustment. A complete application fee, as determined by City Council must accompany the application.
- 12.02 All maps, plats, site plans, photographs or any other exhibits (or copies thereof) ~~shown~~ presented to the ~~board~~ Board ~~for presentation purposes~~ shall become the property of the City and maintained by the Board as part of the file record for that easematter subject to city policies for retention and disposal.
- 12.03 ~~If a majority of regular board members elect to do so, the City staff may routinely assign pending cases to individual board members on a rotating basis. Board members assigned to a case are strongly encouraged to visit the subject site and become especially familiar with details of that pending request, so they may share their special insight with other board members at the hearing on that matter. The board member assigned to any particular case, however, is not under any obligation to introduce a motion to decide the matter.~~

Article 13. Amending or Waiving These By-laws

- 13.01 Amending By-Laws. These rules may be amended at any regular or special called meeting of the Zoning Board of Adjustment, by a majority of a quorum of ~~board~~ Board members present, provided that each of the following conditions is met:
 - a. ~~Such~~ The amendment ~~will is~~ not ~~be contrary~~ in conflict with applicable to any requirement or limitation set by State law or City ordinance.
 - b. ~~Notice~~ Written notice of ~~said the~~ proposed amendment is furnished to each Board member, ~~in writing~~, at least seven (7) days prior to ~~said the open~~ meeting at which the amendment is to be considered.
 - b.c. The amendment is approved by city council.
- 13.02 Waiving By-Laws ~~Bylaws~~. A rule of procedure set forth in the bylaws may be suspended at any meeting by a majority vote of all ~~board~~ Board members present, unless waiver of the procedure would be in conflict with applicable ~~such rule is set by~~ State law or City ordinance.

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