



**ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
New Braunfels Municipal Building, Council Chambers
424 S. Castell Avenue, New Braunfels, Texas
November 19, 2015
6:00 P.M.
AGENDA**

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **APPROVAL OF MINUTES**

- October 22, 2015 Regular Meeting.

4. **PUBLIC HEARINGS**

(A) **Case #Z-15-028:** Hold a public hearing and consider a request for a variance to the Magnolia Springs Planned Development Standards to allow an encroachment of approximately one foot into the required 25-foot front setback on Lot 5 Block 16, Magnolia Springs Subdivision Unit 4, addressed at 355 Amaryllis.
Applicant: LGI Homes, Inc.; Case Manager: Holly Mullins

(B) **Case #Z-15-029:** Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(2)(iii) to allow a duplex to encroach up to 10 feet into the 15-foot side setback in the "R-2" Single-family and Two-family District on the west side of the 1100 block of Katy Street.
Applicant: Trace Jurica; Case Manager: Matthew Simmont

5. **ADJOURNMENT**

CERTIFICATION

I hereby certify that the above Notice of Meeting was posted on the Bulletin Board at the New Braunfels Municipal Building, New Braunfels, Texas on this the ____ day of November, 2015, at ____p.m.

Patrick Aten, City Secretary
City of New Braunfels

NOTE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at 221-4010 at least two work days prior to the meeting so that appropriate arrangements can be made.

**ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
October 22, 2015**

MEMBERS PRESENT:

Chair Richard La Rochelle
Vice Chair Melinda Poss
Bonnie Leitch
Rupert Chavez
Nancy Cronen

STAFF PRESENT:

Chris Looney, Planning Director
Stacy Snell, Planning Manager
Valeria Acevedo, City Attorney
Matthew Simmont, Planner
Holly Mullins, Senior Planner
Matt Greene, Planner
Matt Johnson, Planning Technician

Chair La Rochelle called the meeting to order at 6:00 p.m. in the New Braunfels Municipal Building, City Council Chambers. Roll was called and a quorum declared.

APPROVAL OF MINUTES

Board Member Leitch suggested that the word "stated" be replaced on page 7, with the word "cited".

Motion by Vice Chair Poss, seconded by Board Member Leitch, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of September 17, 2015 as amended. The motion carried. (5-0-0)

PUBLIC HEARINGS

Case #Z-15-024: Hold a public hearing and consider a request for variance to Section 5.3-2(h) to allow existing wood privacy fences to remain between a commercial property and the adjacent single family residences rather than require a 6-foot to 8-foot masonry wall between the commercial and residential properties in the "C-2" General Business District, addressed as 1242 West San Antonio Street.

Applicant: Mark Penick; Case Manager: Matt Greene

Mr. Greene began his presentation and said that the subject property is located on the west side of W. San Antonio Street and 2 lots south of the intersection of Hickory Avenue, consists of 11,380 square feet, and is zoned "C-2" General Business District. He said that a commercial permit was issued in December of 2014 to convert the existing single-family residential structure to a commercial office. Mr. Greene stated that the subject property is bordered by an automotive repair center to the north, single-family residences to the south and west and W. San Antonio Street to the east.

Mr. Greene cited Section 5.3-2(h) of the Zoning Ordinance.

Mr. Greene said that there are currently 6-foot wood privacy fences on the property lines between the subject property and the two adjacent residential lots. Mr. Greene stated that according to the applicant, the original fences were dilapidated and the pickets on the wood privacy fences were replaced with new pickets in August of this year as well as the majority of the fence. He said that the applicant is requesting a variance to allow the existing wood privacy fences to remain and not be required to construct a masonry wall between the adjacent single-family residential properties.

Mr. Greene explained to the Board that City Council requested Staff to propose amendments to the Zoning Ordinance that would allow residential properties to waive the fence or wall requirement. The public hearing and first reading of the ordinance amendment occurred at City Council's October 12, 2015 meeting and the second and final reading is to occur on October 26th.

Mr. Greene said that Section 2.2-3(a) of the Zoning Ordinance states that the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land; Mr.

Greene said that the applicant has stated that the common property lines in question have existing wood privacy fences that would have been considered adequate under the Zoning Ordinance prior to the amendment adopted in 2012, which requires a masonry wall. He said the applicant believes that the existing wood privacy fences provide adequate screening and has pointed out that the residential property to the south is zoned commercial. Mr. Greene said Staff does not recognize any unique circumstances of the subject property to prevent the construction of the masonry wall as required by current City Code, and that all other lots within the City under the same circumstances are required to construct a masonry wall. And;

2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; Mr. Greene said that the applicant has stated the wood privacy fences allow the property owner to use the property without interfering with other residential property rights. He said that Staff has noted the intended use of the property as an office can still occur with the construction of the required masonry wall. And;

3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; Mr. Greene said the applicant does not believe there will be any change at all affecting the public health, safety or welfare, or injurious to other property as the existing wood privacy fences would remain as they are today. Mr. Greene noted that the parking lot for the commercial office is proposed to be located in the back yard of the subject property and Staff believes the existing wood privacy fences may not adequately screen the lights, fumes or noise from the vehicles in the parking lot from the adjacent residential properties for which the current standard is intended to protect. And;

4) Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter; Mr. Greene said the variance may prevent orderly use of the adjacent residences and other properties are required to construct by the current development standards. And;

5) That an undue hardship exists; Mr. Greene said that the applicant believes the need for a masonry wall far exceeds the demands of the property, and that there is no noise or safety issues that would require requiring a masonry wall and that a masonry wall is an excessive demand. Mr. Greene said that the adopted Zoning Ordinance requires the masonry wall of all non-residential development to protect the quality of life at a person's home. He said Staff believes that no undue hardship or unique circumstance affecting the property has been identified. And;

6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations; Mr. Greene said the applicant has stated that the granting of the variance will be in harmony with the regulations as the existing fences would remain and are consistent with other commercial properties along W. San Antonio Street.

Mr. Greene said that city code indicates that a variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

Mr. Greene said that four similar cases have recently been approved and three denied by the Board.

Mr. Greene concluded his presentation and stated that 19 notifications were mailed to surrounding property owners; three were in favor of the variance and two were opposed.

Board Member Leitch asked if there was a permit pulled for the existing wood fence.

Mr. Greene restated that it was the replacement of an existing fence, and that there was no record of a permit.

Vice Chair Poss asked for more information regarding the proposed code amendment.

Mr. Looney explained that the code amendment would provide an option to the adjacent residential property owner to not require the masonry wall, and that the final reading for the amendment would be held at City Council the following Monday.

Board Member Cronen asked Staff to clarify the boundaries to where the masonry wall is required.

Vice Chair Poss asked why the property adjacent and to the south of the property would trigger the masonry wall requirement. Mr. Greene said that the masonry wall requirement is based on the use of land, and not the zoning that is in place for the property.

Discussion ensued in regards to the existing land uses adjacent to the subject property.

Chair La Rochelle invited the applicant to speak.

Mark Penick, from 5372 Tahoma Place, said that to the best of his knowledge, there were no hazardous materials being used at the adjacent automobile repair shop. He also mentioned that city inspector, Matt Garcia, informed him that a permit would not be needed for the replacement of an existing fence.

Vice Chair Poss asked Mr. Penick if he was ever informed by the City of the masonry wall requirement. He said that he was informed after the replacement fence was approved, and during a pre inspection to convert the residential property to a commercial property.

Board Member Cronen asked Mr. Penick if a commercial permit was pulled to convert the house from residential to commercial use.

Mr. Penick confirmed, yes.

Vice Chair Poss asked him what type of commercial business was proposed for the property.

Mr. Penick explained to the Board that he had plans for a staffing company; however, now that those plans are no longer possible, he is selling the property to someone who will operate a property management company.

Vice Chair Poss said that she was pleased that the pending code amendment will potentially provide some flexibility to the masonry wall requirement.

Board Member Leitch asked Mr. Penick why he did not choose to wait for the outcome of the potential code amendment.

Mr. Penick said that he applied for a variance before the proposed code amendment was initiated by City Council.

Mrs. Snell confirmed with the Board that they have the authority to grant a partial variance request.

Mrs. Snell also confirmed for the Board that the adjacent automobile shop is a permitted use in a "C-2" zone.

Chair La Rochelle asked if there was anyone in the audience that wished to speak in favor of the variance.

No one spoke.

Chair La Rochelle asked if there was anyone in the audience that wished to speak in opposition of the variance.

No one spoke.

Motion by Board Member Leitch, seconded by Vice Chair Poss, to grant a variance to Section 5.3-2(h) to allow existing wood privacy fences to remain between a commercial property and the adjacent single

family residence on the side property line, except for the rear property line, rather than require a 6-foot to 8-foot masonry wall between the commercial and residential properties in the "C-2" General Business District, addressed as 1242 West San Antonio Street. The motion approved. (5-0-0)

Case #Z-15-025: Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(ii) and 3.3-2(b)(1)(iii) to allow a proposed addition to encroach up to 5 feet into the 25-foot front yard setback and up to 4 feet 4 inches into the 5-foot side yard setback in the "R-2" Single-family and Two-family District at 972 Cole Avenue.

Applicant: Nile Riedel; Case Manager: Matthew Simmont

Mr. Simmont began his presentation and said that the subject property is approximately 5,000 square feet in area and located just south of the intersection of West Klingemann Street and Cole Avenue.

Mr. Simmont stated that the applicant proposes to construct a new house with a detached garage on the subject property. The proposed dwelling will be approximately 21 feet in height and the detached garage will be approximately 19 feet in height. He said the submitted site plan indicates that a proposed car port located on the northwest side of the dwelling would encroach 4 feet 4 inches into the side yard setback, leaving 8 inches of distance to the property line. Mr. Simmont said that the measurements did not include the roof overhang. He also stated that the site plan shows the proposed dwelling encroaching up to 5 feet into the front yard setback.

Mr. Simmont said that the applicant indicates the requested variances will allow for the development of this small lot with a home that is "best suited" for the property owner. According to the applicant, the car port would provide a covered entry into the dwelling and the larger rear yard will allow for "proper" vehicle maneuvering space coming out of the garage. He also stated that in addition, the applicant notes the requested variances for setback encroachments in this subdivision are commonly requested and granted.

Mr. Simmont said that Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land. Mr. Simmont said Staff believes there are no special circumstances or conditions that affect the subject property to the magnitude of the requested variances since the subject property is only 2 feet narrower than the current minimum lot width requirement of 60 feet and is in compliance with current lot depth requirement. Staff does not find this unique to the subject property and believes it is more suited for possible code amendment discussions. And;
- 2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; Mr. Simmont said that the applicant has indicated that the variances would allow for planned improvements to the property. Staff believes that this property can be developed with a house and garage under current zoning regulations. And;
- 3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; Mr. Simmont said the applicant has indicated that the variances will not affect other properties within the area; however, other properties will be required to construct by the current development standards. And;
- 4) Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter; Mr. Simmont said the variances should not prevent orderly use of other land in the area; however, other properties will be required to construct by the current development standards. And;
- 5) That an undue hardship exists. Mr. Simmont said the applicant has indicated that the proposed improvements to the property are designed to best accommodate the property owner. Staff has not identified an undue hardship on the subject property such as topography or a significant tree, and the applicant has not illustrated a hardship unique to the subject property, but a concern with the existing

development standards of the neighborhood. And;

6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. Mr. Simmont said the applicant states that the granting of the variance will not negatively affect others. He stated that the setbacks are intended to provide open space, allow for off-street parking, and maintain consistency along the street. In this case, the building setbacks in the neighborhood are consistently less than regulations allow, which may suggest that the existing development standards should be reviewed and possibly revised for this neighborhood.

Mr. Simmont said that three similar cases have recently been approved by the Board.

Mr. Simmont concluded his presentation by stating that a variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

Vice Chair Poss asked Staff if there was a special district being considered for the neighborhood that contains the subject property.

Mrs. Snell clarified that there is not a special district being considered; however, the staff report indicated that the ZBA has the ability to suggest to City Council if they see it to be more appropriate than to continue to grant variances.

Discussion continued in regards to the previous variance requests for setbacks within the subject properties neighborhood.

Board Member Cronen asked if the subject property was a 50-foot lot. Staff confirmed that the lot was 58 feet, and that it was slightly larger than most of the surrounding lots.

Chair La Rochelle asked the applicant to address the Board.

Niles Riedel explained to the Board that he was not very familiar with the variance process, identified a discrepancy in the Cities application, and provided the Board with the letters of response that were in favor of his variance request.

Board Member Leitch asked Mr. Penick why he did not choose to attach the garage to the main structure. Mr. Penick said that his architect told him that the home would not fit within the rear setback if it were to be attached to the rear of the proposed house. Discussion continued.

Mr. Penick provided the Board with elevations of his proposed work. Discussion ensued in regards to the architectural design of the proposal.

Discussion followed in regards to the building code requirements of the drainage and construction for a residential structure.

Chair La Rochelle asked if there was anyone in the audience that wished to speak in favor of the variance.

No one spoke.

Chair La Rochelle asked if anyone wished to speak in opposition of the variance.

No one spoke.

Motion by Board Member Cronen, seconded by Vice Chair Poss, to grant a variance to Section 3.3-2(b)(1)(ii) and 3.3-2(b)(1)(iii) to allow a proposed addition to encroach up to 5 feet into the 25-foot front yard setback and up to 4 feet 4 inches into the 5-foot side yard setback in the "R-2" Single-family and Two-family District at 972 Cole Avenue. The motion approved. (5-0-0)

Case #Z-15-026: Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1) to allow a residential driveway to be less than 20 feet in length on Lot 12 and a portion of Lot 11, Block 21, NCB 5062, addressed at 587 East Common Street.

Applicant: Jane Rebescher; Case Manager: Holly Mullins

Mrs. Mullins began her presentation and said that the property is located at the intersection of E. Common Street and Grant Avenue. She stated that a nonconforming detached garage on the property lines adjacent to Grant Avenue and a rear alley was removed from the property in 2014, and a new garage was permitted and constructed in 2015. Mrs. Mullins said that although the application described the structure as a garage, plans submitted did not indicate a driveway, and specifications such as driveway length and spacing were not reviewed with the original permit. The structure meets the typical 15-foot setback for an accessory building; however, because no driveway was shown, review staff failed to apply a separate section of the Zoning Ordinance requiring either the garage setback be increased to 20 feet, or the driveway be 20 feet long, to allow room for a car to park in the driveway without overhanging into the right-of-way and the pedestrian route.

Mrs. Mullins said there are ways to achieve a 20-foot driveway with a 15-foot building setback, such as a side-entry garage door, but the garage is now built with the doors facing Grant Avenue so driveway placement is limited.

Mrs. Mullins said that Section 2.2-3(a) of the Zoning Ordinance states that the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land. Mrs. Mullins said the applicant states that plans were approved by the City, and the garage and driveway are now in place. And;
- 2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; Mrs. Mullins said that the applicant states the variance is necessary to preserve the building currently located 15 feet from the property line. And;
- 3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; Mrs. Mullins stated that a minimum driveway length of 20 feet allows a vehicle to park in front of a garage without overhanging into the right-of-way or blocking visibility for oncoming motorists, and maintains a safe route for pedestrians. And;
- 4) Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter; Mrs. Mullins stated that the variance should not prevent orderly use of other land; however, other property owners are still required to meet current driveway requirements. And;
- 5) That an undue hardship exists; Mrs. Mullins stated that the applicant explained that without the variance, the new garage will have to be demolished. And;
- 6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. Mrs. Mullins said that the minimum driveway length is intended to improve public safety by allowing a vehicle to park in front of a garage without overhanging into the right-of-way or blocking visibility and maintains a safe route for pedestrians. She said that in this case, the location of the new garage is an improvement over the previous non-conforming structure that was built on the property lines.

Mrs. Mullins concluded her presentation by stating that there were no responses for or against the variance request.

Chair La Rochelle asked the applicant to address the Board.

Jane Rebesch, from 652 Cambridge, said that she is the designer and contractor of the project. She provided the site plan of the original permit submittal. Mrs. Rebesch said that she was given permission to construct the garage, and explained that the elevation plans clearly displayed garage doors, and that it should have been implied that construction for a driveway would follow.

Chair La Rochelle asked if there was anyone in the audience that wished to speak in favor of the variance.

No one spoke.

Chair La Rochelle asked if anyone wished to speak in opposition of the variance.

No one spoke.

Motion by Board Member Leitch, seconded by Vice Chair Poss, to grant a variance to Section 3.3-2(b)(1) to allow a residential driveway to be less than 20 feet in length on Lot 12 and a portion of Lot 11, Block 21, NCB 5062, addressed at 587 East Common Street. The motion approved. (5-0-0)

Case #Z-15-027: Hold a public hearing and consider a request for a variance to Section 5.1-3 to allow a restaurant to expand its gross floor area and number of seats and to have fewer parking spaces than required, located at 1074 South Walnut Avenue.

Applicant: Hoover and Associates; Case Manager: Benjamin Campbell

Chair LaRochelle said that the variance was not required, and that the applicant withdrew their request.

ADJOURNMENT

There being no further business, a motion was made by Board Member Leitch and seconded by Vice Chair Poss to adjourn the meeting. The motion was approved unanimously. (5-0-0)

The meeting adjourned at 6:58 p.m.

Chair

Date

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Zoning Board of Adjustment
Agenda Item Report
November 19, 2015

Agenda Item No. A
Presenter – Holly Mullins, Planner
(830) 221-4054 – hmullins@nbtexas.org

SUBJECT: Hold a public hearing and consider a request for a variance to the Magnolia Springs Planned Development District development standards to allow an encroachment of approximately one foot into the required 25-foot front setback on Lot 5, Block 16, Magnolia Springs Subdivision Unit 4, addressed at 355 Amaryllis.

CASE #: Z-15-028

APPLICANT/AGENT: LGI Homes, Inc.
Aaron Jordan, VP of Construction
272 Chrysanthemum
New Braunfels, TX 78130

BACKGROUND/ RATIONALE:

The subject property is located in Magnolia Springs Subdivision, adjacent to IH-35 south of Engel Road. Magnolia Springs is zoned as a Planned Development (“MSPD”) with lot dimensions and building setbacks determined by Development Standards approved as part of the zoning. The MSPD Development Standards require a minimum 25-foot front building setback.

A building permit application was submitted to the City in May, 2015 for a new house at 355 Amaryllis. The site plan showed placement of the structure was in compliance with the City’s setback regulations, including an approximately eight square foot architectural extension approximately two feet deep at the front of the house (Attachment 2). These plans were approved and a building permit was issued.

As required, a form survey was conducted prior to pouring the slab for the house (Attachment 3). It was an “open” form survey, as the forms for the front of the house had not yet been constructed to allow construction access. This apparently is not an uncommon practice in the building industry. However, the form setters mistakenly placed the forms too close to the front setback line, without allowing adequate room for the architectural extension. As a result, a portion of the front facade now encroaches one foot into the setback.

After the encroachment was discovered, the Building Official sent a memo to all contractors clarifying that all forms encompassing the foundation must be provided on the form survey (Attachment 7). The applicant states his company has taken measures to ensure this mistake does not happen again.

Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding all of the following facts:

- 1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;*** (The applicant states that substantial cost would have to be absorbed if the variance is denied, but has not identified any special conditions affecting the land

that warrant the variance.) *and*

2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; (A single-family home could be built on the property without a variance. The applicant believes the variance is necessary to preserve the building as located.) *and*

3) That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; (Granting the variance should not be detrimental to the public health, safety or welfare. The encroachment does not affect the length of the driveway or obstruct visibility.) *and*

4) Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter; (The applicant states no other properties will be affected. However, other properties in the area are still required to meet current setback requirements.) *and*

5) That an undue hardship exists; (The applicant states that without the variance, the home will have to be demolished.) *and*

6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. (Front setbacks are intended to provide open space, allow for off-street parking, and maintain consistency along the street. The applicant states the encroachment is not visually noticeable and does not interfere with any easements. Staff believes the encroachment, though unintentional, is a self-created hardship and the request does not meet all of the criteria for approval.)

Per Section 2.2-3 of the Zoning Ordinance, a variance shall not be granted to relieve a self-created or personal hardship, nor based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

Five similar cases have been approved by the Board and none denied.

Z15-002 HMT Engineering & Surveying, 2624 Koeln Street 1/22/15

Approved: a 5-foot encroachment into the 25-foot front setback. [*Irregularly-shaped cul-de-sac lot; encroachment was discovered on final survey.*]

Z14-006 HMT Engineering & Surveying, 362 Wauford Way 5/22/14

Approved: To allow a 2.5-foot encroachment of an existing house into the 5-foot side setback. [*The subject and adjacent lot had been replatted and the wrong survey was used for staking the corners of the home. The error was not discovered until the home was completed.*]

Z12-042 Todd Burek, 314 Rosalie Drive 9/25/12

Approved: a 3.1-foot encroachment into the 25-foot front setback. [*Irregularly shaped lot created a challenge placing the house. Front setback was measured from each corner of the lot but the points were connected with a straight line rather than a curved line, resulting in a partial encroachment.*]

Z11-12 John Seidel, 161 N. Liberty Avenue 4/28/11

Approved: a 9.6-inch encroachment into the 25-foot front setback. [*Encroachment discovered on final survey.*]

Z10-30 Tina Davis, 118 Cambridge Way 12/16/10

Approved: an 8.4-foot encroachment into the 25-foot front setback. [*Irregularly shaped cul-de-sac lot; encroachment discovered on final survey.*]

GENERAL INFORMATION:

Size: 6,098 square feet

Variance Request Due to Notice of Violation: No

Surrounding Zoning and Land Use:
North – MSPD/ Single-family residence
South - MSPD/ Single-family residence
East - Across Amaryllis, MSPD/ Single-family residence
West – MSPD/ Single-family residence

NOTIFICATION:

Public hearing notices were sent to owners of 14 properties within 200 feet. As of November 12, we had received no responses.

ATTACHMENTS:

1. Application
2. Approved Site Plan
3. Form Survey
4. Final Survey indicating encroachment
5. Aerial Map
6. Notification Map
7. Photographs
8. Building Official Memo
9. Magnolia Spring PD Development Standards



APPLICATION TO APPEAR BEFORE THE ZONING BOARD OF ADJUSTMENT

Planning and Community Development
424 S. Castell Avenue, New Braunfels TX 78130
(830) 221-4050

PLANNING

2-15-028

APPLICATION FEES: \$200 plus \$50 for each variance or special exception sought

Name of Applicant/Agent*: LGI HOMES INC.

Property Address: 355 Amaryllis

Mailing Address: 272 Chrysanthemum

Contact information: Phone: (210) 563-4648 E-Mail: ajordan@lgihomes.com

Legal Description: Lot #: 5 Block: 16 Subdivision: Magnolia Springs Unit 4

(NOTE: If property is not platted, attach a copy of the metes and bounds description and survey/drawing.)

Present Use of Property: Residential Zoning: Residential

Describe Variance or Special Exception Request: Home was accidentally built 12 inches across the front 25' building setback line. Request this be granted a variance.

If the request is a variance, please explain in detail that: (use additional pages if necessary)

(1) There are special circumstances or conditions affecting the land that warrant the variance: Substantial cost would be absorbed if variance is denied.

(2) The variance is necessary to preserve a substantial property right of the applicant: Not applicable.

(3) How will other property in the area or the public in general be affected? No other properties will be affected.

(4) An undue hardship exists if the variance is not granted: The home would have to be demolished and rebuilt if not granted this variance. Cost would exceed \$300,000.

(5) Granting the variance will be in harmony with the spirit and purpose of the City's regulations: The encroachment is not visually noticeable and does not interfere with any easements.



If the request is a special exception:

- Off-site Parking
- Nonconforming Uses/Structures
- Semipublic Parking in Residential

Submittal Checklist:

- Completed application and fee
- Letter of authorization if applicant is not property owner
- Site plan, drawn to scale and no larger than 11"x17", showing all existing and proposed improvements, setbacks from the property lines, and building elevations (if applicable.)
- For off-site parking requests, access plan and parking agreement per **Section 2.2-4(b)** (Additional information may be deemed necessary by staff for processing this request.)

Please initial the following important reminders:

AWJ **APPEARANCE AT MEETINGS**

It is strongly advised that the applicant be represented at the hearing. The Board may deny requests for which the applicant or an agent do not appear.

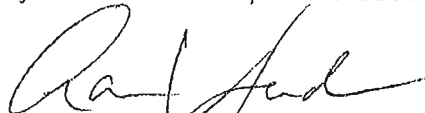
AWJ **NOTIFICATION SIGNS**

Public hearing notification signs must be placed on the property at least 15 days prior to the meeting, or the hearing cannot legally be held. The variance notification signs are **\$15.00 per sign**. One sign is required for the first 100 feet of frontage and an additional sign for every 200 feet or fraction thereof.

The applicant is responsible for:

1. Picking up and placing the signs at least **15 days prior to the hearing date**;
2. Ensuring that the signs remain on the property throughout the variance process; and
3. Removing the signs after the final action by the Zoning Board of Adjustment.

I hereby certify that the information provided is true and correct to the best of my knowledge.

Signed:  Date: 10/9/15
 Applicant/Agent* Print Name: AARON V. JORDAN

* If signed by an agent, a letter of authorization must be furnished by the property owner.

FOR OFFICE USE ONLY

CASE NO.: _____

Application Received By: BUC Receipt No: 224755 Date: 10/9/15

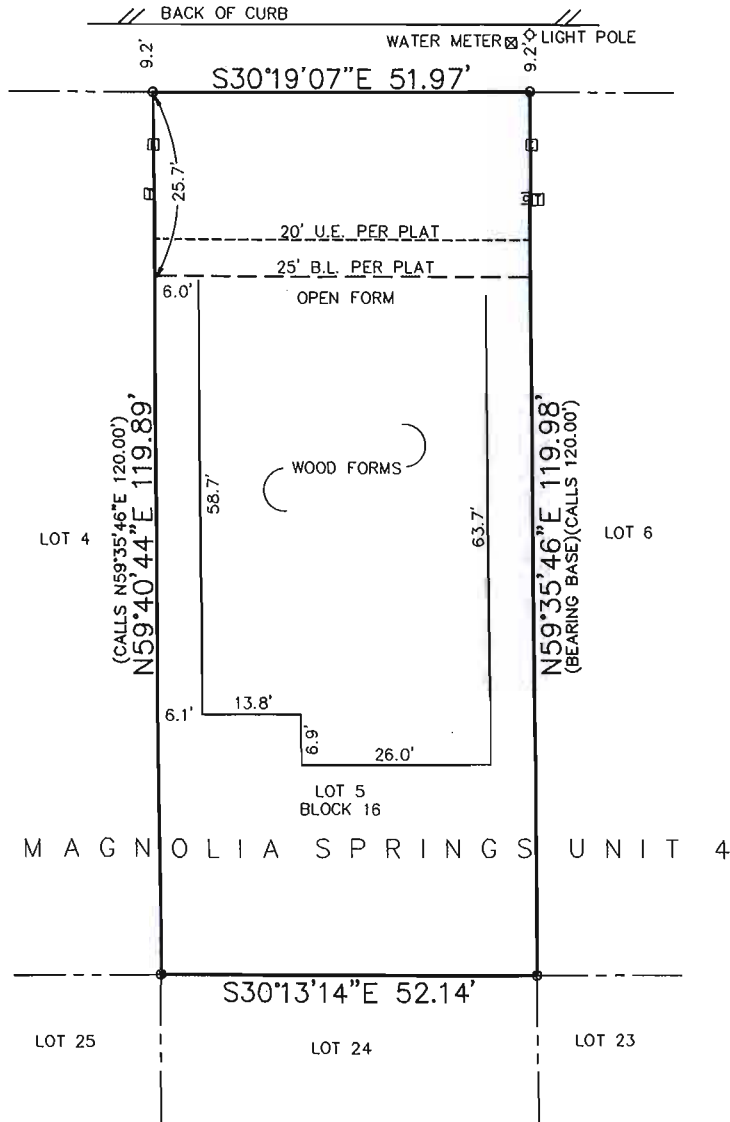
Fee: \$ 265.- Zoning: PD-Magnolia Sp Meeting Date: 11/19/15

Signs: Date issued: _____ Number of signs issued: 1

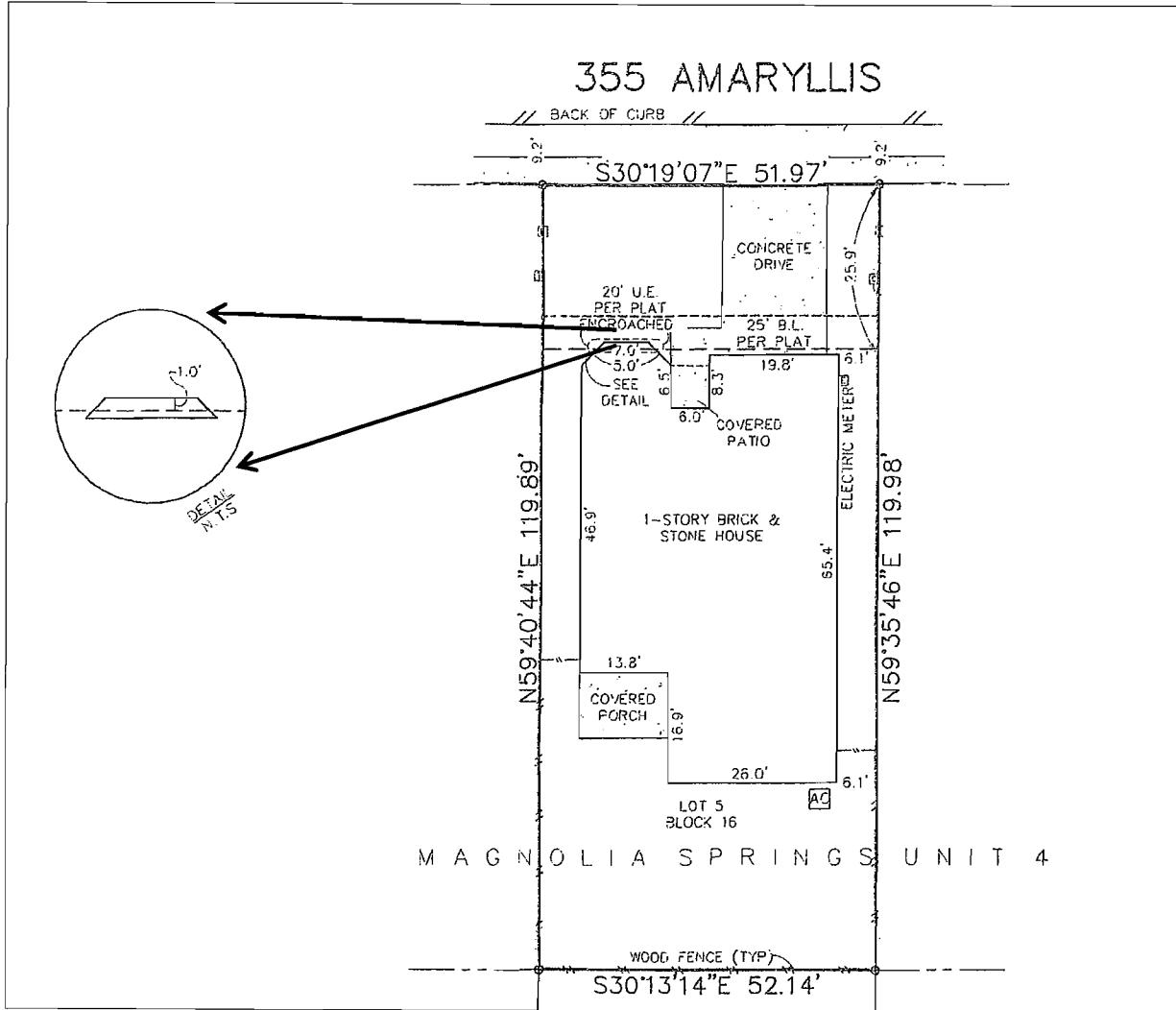
Variance to Section(s) No.: _____

Checklist: Site Plan ✓ Metes & Bounds/Survey ✓ Agent Letter: N/A

355 AMARYLLIS



Form Survey



Final Survey with encroachment



Aerial Map

Legend

- Subject Property
- City Limits

Map Created 10/27/15

Z-15-028
 355 Amaryllis
 Front Setback



ZONING BOARD OF ADJUSTMENT – November 19, 2015
New Braunfels Municipal Building, Council Chambers, 424 S. Castell Avenue

Address/Location: 355 Amaryllis

Applicant: Aaron Jordan on behalf of LGI Homes, Inc.

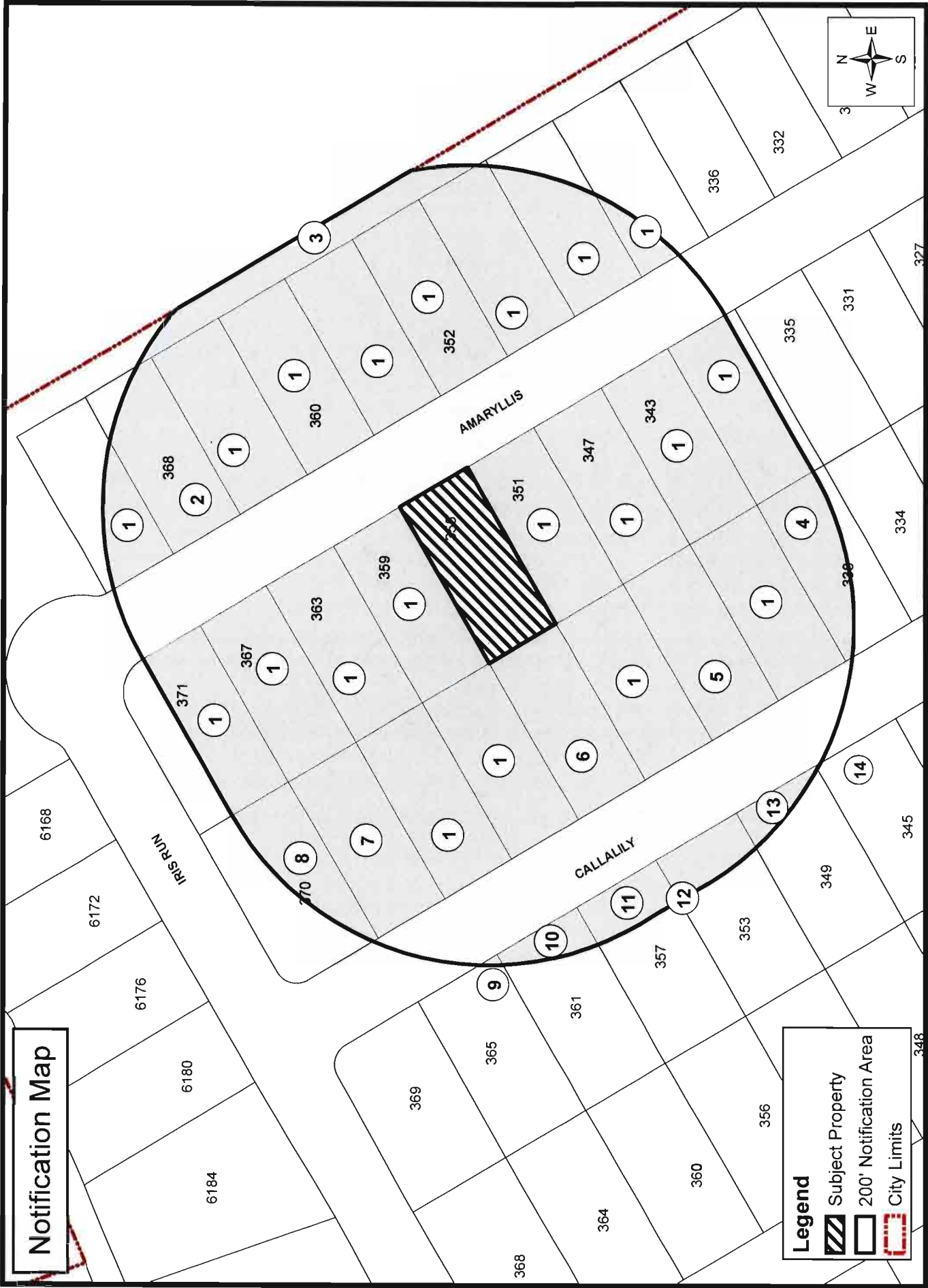
Case #: Z-15-028

The circled numbers on the map correspond to the property owners listed below. All information is from the Comal Appraisal District Records. The property under consideration is marked "Subject."




1. LGI Homes Texas LLC
2. Rahn Carl W & Melody
3. Castlerock Communities LP
4. Vargas Rigoberto Jr
5. Kourt Shane & Yarleen Rosa
6. Reynolds Daniel Alan
7. Roberts David N
8. Smith Lennie
9. Kaspar Joshua W
10. Sipper Barbeth & Mellon Gregory
11. Ramirez Anabelle
12. Clark David
13. Marroquin Santiago
14. Palomo Ryan H & Laura

SEE NOTIFICATION MAP

Notification Map



Legend

-  Subject Property
-  200' Notification Area
-  City Limits



Z-15-028
355 Amaryllis
Front Setback



Subject Property





BUILDING INSPECTION

NOTICE

To: ALL CONTRACTORS

From: New Braunfels Building Department

Date: 11/03/15

Re: FORM SURVEYS REQUIRED FOR ALL RESIDENTIAL HOMES

PROBLEM:

The City of New Braunfels has been experiencing cases of setback violations on new construction.

SOLUTION:

The City of New Braunfels will require a form survey of the foundation at the time of the (DWV) Drain, Waste and Vent Inspection for all new residential homes. This survey needs to be posted with the construction permit at the time of the inspection. The city's building inspectors will start looking for this immediately.

Clarification: The requirement is for a form survey of the foundation. It's not for one side or for one form board; it's for all the forms that encompass the foundation.

If you have any questions, please feel free to contact me at (830) 221-4060.

Thank you,

Robert P. Kinsey, CBO/CFM

Building Official and Floodplain Administrator

Rev: 11/03/15

424 SOUTH CASTELL AVENUE
NEW BRAUNFELS, TEXAS 78130

TEL 830.221.4060
FAX 830.608.2117
WWW.NBTEXAS.ORG

ATTACHMENT 8

MAGNOLIA SPRINGS SUBDIVISION PDD DEVELOPMENT STANDARDS

Permitted Uses

Single-Family residential dwellings and related accessory buildings or structures permitted by Section 5.3 of the City's Zoning Ordinance and home occupations permitted by Section 5.4 of the City's Zoning Ordinance.

Minimum Setbacks

Front – 25'

Rear – 20'

Interior Side – 5'

Corner Side – 15' where rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots; 25' where rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.

Height – Maximum of 35' or 2 ½ stories

Minimum Lot Size

Lot Area – 5,500 square feet

Lot Width – 52'



**Zoning Board of Adjustment
Agenda Item Report
November 19, 2015**

**Agenda Item No. B
Presenter – Matthew Simmont, Planner
(830) 221-4058 – msimmont@nbtexas.org**

SUBJECT: Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(2)(iii) to allow a duplex to encroach up to 10 feet into the 15-foot side yard setback in the “R-2” Single-family and Two-family District on the west side of the 1100 block of Katy Street.

CASE #: Z-15-029

OWNER: Atanacio Campos
PO Box 310859
New Braunfels, TX 78131

APPLICANT: Trace Jurica
301 Main Plaza, #311
New Braunfels, TX 78130

BACKGROUND/ RATIONALE:

The unimproved subject property is located north of the intersection of Katy Street and N. Hickory Avenue and adjacent to the Union Pacific Railroad right-of-way extending to N. Walnut Avenue. The narrow triangular shaped property has approximately 60 feet of frontage on N. Hickory Avenue and extends to the west along Katy Street for approximately 375 feet, becoming more narrow and terminating into a point at the intersection of Katy Street and N. Walnut Avenue.

The front lot line of the subject property faces N. Hickory Avenue as defined in the zoning ordinance that a corner lot is deemed to front on that street on which it has its least dimension (60 feet of frontage on N. Hickory Avenue and 375 feet of frontage on Katy Street).

The current width requirement for a corner lot in the “R-2” District is 70 feet. The subject property is considered legally non-conforming as it has approximately 55 feet of frontage along N. Hickory Avenue. Although it is long and narrow, the lot is approximately 10,000 square feet in area. This exceeds the minimum area of 8,500 square feet required for construction of a duplex in the “R-2” District and no lot size variance is needed.

Because the subject property is a corner lot that fronts N. Hickory Avenue, it is required to have a 15 foot side setback along Katy Street. The side yard setback of 15 feet along Katy Street would allow for a front building width of approximately 30 feet facing N. Hickory Avenue that would become more narrow toward the rear of the property.

The applicant is proposing to develop the property with 2 new residential dwelling units (a duplex). The applicant is seeking a variance to the side yard setback along Katy Street that will allow for additional building envelope on the property.

Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- 1) ***That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;*** (The applicant has stated that the buildable area on the property with current setbacks restricts the development potential to less than what is allowed by zoning. Staff believes there are special circumstances or conditions that affect the land in this case. Staff recognizes that the subject property is an oddly shaped residentially zoned parcel that has a very limited building envelope within the current building setbacks.) ***and***
- 2) ***That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant has indicated that the variance is necessary to allow for a duplex to be developed on the property. Staff believes that this property can be developed with a one family dwelling under current zoning regulations.) ***and***
- 3) ***That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;*** (The variance will not affect other properties within the area. However, other properties will be required to construct by the current development standards.) ***and***
- 4) ***Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;*** (The variance should not prevent orderly use of other land in the area. However, other properties will be required to construct by the current development standards.) ***and***
- 5) ***That an undue hardship exists;*** (The applicant has indicated that the unique shape of the property limits the building envelope such that a duplex could not be constructed in compliance with zoning standards.) ***and***
- 6) ***That the granting of a variance will be in harmony with the spirit and purpose of these regulations.*** (The applicant states that the granting of the variance will allow the property to be developed with a duplex that is allowed within the R-2 zoning district.)

Per Section 2.2-3 of the zoning ordinance, a variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

The Board has approved three similar requests for new construction:

Z13-027 Katherine Wells, 805 E. Mather Street 7/25/13
Approved: To allow a 10-foot encroachment into the 25-foot street side setback for construction of a new duplex. [Adjacent property was divided creating an increased setback for the subject property.]

Z13-009 Greg Griffin, 2011 Sungate Drive 2/28/13
Approved: To allow a 10-foot encroachment into the 25-foot street side setback for construction of a new home. [Property was platted with a 15-foot side setback. Subsequent platting of the adjacent lot created a 25-foot setback.]

Z10-15 Trace Jurica, 385 South Street

7/22/10

Approved: To allow a 15-foot encroachment into the 25-foot street side setback for a new house. [1920s neighborhood with narrow lots and varying setbacks]

GENERAL INFORMATION:

Size: Approximately 10,000 square feet

Variance Request Due to Notice of Violation: No

Surrounding Zoning and Land Use

North – Railroad right-of-way
East – Across N. Walnut Avenue / Single Family Residences
South – Across Katy Street, R-2 and Walnut Neighborhood Special District - Commercial / Single Family Residences
West – Across N. Hickory Ave., R-2 / Single-Family Residence

NOTIFICATION:

Public hearing notices were sent to 16 owners of properties within 200 feet. As of November 3, we have received no responses.

ATTACHMENTS:

1. Application
2. Existing building envelope illustration
3. Proposed building envelope illustration
4. Aerial Map
5. Notification Map
6. Photographs
7. Section 3.3-2(b)(2)

U:\Planning\ZBA Files\2015 Cases\Z-15-029 Jurica\Z-15-029 Jurica report.docx



APPLICATION TO APPEAR BEFORE THE
 ZONING BOARD OF ADJUSTMENT
 Planning and Community Development
 424 S. Castell Avenue, New Braunfels, TX 78130
 (830) 221-4050

OCT 23 2015
 2-15-029

PLANNING

APPLICATION FEES: \$200 plus \$50 for each variance or special exception sought

Name of Applicant/Agent*: Trace Jurica

Property Address: Katy St @ Walnut + Hickory

Mailing Address: 301 Main Plaza #311

Contact Information: Phone: 830-237-6771 E-Mail: trace@juricabuilders.com

Legal Description: Lot #: 55 Block: 3036 Subdivision: NCB

(NOTE: If property is not platted, attach a copy of the metes and bounds description and survey/drawing.)

Present Use of Property: vacant Zoning: R-2

Describe Variance or Special Exception Request: Reduce side setback along Katy St. to 5' from 15'

If the request is a variance, please explain in detail that: (use additional pages if necessary)

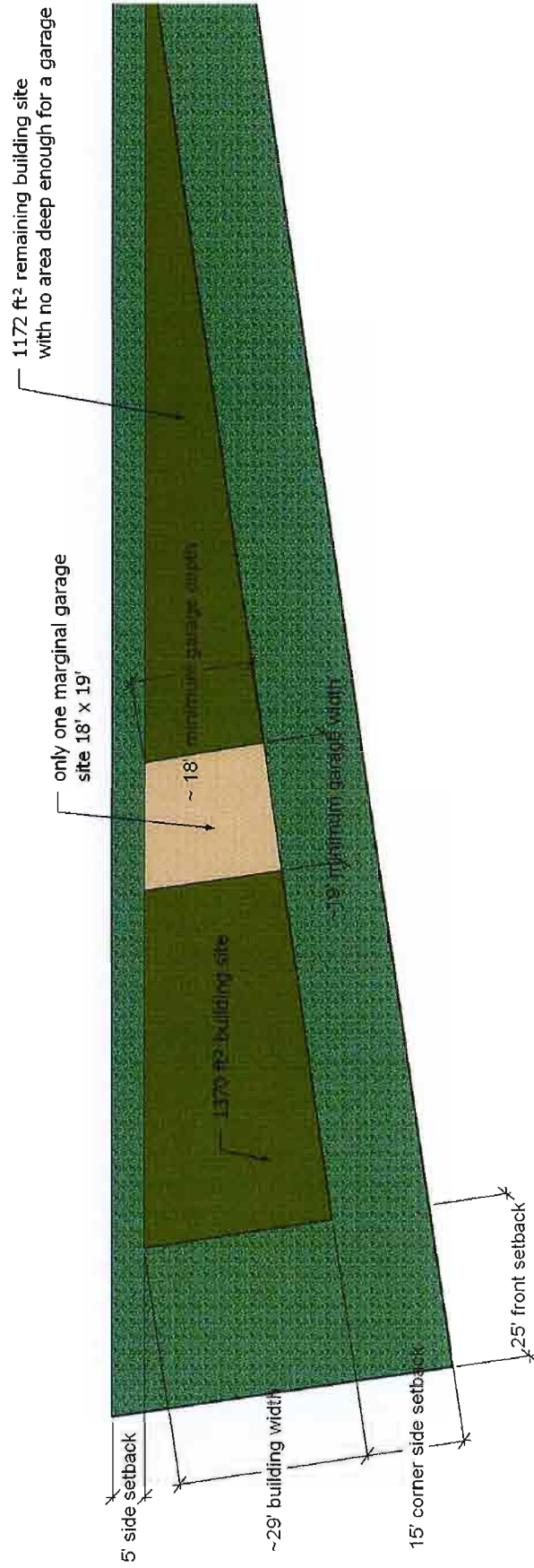
(1) There are special circumstances or conditions affecting the land that warrant the variance: The buildable area with current setbacks restricts building to less than allowed by zoning

(2) The variance is necessary to preserve a substantial property right of the applicant: see above

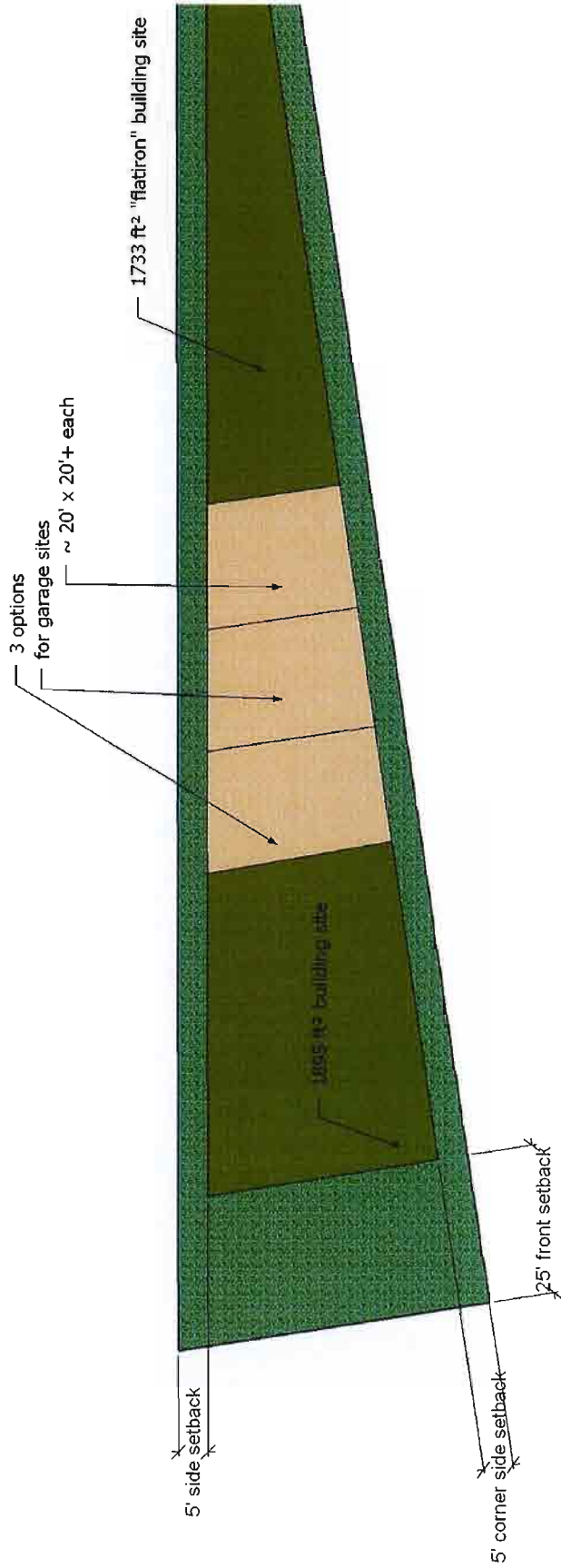
(3) How will other property in the area or the public in general be affected? 2 residential units will provide more buffering than 1 unit against the noise of the train

(4) An undue hardship exists if the variance is not granted: no variance means barely one residence can be built when the zoning allows two

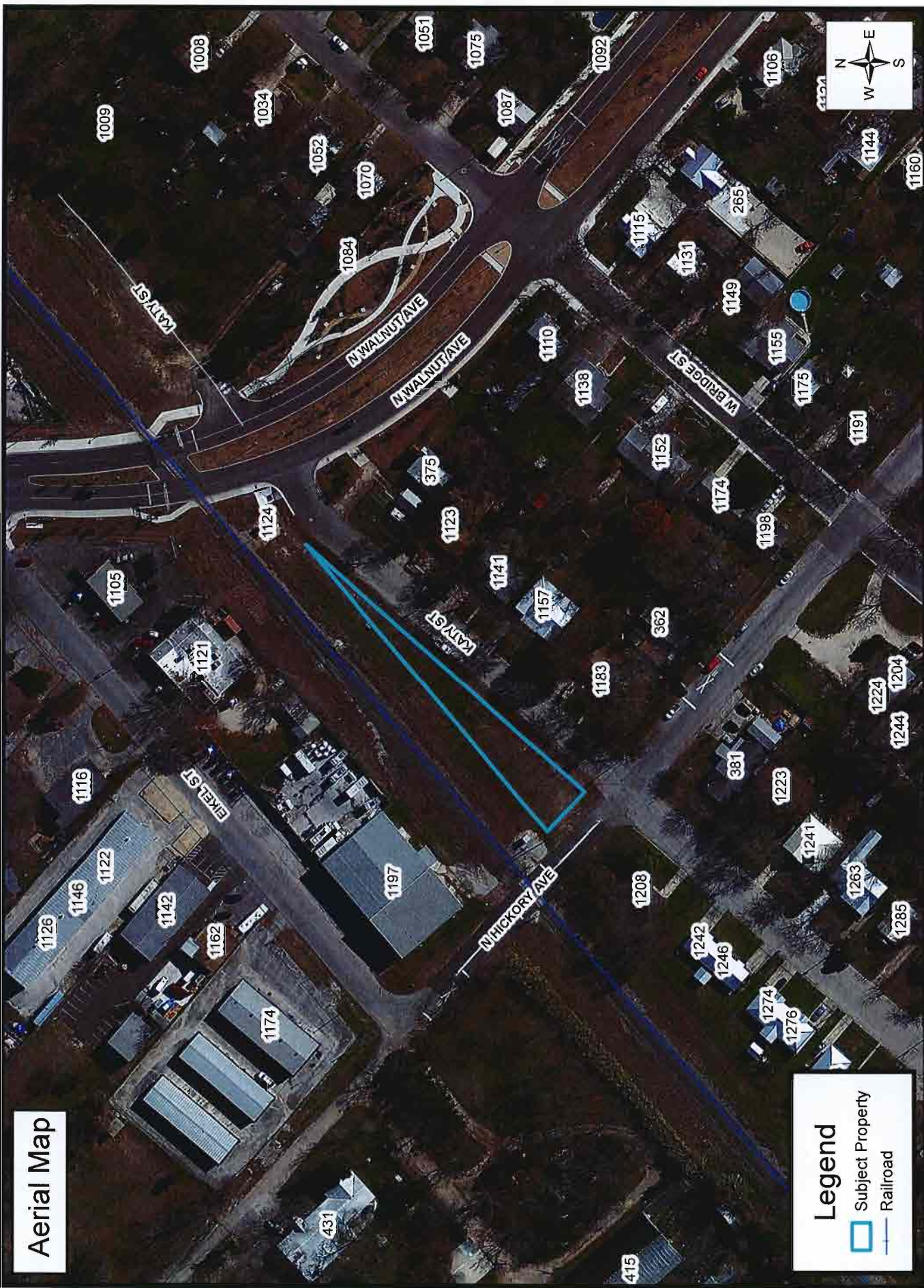
(5) Granting the variance will be in harmony with the spirit and purpose of the City's regulations: the property is zoned R-2



Existing Building Envelope



Proposed Building Envelope



Aerial Map

Legend

- Subject Property
- Railroad



Z-15-029
West side of the 1100 block of Katy Street
Side Setback

Map Created 11/3/15

ZONING BOARD OF ADJUSTMENT – November 19, 2015
New Braunfels Municipal Building, Council Chambers, 424 S. Castell Avenue

Address/Location: West side of the 1100 block of Katy Street

Applicant: Trace Jurica

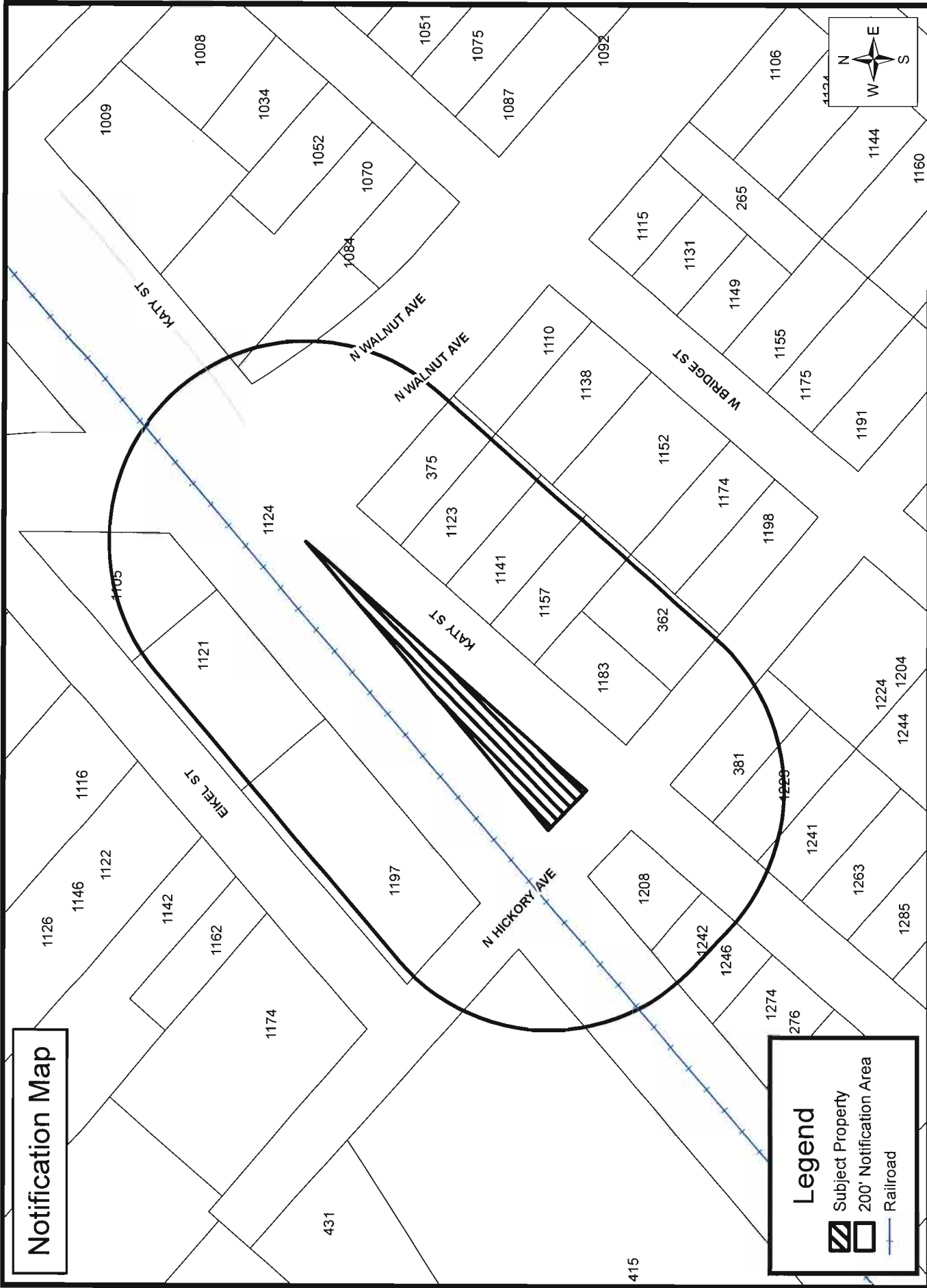
Case #: Z-15-029

The circled numbers on the map correspond to the property owners listed below. All information is from the Comal Appraisal District Records. The property under consideration is marked "Subject."




- | | | | |
|---|--|----|-----------------------------|
| 1 | Meckel Jimmie Rae | 10 | Brazle Leah E |
| 2 | City Of New Braunfels | 11 | Vargas Jose & Yolanda |
| 3 | Esparza Manuel E | 12 | Equity Trust Company |
| 4 | Seidel Kenneth R Jr & Cynthia J | 13 | Smidt Randall R & Christy B |
| 5 | Howington William E & Pamela H | 14 | Comal County Farm |
| 6 | Aguirre Alma R Et Al | 15 | Smith Birch & Velma |
| 7 | Lovett John li | 16 | Brotze Gary H |
| 8 | Madrigal Manuel & Marcelina T Family Trust | 17 | Liberty Partnership Ltd |
| 9 | Lopez Jose Luz & Raquel Sanchez | | |

SEE NOTIFICATION MAP

Notification Map



Legend

-  Subject Property
-  200' Notification Area
-  Railroad



Z-15-029 West side of the 1100 block of Katy Street Side Setback

Map Created 11/3/15



Subject property facing southwest from Walnut Ave.



Subject property facing north from Katy Street.

(2) Duplexes.

- (i) *Height.* 35 feet.
- (ii) *Front building setback.* 25 feet.
- (iii) *Side building setback.* There shall be a side building setback on each side of a building not less than five feet in width. Buildings on corner lots shall have 15-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the rear lot lines of the adjacent lots. Buildings on corner lots shall have 25-foot side building setbacks adjacent to the street where the rear lot lines of the corner lots coincide with the side lot lines of the adjacent lots.
- (iv) *Garage setback.* Where a driveway is located in front of a garage, the garage shall be setback 20 feet from the right-of-way or the driveway to the garage shall be at least 20 feet long to provide enough space for a vehicle to park without overhanging into the right-of-way, if the garage door is closed. (See Illustration 8 in Sec. 5.1-1)
- (v) *Rear building setback.* 20 feet.
- (vi) *Width of lot.* The minimum width of an interior lot shall be 60 feet and the minimum width of a corner lot shall be 70 feet.
- (vii) *Lot area per family.* Duplexes hereafter erected or altered shall have a lot area of not less than 8,000 square feet for an interior lot and 8,500 square feet for a corner lot. Where a lot was legally under separate ownership prior to September 25, 1967, but has an area less than the minimum required in this provision, this regulation shall prohibit the erection of a two-family residence. Where a public or community sewer is not available and in use for the disposal of all sanitary sewage, each lot shall provide not less than one acre and approved by the City Sanitarian.
- (viii) *Lot depth.* 100 feet.
- (ix) *Parking.* Two off-street parking spaces shall be provided for each two-family dwelling unit. See Section 5.1 for other permitted uses' parking.