

**ZONING BOARD OF ADJUSTMENT – March 18 2019
STAFF REPORT**



| | | | |
|--|----------------|---|--------------|
| APPLICATION TYPE: | | CASE: | |
| Variance | | ZBA19-02: Lancaster | |
| SYNOPSIS: | | | |
| <p>The applicant has submitted a variance requesting a three (3) foot side yard setback in lieu of the required five (5) feet, for a house within Single-Family Residential (RS-1) Zoning District. The purpose of the request is to allow for the enclosure of a carport built in 1967, according to county records. The existing home is setback 4.9 feet from the side property line but the angle of the home and property line means the enclosed carport will be somewhere between 3-4 feet off the property line. The current floor area is 2,316 square feet and the additional will add approximately 437-square feet of floor space.</p> | | | |
| LOCATION: | | LEGAL DESCRIPTION: | |
| 2250 Joy Road | | Lot 4, Block: 1, Lake Nasworthy, Group 16 | |
| SM DISTRICT / NEIGHBORHOOD: | ZONING: | FUTURE LAND USE: | SIZE: |
| SMD District #1 – Tommy Hiebert Nasworthy Neighborhood | RS-1 | N- Neighborhood | 0.33 acres |
| THOROUGHFARE PLAN: | | | |
| <p>Joy Road – Urban Local Street 50’ right-of-way required (80’ Provided), 40’ pavement or 36’ feet with a 4’ sidewalk(22’ Provided)</p> | | | |
| NOTIFICATIONS: | | | |
| <p>11 notifications were mailed within a 200-foot radius on March 6, 2019. Three received in support and One in opposition.</p> | | | |
| STAFF RECOMMENDATION: | | | |
| <p>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 three (3) foot side yard setback in lieu of the required five (5) feet, for a house within the Single Family Residential (RS-1) Zoning District located at 2250 Joy Road.</p> | | | |
| PROPERTY OWNER/PETITIONER: | | | |
| <i>Jerry & Loretta Lancaster</i> | | | |
| STAFF CONTACT: | | | |
| <p>Hillary Bueker Senior Planner (325) 657-4210, Ext 1547 hillary.bueker@cosatx.us</p> | | | |

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 applicant indicated a special circumstance that most homes in the area do not meet the current setback regulations as they were built before being annexed into the city. For the reasons in Criteria #1 above, the Planning Division does not believe there is a special circumstance resulting in a hardship.

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.*

Variances: 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 applicant believes a special circumstance exists since the lot is extremely long and narrow and houses in the neighborhood do not sit straight on the lots. The Planning Division does not believe that this situation meets the test for a special circumstance. The carport is allowed to remain as a non-conforming structure but the zoning ordinance does not allow improvements of the structure unless it comes into compliance with current regulations.

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

The original house and carport structures were built in 1967 and the current owner purchased the property in 2014. Planning staff believes the current circumstances are not the result of the applicant as they are looking to enclose an area that is currently under carport roof and not add

the existing roof area.

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 indicated that it would be cost prohibitive to move the carport farther to the right and would ruin the look of the property. They believe enclosing the existing carport would look like an original build and not look like an additions. Planning staff believes that allowing the carport to remain as a non-conforming structure would allow the applicant the same rights as other property owners in the same zoning district, whereas allowing the enclosure of the non-conforming structure would not be allowed by right on any other property in the RS-1 zoning district.. All other RS-1 properties abutting the City Limits are also subject to the same side yard setback.

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 indicates that granting the variance would not be detrimental to the neighborhood and enhance the area with this minimal action. Planning staff does not believe this action necessary to make possible the use of the land or structure as the structure currently serves as a carport.

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

The applicant believes they are not negatively affection the surrounding properties and the neighbors to do object to the improvements. The Lake Nasworthy Homeowners Association has approved the improvement as well. The zoning ordinance seeks to maintain an orderly pattern of development so the intent would not be met if the variance was granted.

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

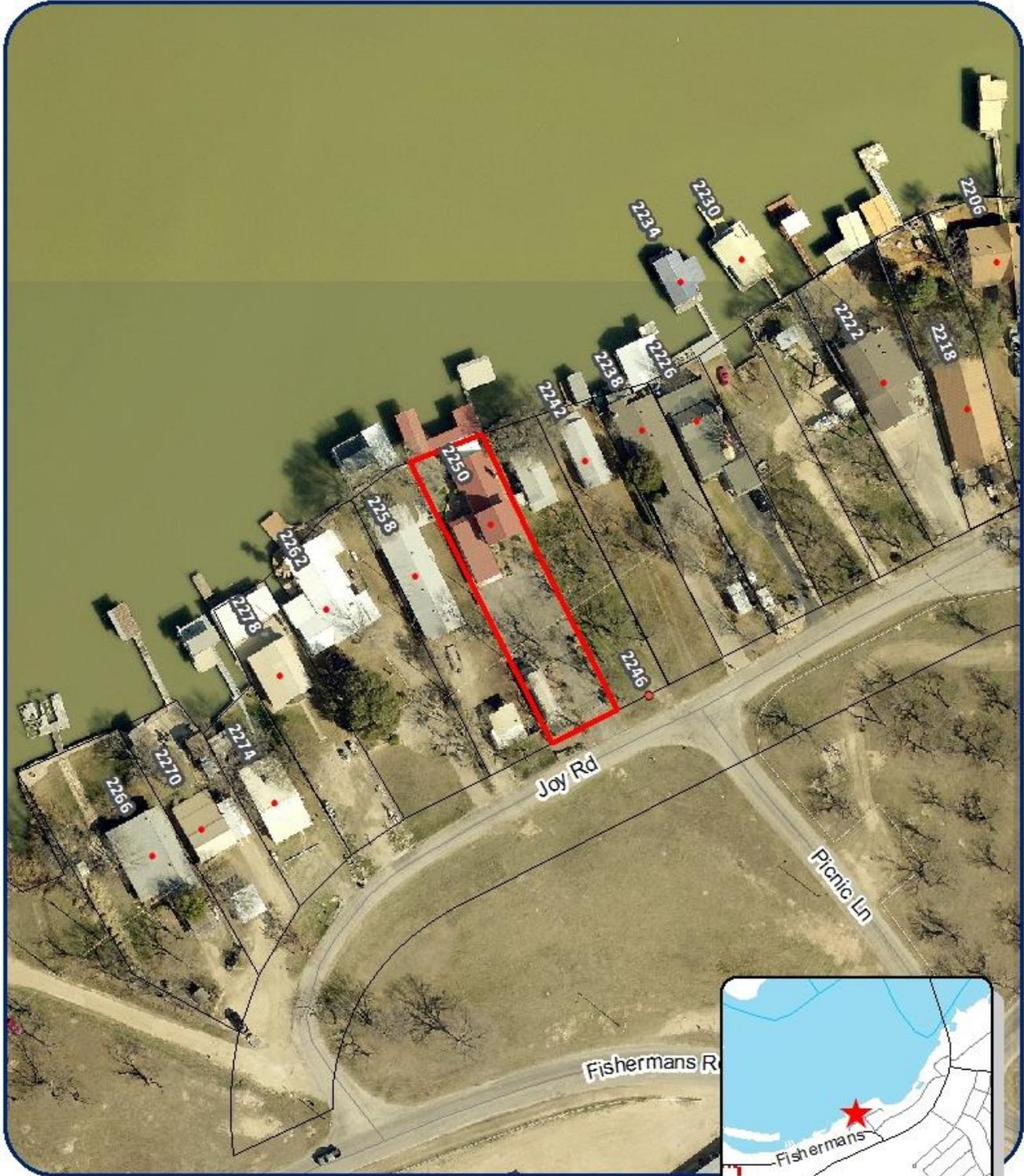
The applicant stated that granting the variance will be consistent with the purpose and intent of the zoning ordinance and enhance surrounding property values. Planning staff believes granting the variance will not meet the intent of the zoning ordinance as its intent is to create a safe and consistently built environment with adequate setbacks from property lines for all structures.

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 three (3) foot side yard setback in lieu of the required five (5) feet, for a house within the Single Family Residential (RS-1) Zoning District located at 2250 Joy Road.

Attachments:

Aerial Map
Future Land Use Map
Zoning Map
Photographs
Site Plan
Floor Plan
Application
Owner Communications
Notification Map
Resident Responses



ZBA19-02: Lancaster
2250 Joy Road
Council District: SMD #1 - Tommy Hiebert
Neighborhood: Nasworthy
Scale: 1" approx. = 100 ft

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

N





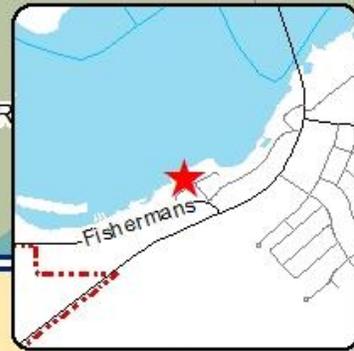

ZBA19-02: Lancaster

2250 Joy Road

Council District: SMD #1 - Tommy Hiebert
 Neighborhood: Nasworthy
 Scale: 1" approx. = 100 ft

Legend

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





ZBA19-02: Lancaster
2250 Joy Road

Council District: SMD #1 - Tommy Hiebert
Neighborhood: Nasworthy
Scale: 1" approx. = 100 ft

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



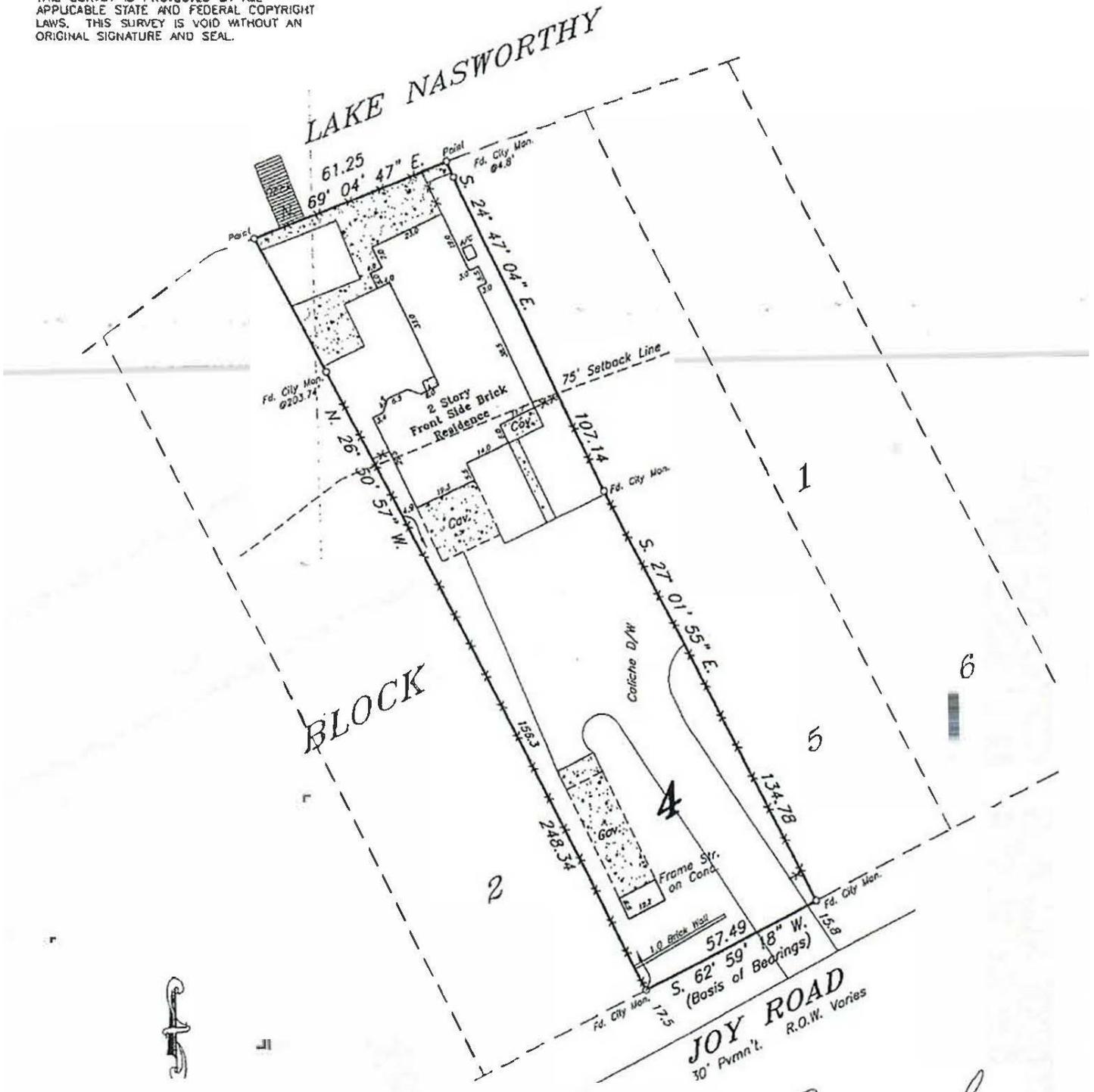
Photos of Site and Surrounding Area





Site Plan

THIS SURVEY IS PROTECTED BY ALL APPLICABLE STATE AND FEDERAL COPYRIGHT LAWS. THIS SURVEY IS VOID WITHOUT AN ORIGINAL SIGNATURE AND SEAL.



Effective January 3, 2017



City of San Angelo, Texas – Planning Division
 52 West College Ave



Application for Variance from Zoning Regulations

Section 1: Basic Information

Name of Applicant(s): Jerry Lancaster
 Owner Representative (Notarized Affidavit Required)

1003 Woodland Park Ave. Midland Tx 79705
 Mailing Address City State Zip Code

432-664-9009 jerry.lancaster@sbcglobal.net
 Contact Phone Number Contact E-mail Address

2250 Joy Rd. San Angelo Tx 76904
 Subject Property Address and/Location City State Zip Code

Lot 4, Block 1, Group 16 Lake Nasworthy
 Legal Description (can be found on property tax statement or at www.tomgreencad.com)

Zoning District:
 CN CO CG CH CG/CH CBD OW ML MHS MHP PD
 RS-1 RS-2 RS-3 RM-1 RM-2 R&E

(Zoning Map available on [City Maps](#))

Section 2: Variance Request(s)

- List each variance request separately:
- Zoning Ordinance section: 501.A
 Describe variance: 3-foot side yard setback instead of 5 feet
 - Zoning Ordinance section: _____
 Describe variance: _____
 - Zoning Ordinance section: _____
 Describe variance: _____
 - Zoning Ordinance section: _____
 Describe variance: _____

Section 3: Variance Request Criteria

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

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;
 Explanation: Extremely long narrow lots, & houses in the neighborhood do not sit straight on the lot.

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: The carport existed in this location since 1967, we purchased this property in 2014.

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: It would be cost prohibitive to move the garage/carport farther to the right & would ruin the looks of the property. Enclosing the existing carport would look like an original build, & not look like an addition.

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: Granting of this variance would is not detrimental to the neighborhood, & in fact enhances the neighborhood with the minimal action required.

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

Explanation: We are not negatively affecting our neighbors, and they do not object. The LNHOA has approved our request.

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

Explanation: Granting the variance will be consistent with the purposes & intent of the zoning commission & actually enhances surrounding property values.

Effective January 3, 2017

Section 4: Applicant(s) Acknowledgement

Please initial the following:

- 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;
- 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;
- 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
- 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.

Jerry Lancaster
Signature of licensee or authorized representative

2-15-19
Date

Jerry Lancaster
Printed name of licensee or authorized representative

Name of business/Entity of representative

FOR OFFICE USE ONLY:

Reviewed/Accepted by: H. Bueker Date: 2 / 15 / 19
Case No.: ZBA: 19 - 02 ZBA Hearing Date: 4 / 1 / 19
Fully-Dimensioned and scaled Site Plan: Yes No Date of Application: 2 / 15 / 19
Non-Refundable Fee: \$ 250 Receipt #: 144145 Date paid: / /
Ordinance section(s) from which variance(s) is/are requested: _____

Bueker, Hillary

From: Jerry Lancaster <jerrylancaster@sbcglobal.net>
Sent: Sunday, February 17, 2019 5:32 PM
To: Wood, Rachel; Bueker, Hillary; Dan Donahue West Texas Preferred Construction
Subject: 2250 Joy Rd - Convert existing carport to insulated double-car garage
Attachments: Memo to Rachel Wood.docx

CAUTION: This email was received from an EXTERNAL source, use caution when clicking links or opening attachments.

Rachel & Hillary: Please read the memo attached to this email detailing my request that you go ahead and issue a permit without time and expense necessary for obtaining a variance. I have sent you a couple of emails with photos showing multiple properties on our street which are out of compliance with property setbacks, which I'm not sure if you received them or not, so I would like to come back into your office tomorrow (Monday morning) to show you these photos. They prove that our request is well within the existing norms for this small neighborhood street.

Also, I failed to mention to you that the carport does not have the usual thin, flat roof. It is a continuation of the existing house roof, with the same pitch, and with existing two-plus feet of side walls already in existence. We simply want to extend those side walls straight down approximately eight feet, so that the existing space under the roof is enclosed. The existing carport roof extends the length of the house and is an extension of the insulated roof and ceiling for the utility room, closet, bathroom and master bedroom. It is the identical roof, with insulation and rain gutters and finished ceiling, extending all the way from the master bedroom and bathroom and utility room for the full length of the carport. The carport and house is all one existing building, with the exception of extending the current two-foot walls of the carport down to the ground. The new walls will be farther from the property line than the now existing carport and two-foot sidewalls.

It seems to me that there is no reason to require a variance, but we will do whatever you say.

Thank you!!

Memo to Rachel Wood, Permit Technician & Hillary Bueker, Planner, The City of San Angelo
Planning & Development Services:

From: Jerry Lancaster, owner of 2250 Joy Road, San Angelo, TX 76904, 432-664-9009

Attached to this memo please find my findings of homes on Joy Road that are at a variance with the City of San Angelo setback requirements. Eleven of the nineteen homes on Joy Road have either all or portions of their home and/or storage buildings out of compliance with the minimum setback requirements.

As I understand the requirements for getting a variance approved, I have to prove that granting my variance would not be out of the norm for the area.

I think my findings are so great in my favor that the Permits and Inspections Division should go ahead and grant my building permit for adding walls to an existing carport, without the time and expense necessary in obtaining a variance.

Also, the existing carport does not have a thin flat roof. It already has a large, fully insulated inclined roof with rain gutters and approximately two feet of side wall now existing, with a finished ceiling underneath the carport, and has been existing for many years. The two-foot side walls are already there, and we would simply be extending them down about eight feet so they are touching the ground and concrete slab that is already there. We intend to build concrete footing to support the new walls. The new walls we are building would be farther from the property line than the already existing roof with two-foot side walls.

Please grant our request for a building permit, without the time and expense involved in obtaining a variance.

Respectfully submitted,

Jerry Lancaster

My observation of homes on Joy Rd on Lake Nasworthy, Texas

Total Homes: 19

Total Homes that are within less than the minimum setback requirements,
including the new one to be built: 11

Joy Road is a short street with 19 homes on one side of the road next to the lake, and no homes on the other side of the street. All the lots are very long and narrow, and narrows more at one end than the other, making it extremely hard to meet the setback requirements. Eleven of the 19 properties are not within the required building setback requirements. I do not object to any of this, and feel like we are in a very beautiful neighborhood. My nextdoor neighbor states that he also has no objection.

2202 Joy Rd – Less than 1 foot from property line

2206 Joy Rd – Less than 1 foot from property line

2226 Joy Rd - Storage building less than 1 foot from property line, and home less than 1 foot from property line on both sides

2226 & 2238 Joy Rd – Shares boat house that straddles the property line

2242 Joy Rd – Storage building less than 1 foot from property line

2250 Joy Rd – Carport less than 3 feet from property line

2266 Joy Rd – Less than 3 feet from property line

2270 Joy Rd – Storage building less than 1 foot from property line

2274 Joy Rd – Storage building less than 1 foot from property line

2246 Joy Rd – The new owner of the property next door to my home stated to me that he was granted a variance to completely tear down the old home and build a new one in its place, being less than 75 feet from the water.

Bueker, Hillary

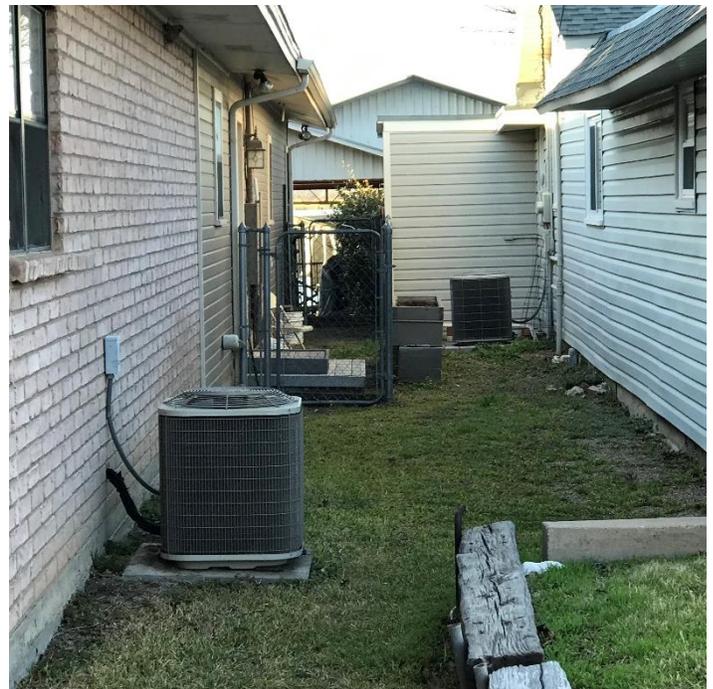
From: Jerry Lancaster <jerrylancaster@sbcglobal.net>
Sent: Saturday, February 16, 2019 5:38 PM
To: Bueker, Hillary; Wood, Rachel; Dan Donahue West Texas Preferred Construction
Subject: 2250 Joy Rd, enclose carport permit and/or variance

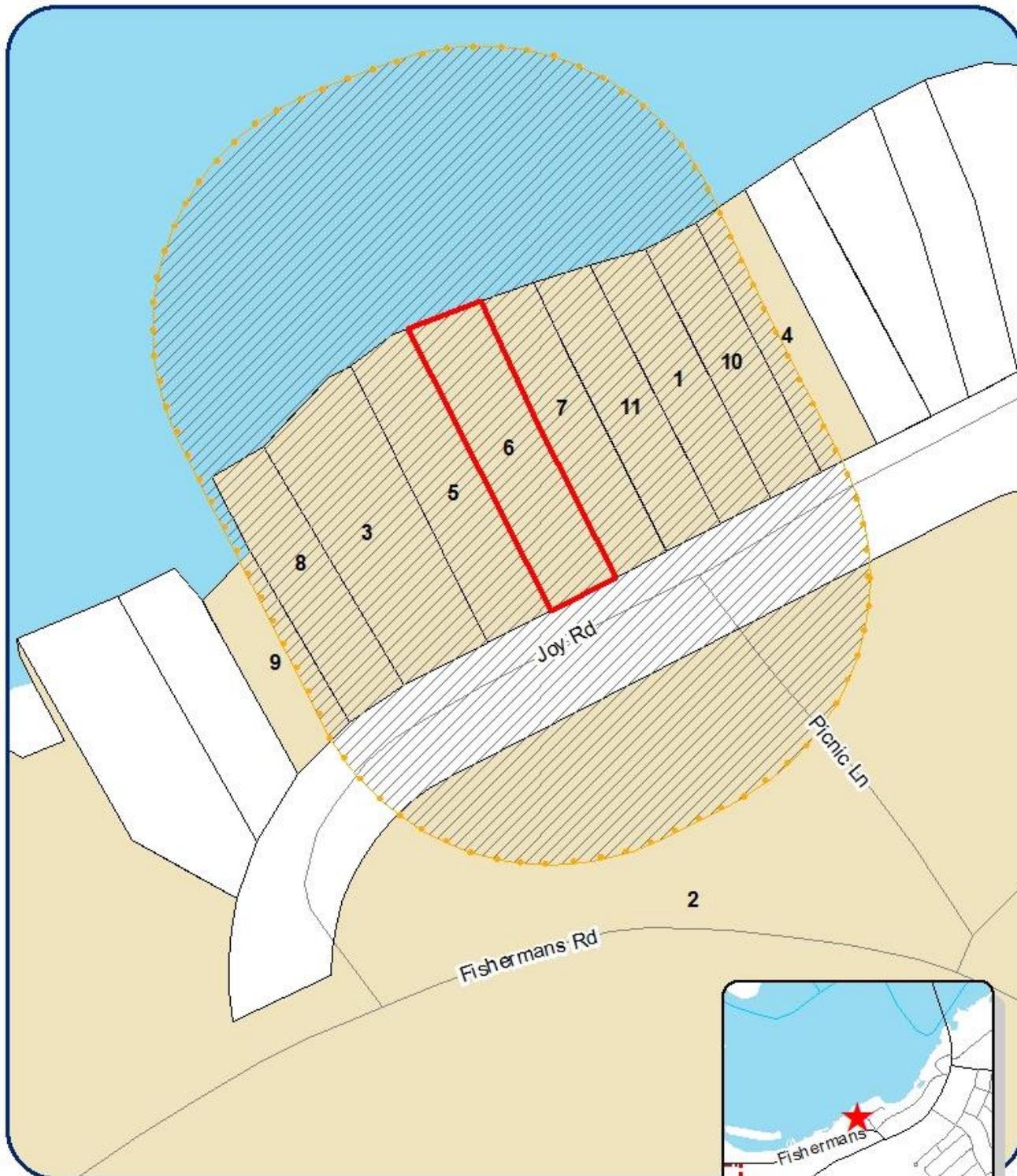
CAUTION: This email was received from an EXTERNAL source, use caution when clicking links or opening attachments.

Attached hereto are two more properties on Joy Road, showing the properties are very close together, one of which shows a portion of the house sitting directly on the property line, with no clearance whatsoever. Using these two photos plus the ones I sent you earlier, shows that building at or near the property lines on Joy Road is the norm for this neighborhood, and that I would not be building anything varying from the norm in the neighborhood. Our proposed fully insulated double garage with two small storm windows at the top of each side wall to let in light and give some air circulation in the summertime, would be a great addition to the neighborhood and not vary from the norm whatsoever.

I would request that you allow us to obtain a building permit, without the necessity of obtaining a variance.

If we must obtain a variance, I would point out that our new neighbor to the right of our house has recently torn down the existing house on the property, and he said he has already obtained a variance to allow him to build a new home on the property without the required 75-foot setback. We would respectfully request that we also be granted a variance, but would hope that you would consider going ahead a granting us a permit without the need for a variance, for all of the reasons stated above and in my first email to you.





ZBA 19-02: Lancaster
2250 Joy Road

Council District: SMD #1 - Tommy Hiebert
Neighborhood: Nasworthy
Scale: 1" approx. = 100 ft

Legend

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



To The City of San Angelo, Building Permits, Planning & Zoning:

Re: Variance at 2250 Joy Road for enclosing an existing carport into a double-car garage

I, Ray Harper, own the property on Lake Nasworthy at 2258 Joy Road, San Angelo, Texas, directly next door to 2250 Joy Road, sharing a common fence with 2250 Joy Road.

I wish to go on record as not objecting to enclosing the existing carport at 2250 Joy Road. I appreciate the fact that Mr. Jerry Lancaster is improving the property and increasing the property value at 2250 Joy Road, and have no objection whatsoever.

Respectfully submitted,



Ray Harper

2258 Joy Road

San Angelo, TX 76904

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: David & Mary Stalo

ADDRESS: 2226 Goy Rd S.A. TX. 76904

PHONE: 325-947-6104

SIGNATURE: David R Stalo

ZBA19-02: Lancaster

Property owner number: 10

If you have any questions about these proceedings, please call Hillary Bueker, Senior Planner, with the City of San Angelo's Planning Division at (325) 657-4210 or by email at hillary.bueker@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: Donald A & Judith A Burney

ADDRESS: 2238 Joy Rd.

San Angelo TX 76904

PHONE: 325-949-5809

SIGNATURE: Judith A Burney

ZBA19-02: Lancaster

Property owner number: 1

If you have any questions about these proceedings, please call Hillary Bueker, Senior Planner, with the City of San Angelo's Planning Division at (325) 657-4210 or by email at hillary.bueker@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)

Reducing the distance between homes from 5' to 3' setback is just way too close.

There needs to be more space between houses — not less.

Houses that are too close together look ugly.

NAME: John Cocuzzi

ADDRESS: 626 Ashford Drive
San Angelo TX 76901

PHONE: (325) 224-0122

SIGNATURE: 

ZBA19-02: Lancaster

Property owner number: 3

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

ZONING BOARD OF ADJUSTMENT – March 18, 2019
STAFF REPORT



| | | | |
|--|--|---|-------------------------|
| APPLICATION TYPE: | | CASE: | |
| Variance | | ZBA19-03: Wells | |
| SYNOPSIS: | | | |
| <p>On February 22, 2019, the applicants submitted the subject variance request to allow additions onto their existing single-family dwelling. The variances if approved would allow a 16-foot front yard setback from South Tyler Street in lieu of the required 25 feet to convert an existing carport into a bedroom; a 0-foot setback from South Taylor Street in lieu of 25 feet for the said bedroom and conversion of an attached storage building into a den; and a variance to allow one parking space in lieu of two for the dwelling once the carport has been converted into a bedroom (See additional information).</p> | | | |
| LOCATION: | | LEGAL DESCRIPTION: | |
| 1441 South Tyler Street; located immediately north of the intersection of South Tyler Street and South Taylor Street | | South Heights Addition, Block 18, the north 50 feet of the south 120 feet of Lot 8 and the south 70 feet of Lot 8 | |
| SM DISTRICT / NEIGHBORHOOD: | | ZONING: | FUTURE LAND USE: |
| SMD District #5 – Lane Carter Santa Rita Neighborhood | | RS-1 | N- Neighborhood |
| SIZE: 0.09 acres | | | |
| THOROUGHFARE PLAN: | | | |
| <p>South Taylor Street – 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>South Tyler Street – Urban Local Street Required: 50' right-of-way, 40' pavement or 36' feet with a 4' sidewalk; Provided: 60' right-of-way, 36' (complied at the time of platting)</p> | | | |
| NOTIFICATIONS: | | | |
| 21 notifications were mailed within a 200-foot radius on March 6, 2019. Zero letters have been received in support and one letter was received in opposition of the request to date (see attached). | | | |
| STAFF RECOMMENDATION: | | | |
| <p>Staff's recommendation is for the Zoning Board of Adjustment (ZBA) to APPROVE (a) a variance from Section 501.A of the Zoning Ordinance to allow a 16-foot front yard setback from South Tyler Street in lieu of the required 25 feet; (b) a variance from Section 501.A of the Zoning Ordinance to allow a 0-foot front yard setback from South Taylor Street in lieu of the required 25 feet; and, (c) a variance from Section 511.B of the Zoning Ordinance to allow one parking space in lieu of the required two parking spaces in the RS-1 Zoning District located at 1441 South Tyler Street, subject to two Conditions of Approval.</p> | | | |
| PROPERTY OWNER/PETITIONER: | |  | |
| <i>Property Owners and Applicants:</i> Justin and Kayla Wells | | | |
| STAFF CONTACT: | | | |
| Jeff Fisher, AICP Senior Planner (325) 657-4210, Extension 1550 jeff.fisher@cosatx.us | | | |

Additional Information: The applicants purchased the property in 2016 but the home was built in 1927 according to the Tom Green County Appraisal District prior to zoning. There is no record of any permit for the main dwelling on this property, and aerial footage delineates the current footprint has existed since at least 1954. The proposed additions will shift the current structures out of the city right-of-way along Taylor Street, removing the current encroachments. The applicant plans to install a new driveway along Taylor Street which will allow an additional vehicle to park in the right-of-way between the paved street and the property. However, because only a portion of this space is on private property and the rest in the right-of-way, it does not count towards required parking, and a variance is still required.

Variances: 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:

Original

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 Planning Division believes that the applicants have a unique circumstance peculiar to the size and shape of the property – an irregular triangle that narrows and fronts onto two streets – South Taylor Street and South Taylor Street – limiting buildable space. The lot at its widest is 69.28 feet along the north property line. If both required setbacks were met, a total of 50 feet, this would only leave space for a 10-foot wide, insufficient for adequate living area. The two residential properties immediately to the north have a similar shape and also do not meet the current front yard setback along South Taylor Street and appear to have legal non-conforming residences.

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

The applicants purchased the property in 2016 and did not create the current deficient setbacks. The applicants are attempting to improve this situation by shifting the existing portions that encroach into the public right-of-way back exclusively onto private property. The applicants are creating one deficient parking space by enclosing their carport but Planning Staff supports this request given limited space on the property, and with a new driveway along Taylor Street that can park a second vehicle. A portion of this space would be in the right-of-way, but exclusively off the paved portion of the street, and there are no immediate plans for the City to widen South Taylor Street. Further, this area acts a rear yard to the properties to the north which have solid screen privacy fencing.

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.**

Other homes in this neighborhood that do comply with the required setbacks are on larger lots or rectangular shaped lots fronting only one street with a single front yard setback. The subject lot has a dual disadvantage being on an irregular shaped lot that narrows and with two required front yard setbacks. Denying the variance would thus create an unnecessary 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.**

The applicants are shifting but not expanding the existing structures on the lot, making the request the minimum action necessary. The existing home at 1,075 square feet is the smallest home within this block and the footprint would remain the same. The Planning Division believes the proposed request is consistent with the intent of the Zoning Ordinance and the request does not further reduce the existing setbacks.

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

The Planning Division does not believe the requested variances would negatively affect adjacent land. The existing lots were platted in 1906, and amended in 1926 prior to zoning. Existing front setbacks along South Tyler Street range from 16 feet to 25 feet and the lot immediately north also has a 0-foot front yard setback. The proposed request would be in keeping with the average setbacks on adjoining lots or those in close proximity.

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 consistent with the intent of the Zoning Ordinance. The proposed variances comply with Section 104 Purpose of the Zoning Ordinance, “protecting the character and established pattern of desirable development in each area” with setbacks that are consistent with this policy. As indicated, the footprint of the home would not increase and the home will remain the same size.

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 the house is legal non-conforming and was built on an irregular shaped lot with two front yards, creating a hardship to meet required setbacks. The Planning Division agrees. There is insufficient space to meet the front yard setbacks given the narrow, triangular shape of the property. The applicant would be forced to remove large portions of their home to comply, creating an unnecessary hardship.

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 **APPROVE** the following variances to allow additions to a single-family dwelling in the Single-Family Residential (RS-1) Zoning District: (a) a variance from Section 501.A of the Zoning Ordinance to allow a 16-foot front yard setback from South Tyler Street in lieu of the required 25 feet; (b) a variance from Section 501.A of the Zoning Ordinance to allow a 0-foot front yard setback from South Taylor Street in lieu of the required 25 feet; and, (c) a variance from Section 511.B of the Zoning Ordinance to allow one parking space in lieu of the required two parking spaces located at 1441 South Tyler Street, subject to **two Conditions of Approval:**

1. The applicant shall obtain a new building permit(s) from the Permits and Inspections Division for the proposed building expansions.
2. The variance shall limit the expansion to the square footage and dimensions shown on the attached plan provided by the applicants.

Attachments:

Aerial Map
Future Land Use Map
Zoning Map
Photographs
Response Letter
Site Plan
Application

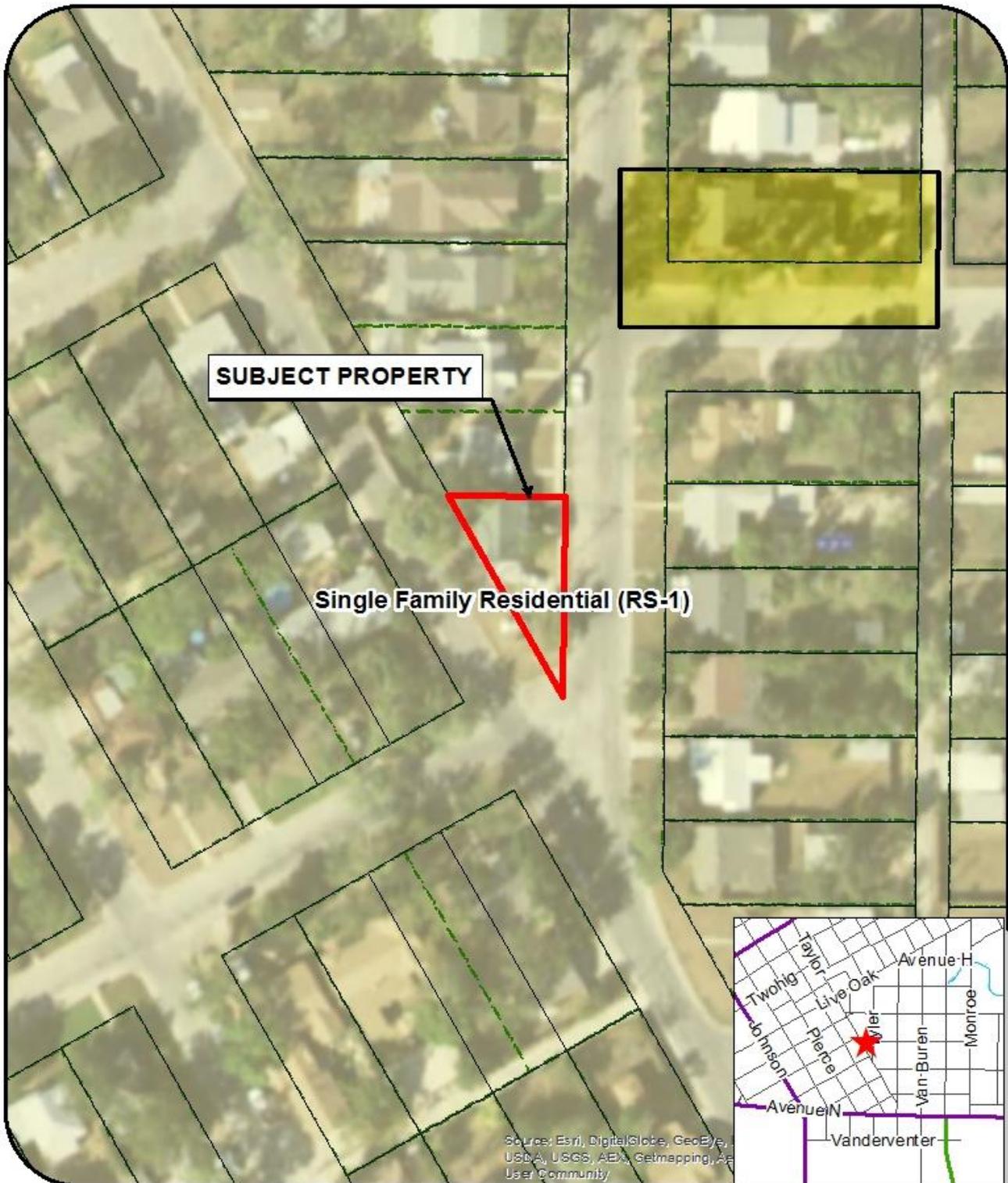


Source: Esri, DigitalGlobe, GeoEye,
USA, USGS, Aero, Getmapping, Aer
Last Community

Variance Case File
ZBA19-03: Wells
Council District: Lane Carter (SMD#5)
Neighborhood: Santa Rita
Scale: 1" approx. = 75 ft
Subject Property: 1441 S. Tyler St.

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





Variance Case File
ZBA19-03: Wells
Council District: Lane Carter (SMD#5)
Neighborhood: Santa Rita
Scale: 1" approx. = 75 ft
Subject Property: 1441 S. Tyler St.

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



Photos of Site and Surrounding Area

WEST AT SUBJECT PROPERTY



NORTHWEST AT SUBJECT PROPERTY



LOCATION OF PROPOSED BEDROOM ADDITION



LOCATION OF PROPOSED DEN ADDITION



VIEW FROM INTERSECTION CORNER



LOOKING NORTH AT SUBJECT PROPERTY



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

(X) IN OPPOSITION

REASON(S)

I feel the line of sight for traffic at this intersection would be impaired. It is already difficult to see if there are cars approaching from the multitude of directions. Drivers speed, ignore stop and yield signs as it is. Any further obstruction would only make a bad situation worse.

NAME: David Myrick

ADDRESS: 2103 W Ave L.

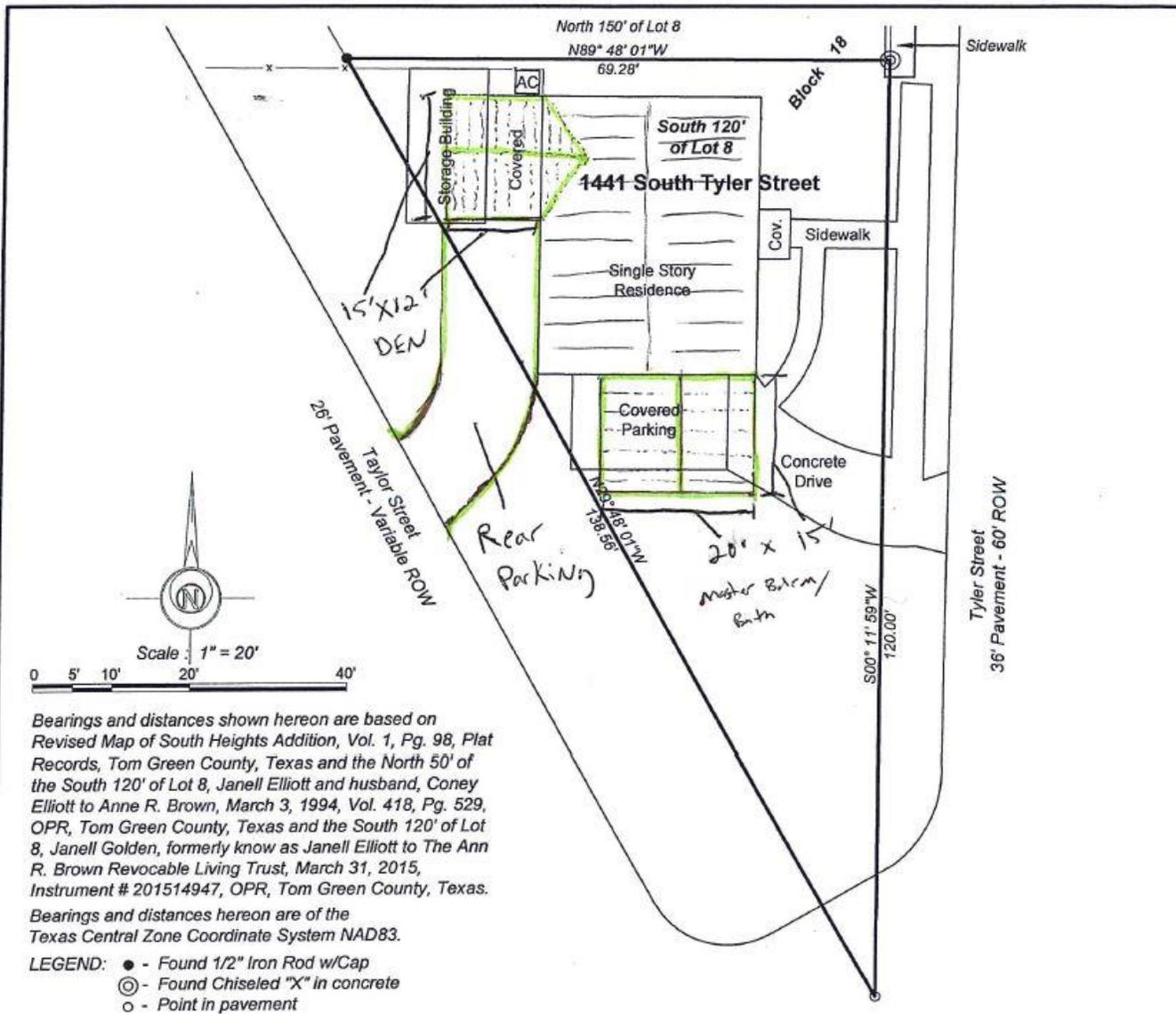
SIGNATURE: David Myrick

ZBA19-03: Wells

Property owner number: 14

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

Site 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: existing home and lot were established prior to the purchase of the property

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: most lots in this district a rectangular shaped with larger lot areas

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: existing lot is only 3920 sqft where -ms new lots in RS-1 need to be 5000 sqft. this smaller lot size prevents me from expanding the home

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

Explanation: proposed additions will be consistent with current building foot prints

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

Explanation: the proposed additions will not reduce current set back any further. The current site triangle on the corner lot will not be impeded by the proposed additions.

Effective January 3, 2017

Section 4: Applicant(s) Acknowledgement

Please initial the following:

- 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;
- 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;
- 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
- 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.

Justin Wells - Kayla Wells
Signature of licensee or authorized representative

2/21/2019 - 2/21/2019
Date

Justin Wells - Kayla Wells
Printed name of licensee or authorized representative

Name of business/Entity of representative

FOR OFFICE USE ONLY:

Reviewed/Accepted by: Jeff Fisher Date: 2, 22, 2019

Case No.: ZBA: 19 - 03 ZBA Hearing Date: 4, 11, 2019

Fully-Dimensioned and scaled Site Plan: Yes No Date of Application: 2, 22, 2019

Non-Refundable Fee: \$ 250.00 Receipt #: _____ Date paid: 2, 22, 2019

Ordinance section(s) from which variance(s) is/are requested: 501.A, 511.B

MEMO



Date: March 12, 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 18, 2019 special 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 Restated Bylaws

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

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 chair 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 Board member or as 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 Chair or Secretary.
- 4.02 Special Meetings. Additional special meetings may be held at any time, upon the call of the Board chair or upon written request of three (3) other members, following at least seventy-two hours' notice to each member of the 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 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 Chapter 2.07 of the Code or Ordinance or Chapter 211 of the Texas Local Government Code.
- 5.02 Chair Vote. It shall be customary for the chair to vote on all matters pending before the Zoning Board of Adjustment except with respect to recusal in the case of conflict of interest.
- 5.03 Agenda Order. 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 chair 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 may ask questions of the staff, concerning its presentation and report.
 - d. The applicant/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/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/appellant Applicant/appellant makes rebuttal or adds points not previously covered. The 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.
- 5.04 Orderly Procedure. Orderly procedure requires that each side shall proceed without interruption by the other.
- 5.05 Questions during Hearing. During the hearing, the chair, 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 chair 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, 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 chair 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 chair.

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 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 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 Chair or Vice Chair 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 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 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 requests by an applicant/appellant or authorized agent, the Board may defer the hearing or provide for continuance. Deferrals 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 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 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 as to: (1) whether there is a substantive difference between the case as it has been described in public notice and as amended, and (2) whether the motion to amend is seeking more restrictive conditions than described in the public notice. If the motion substantively amends the pending application such that prior notice of the purpose of the hearing is considered ineffective, 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 & 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 to be substantive 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 .

Article 9. Officers of the Zoning Board of Adjustment

- 9.01 Election of Chair and Vice-Chair. Annually, as the first item of new business at the first regular meeting of the Board, the Board shall elect a chair and vice-chair. The election shall be determined by a majority 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, 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 chair and vice-chair to serve until the next regular election in the month of January.
- 9.02 Succession of Vice-Chair to office of Chair. If the chair resigns his office or the office of chair otherwise becomes vacant, the vice-chair shall succeed to office of chair for the remainder of the term. If the vice-chair succeeds to the office of chair, resigns his office, or the office of vice-chair otherwise becomes vacant, a special election shall be held at the next regular meeting of the Board to select a vice-chair to serve for the remainder of the term.
- 9.03 Presiding at Meetings. (a) If present and able, the chair shall preside at all meetings and hearings. If the chair is absent or unable to preside, the vice-chair shall preside. If both are absent or unable to preside, the members present shall appoint a temporary chair 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 Chair. The chair 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-Chair. The chair may delegate specific duties generally to be performed by the vice-chair, or may authorize the vice-chair to perform specific duties of the chair, during the chair's absence or disability, so that necessary Board functions are performed in a timely manner. The vice-chair shall perform all duties so delegated. In case of absence or incapacity of the chair, and on approval by a majority of the Board, the vice-chair shall

perform any or all duties of the chair, 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 chair 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 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.

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 to the Zoning Board of Adjustment.
- 10.03 *Members Not to Vote Unless Present at Hearing.* No Board member shall 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 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.

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 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 (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) 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. 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 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 Waiving Bylaws. 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 waiver 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 18th day of March, 2019.

, Chairperson
Date: March 18, 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:


 85CC121DADBB40F...
 Brenda Gunter, Mayor

ATTEST:

DocuSigned by:


 EE8995EDA4EAT475...
 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 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.