

**ZONING BOARD OF ADJUSTMENT – OCTOBER 4, 2021
STAFF REPORT**



APPLICATION TYPE:	CASE:		
Variance	ZBA21-23: 108 & 100 E. Ave K		
SYNOPSIS:			
A request for approval of a variance from section 509.B the zoning ordinance to allow both an 8 foot and 6 foot fence height in lieu of the maximum 4 feet in the General/Heavy Commercial (CG/CH) Zoning District, located at 108 E. Ave. K.			
LOCATION:		LEGAL DESCRIPTION:	
Northeast corner of Oakes and Avenue K intersection.		Blk: 99, Subd: FORT CONCHO ADDITION, W 26' OF LOT 11 & ALL OF LOT 12 & Lot: 10 & E 24' OF LOT 11, Blk: 99, Subd: FORT CONCHO ADDITION	
SM DISTRICT / NEIGHBORHOOD:	ZONING:	FUTURE LAND USE:	SIZE:
SMD District # – Harry Thomas Fort Concho	Heavy/General Commercial (CG/CH)	CN – Neighborhood Commercial	0.151 acres
NOTIFICATIONS:			
19 notifications mailed within 200-foot radius on September 23, 2021. No letters received in favor or against.			
STAFF RECOMMENDATION:			
Staff’s recommendation is for the Zoning Board of Adjustment (ZBA) to APPROVE a variance from section 509.B of the Zoning Ordinance to allow for a fence height of 6 feet and one of 8 feet in lieu of the maximum 4 feet in General/Heavy Commercial (CG/CH) Zoning District with two conditions of approval .			
PROPERTY OWNER/PETITIONER:			
Owner: Elizabeth Bible			
STAFF CONTACT:			
Kyle Warren Planner I (325) 657-4210, Extension 1546 kyle.warren@cosatx.us			

Allowed Variances:

In addition to the six criteria in the City’s Zoning Ordinance, 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. **On September 1, 2021, the State of Texas has amended the Texas Local Government Code, Section 211.009 to include the following five criteria as grounds for a hardship:***

- (1) **the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;**
- (2) **compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;**
- (3) **compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;**
- (4) **compliance would result in the unreasonable encroachment on an adjacent property or easement; or**
- (5) **the municipality considers the structure to be a nonconforming structure.**

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.*

Planning Staff believe that there is an overriding public interest, being that the effective screening of outdoor storage and possibly junked vehicles on the site, outweighs the interest in maintaining visibility of the property through a shorter fence in the yards adjacent to the street.

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.*

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 property in question is a vehicle repair yard, which has old and dilapidated vehicles on the lots. It is the only property with such a use in its immediate area and the benefit of screening this lot outweighs the need to strictly enforce the front yard fence height requirement.
2. **These special circumstances are not the result of the actions of the applicant.** The current owner already had a makeshift 8 foot fence at the front of the lots, by allowing this variance the fencing would be upgraded to better quality fencing materials. The remaining sections of 6 foot fence would cover up an unsightly repair yard that has been in operation for years.
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.** Keeping the fence at a 4 foot maximum in the front would put the property in question at risk for theft. The two buildings that front the lot are built with no setback so keeping the 8 foot fence already in place keeps the continuity of the front face of the two lots.
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 request would improve the appearance of the property to the public by fencing in the old and junked cars on the lot.
5. **Granting the variance will not adversely affect adjacent land in a material way.** The surrounding area is also zoned CG/CH and would tidy the area up if the fencing were built and brought up to material standards. No immediate negative impacts are foreseen to adjacent properties.
6. **Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.** Section 104.2 of the Zoning Ordinance states that the purpose of the Ordinance is to “Protect the character and the established pattern of development in each area”. Staff believes providing a variance for a fence in this case would be in line with protecting the character of the area.

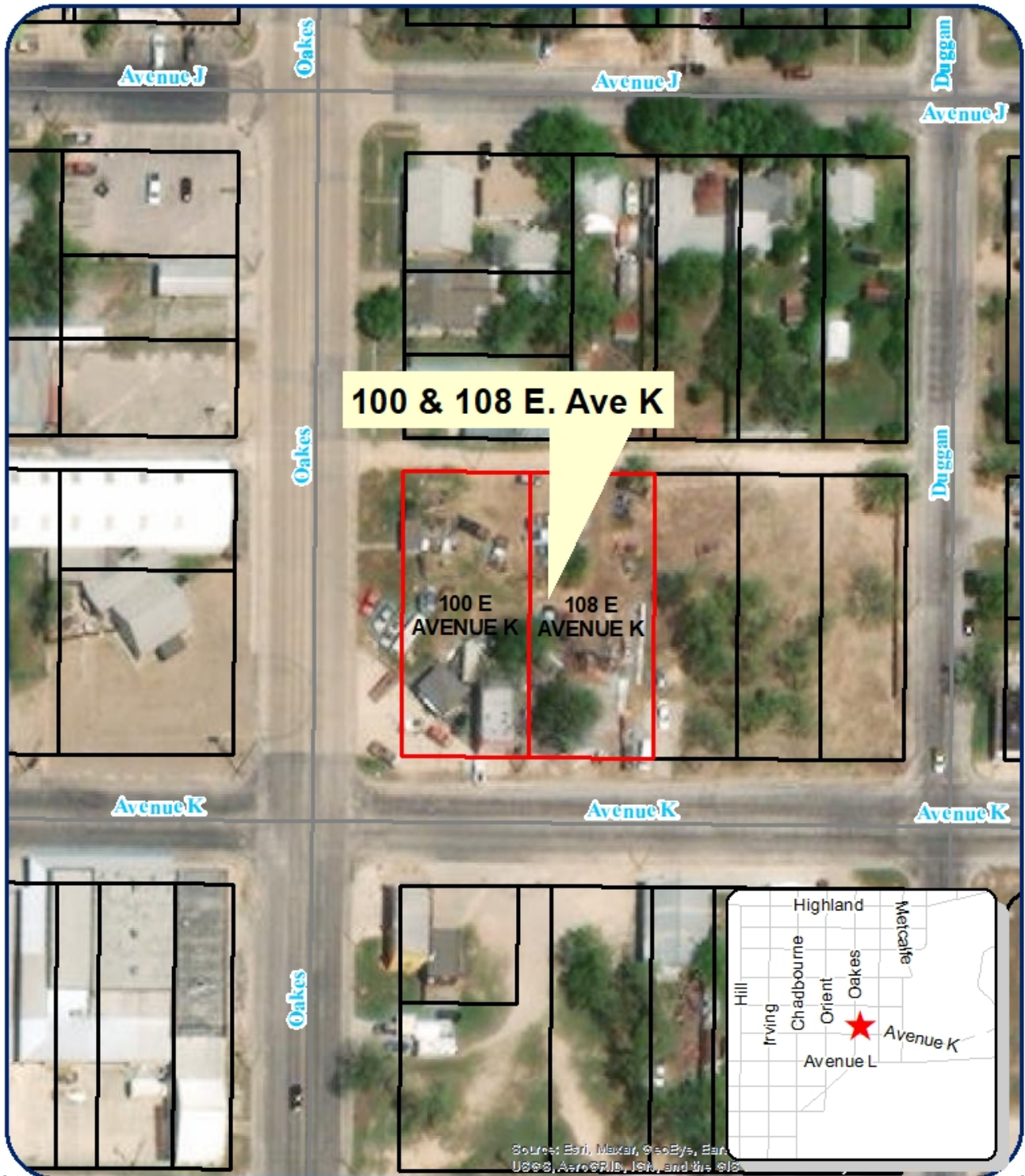
Recommendation:

Staff’s recommendation is for the Zoning Board of Adjustment (ZBA) to **APPROVE** a variance from section 509.B the zoning ordinance to allow both an 8 foot and 6 foot fence height in lieu of the maximum 4 feet in General/Heavy Commercial (CG/CH) Zoning District located at 108 E. Ave. K with **three conditions of approval:**

1. The applicant shall obtain all required permits from the Permits and Inspections Division;
2. The applicant shall construct all fencing with standard fencing materials, as determined by the Planning Director.
3. All outdoor storage of materials and vehicles shall be contained within the new fencing.




Attachments:


Location Map
Photographs



Property Location Map

ZBA21-23
Council District: Harry Thomas- District 3
Neighborhood: Fort Concho
Scale: 0 0.00375 0.0075 0.015 0.0225 0.03 Miles

Legend
Subject Properties: 
Current Zoning:  



Photos of Site and Surrounding Area

FRONT OF PROPERTY (EXISTING 8' FENCE) AND EAST SIDE



SOUTH WEST AND WEST SIDES OF PROPERTY



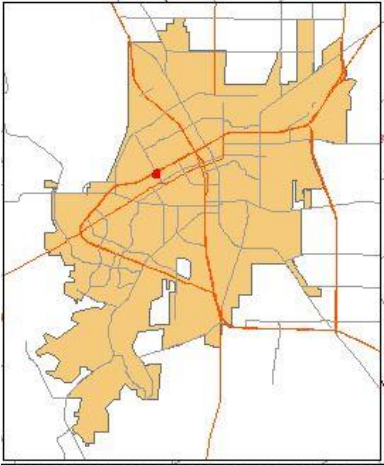
NORTH SIDE OF PROPERTY



**ZONING BOARD OF ADJUSTMENT – AUGUST 24, 2021
STAFF REPORT**



APPLICATION TYPE:		CASE:	
Variance		ZBA21-26: 400 Block of Howard Street	
SYNOPSIS:			
The applicant has applied for a variance to eliminate an encroachment of an existing single-family residence onto an adjacent property. The house sits on Lot 2 in the Sun-Set Terrace Subdivision and encroaches over the side lot line into Lot 3. Approval of this variance for a narrow lot width (42 feet instead of 50) for Lot 3, will allow Lot 2 to become larger, eliminating the encroachment and maintaining the required 5-foot side yard setback from Lot 3, but will result in Lot 3 being non-compliant.			
LOCATION:		LEGAL DESCRIPTION:	
Southwest of Houston Harte Expressway/Howard Street		Lot 3 in Sun-Set Terrace Addition	
SM DISTRICT / NEIGHBORHOOD:	ZONING:	FUTURE LAND USE:	SIZE:
SMD District #4 – Lucy Gonzales Central Neighborhood	Single-Family Residential (RS-1)	N – Neighborhood	0.151 acres
NOTIFICATIONS:			
20 notifications mailed within 200-foot radius on September 23, 2021. No letters received in favor or against.			
STAFF RECOMMENDATION:			
Staff’s recommendation is for the Zoning Board of Adjustment (ZBA) to APPROVE a variance from Section 501.A of the Zoning Ordinance to allow for a lot width of 42 feet in lieu of the required 50 feet in the Single-Family Residential (RS-1) Zoning District, being 0.151 acres located southwest of Houston Harte Expressway and Howard Street, subject to two conditions of approval .			
PROPERTY OWNER/PETITIONER:			
Owner: Boyer Legacy Real Estate LLC Petitioner: Erica Carter, P.E. Carter-Fentress Engineering, LLC			
STAFF CONTACT:			
Jeff Fisher, AICP Chief Planner (325) 657-4210, Extension 1550 jeff.fisher@cosatx.us			



Additional Information: The new lots will comply with all development standards of the RS-1 zoning district except that Lot 3 will now be 42.35 feet in width instead of the 50 feet required in the Zoning Ordinance. The requested variance would allow this narrower lot to be created through a subdivision replat. While lot width variances have not been approved in this subdivision, there have been a few approvals in the last two years that were similar to this case:

- ZBA21-15: 106 & 110 E. Highland Blvd. – approved by ZBA – to allow two lots with 46’ and 48’ lot widths for single-family homes (to allow readjustment of lot lines);
- ZBA20-25: 2625 Forest Park Avenue – approved by Planning Director - to allow two lots with 47’ lot widths for single-family homes (eliminating an encroachment)

Allowed Variances:

In addition to the six criteria in the City’s Zoning Ordinance, 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. On September 1, 2021, the State of Texas has amended the Texas Local Government Code, Section 211.009 to include the following five criteria as grounds for a hardship:*
 - (1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;
 - (2) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
 - (3) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
 - (4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (5) the municipality considers the structure to be a nonconforming structure.

Planning Staff believes that #4 above is applicable demonstrates a hardship. Therefore staff supports the requested variance to eliminate the encroachment of the building across the existing lot lines. Although one option for resolving this would be to combine the two lots into one, staff believes that allowing two lots, especially with such a minimal reduction in width on one lot, is a reasonable solution in this case.

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 existing encroaching house is a special circumstance on this property. As indicated, the lots were platted in 1926 and the home built in 1927. The encroachment was recently discovered and the variance would allow the situation to be rectified.
2. **These special circumstances are not the result of the actions of the applicant.** The current owner only purchased the property in February 2021 and did not create the circumstance.
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.** As indicated, the encroachment renders this lot unbuildable because the Zoning Ordinance limits one home on each lot.
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 request is the minimum action necessary.
5. **Granting the variance will not adversely affect adjacent land in a material way.** The surrounding area is fully built out with homes. As indicated, it appears the encroachment has existed since the homes were built, and the lot lines have not changed. Allowing the variance would not create any adverse effects on adjacent land.
6. **Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.** Section 104.2 of the Zoning Ordinance states that the purpose of the Ordinance is to “Protect the character and the established pattern of development in each area”. The adjacent home will not change its location and at 42 feet of lot width, there is still sufficient space to build a new home.

Recommendation:

Staff's recommendation is for the Zoning Board of Adjustment (ZBA) to **APPROVE** a variance from Section 501.A of the Zoning Ordinance to allow for a lot width of 42 feet in lieu of the required 50 feet in the Single-Family Residential (RS-1) Zoning District, being 0.151 acres located southwest of Houston Harte Expressway and Howard Street, subject to **two conditions of approval**:

1. The applicant shall obtain all required permits from the Permits and Inspections Division;
2. The applicant shall submit and obtain approval of a subdivision replat with the new lot configurations within 12 months.

Attachments:

Location Map
Photographs
Concept Plan
Application



Variance		Legend			
ZBA21-26: 400 Blk. Howard Street Council District: Lucy Gonzales - District 4 Neighborhood: Central Scale: 1" approx. = 100 ft SW of H. Harte Expressway/Howard St.		Subject Properties: 	Current Zoning: RS-1 Requested Zoning Change: N/A Vision: Neighborhood		

Photos of Site and Surrounding Area

SUBJECT PROPERTY



NORTH ON HOWARD ST.



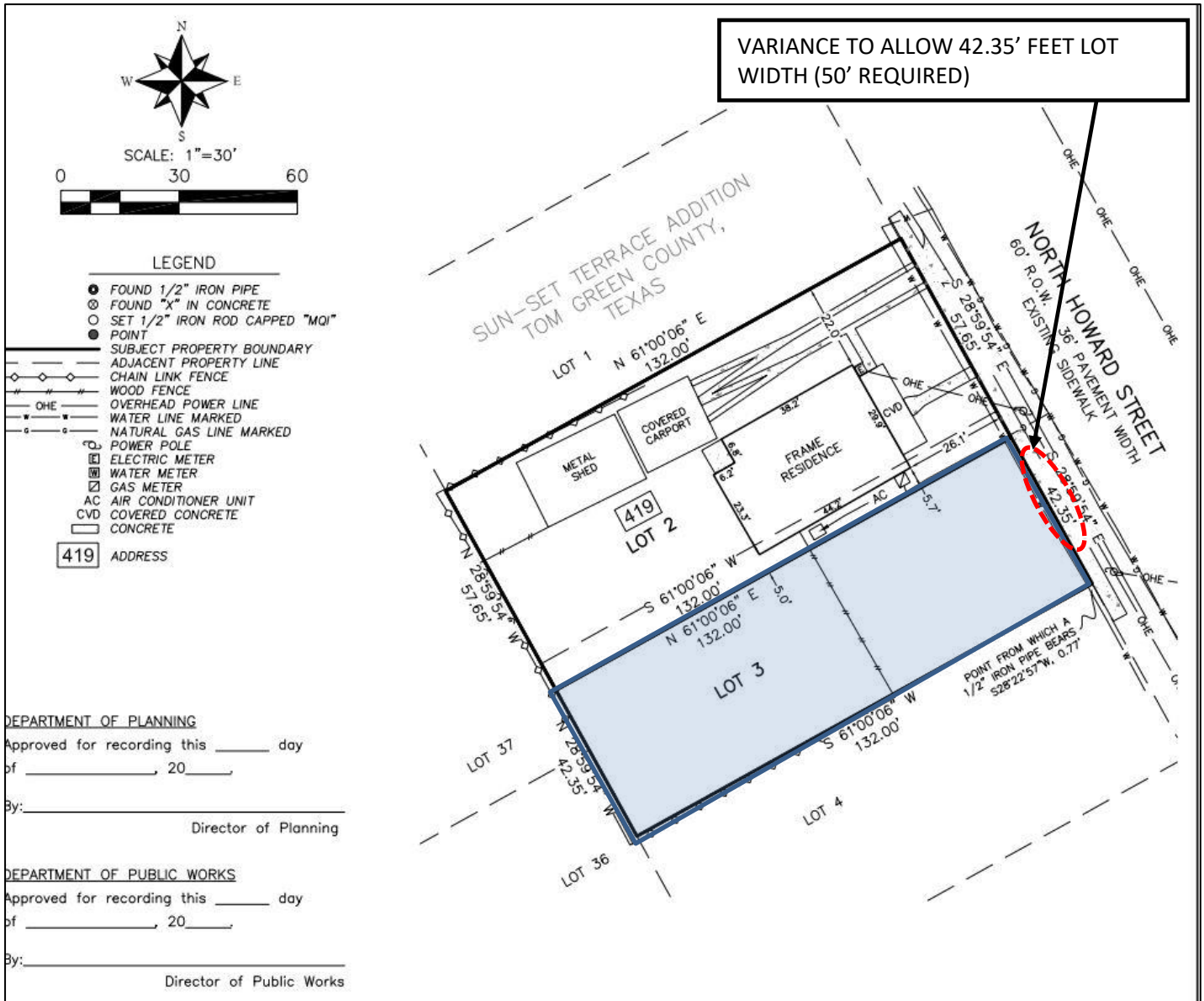
SUBJECT PROPERTY



SOUTH ON HOWARD ST.



Concept Plan





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): Carter-Fentress Engineering, LLC.

Owner Representative (Notarized Affidavit Required)

113 East Twohig San Angelo Texas 76903
 Mailing Address City State Zip Code

325-716-3013 ecarter@fentresseng.com
 Contact Phone Number Contact E-mail Address

419 Howard Street San Angelo Texas
 Subject Property Address and/Location City State Zip Code

All of Lot 2 and Lot 3 Sun-Set Terrace Addition
 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: Section 501.A Minimum Lot Width
 Describe variance: Applicant is subdividing a larger lot into 2 smaller lots and is requesting the approval for Lot 3 minimum width to be 43.25'
- 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: The Tract of land is made up of Lots 2 and 3 and has 1 owner. Lot 2 has an existing residence. Because, Lot 2 has an existing residence on it, Lot 3 boundary line must meet the setback requirements per the ordinance. Lot 2 has accessory buildings that had be accounted for within that setback requirement. Leaving Lot 2 with 42.35' in lieu of 50'.

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 applicant did not own this property when the existing structures were built, thus was not a result of his actions.

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: The tract of land was made from 2 residential lots that were meant for 2 homes to be built on. The applicant has a buyer for Lot 3 that will fit nicely with the width we are requesting and still meet the setback requirements. There are many residential lots that have requested and have been granted approval of this same variance.

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: This minimum width will not cause the lot to be less than 5,000 sq. ft. which is the minimum residential lot area.

This variance will allow for another affordable home to be built on a lot that was always meant to have a home built on and in the RS-1 district.

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

Explanation: Granting this variance will not affect any adjacent landowners. The applicant will still be meeting the setback requirements per the Zoning Ordinance.

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

Explanation: One intent of the zoning ordinance is to preserve neighborhoods and keep areas with single family homes

separate from other commercial or industrial facilities. This variance will not disrupt that intent. It will also bring a new home to an older neighborhood which allows for surrounding home values to increase.

Effective January 3, 2017

Section 4: Applicant(s) Acknowledgement

Please initial the following:

EC

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;

EC

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;

EC

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

EC

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.

Erica Carter

Signature of licensee or authorized representative

08/18/2021

Date

Erica Carter, P.E.

Printed name of licensee or authorized representative

Carter-Fentress Engineering, LLC.

Name of business/Entity of representative

FOR OFFICE USE ONLY:

Reviewed/Accepted by: _____

Date: ____/____/____

Case No.: ZBA: _____ -- _____

ZBA Hearing Date: ____/____/____

Fully-Dimensioned and scaled Site Plan: Yes No

Date of Application: ____/____/____

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

Date paid: ____/____/____

Ordinance section(s) from which variance(s) is/are requested: _____

