



## CITY OF FREDERICKSBURG

### ZONING BOARD OF ADJUSTMENT MEETING AGENDA THURSDAY JUNE 16, 2022, ~ 5:30 P.M. LAW ENFORCEMENT CENTER – 1601 E. MAIN STREET

Travis Neal, Member  
Marcus Vidrine, Member  
Devin Mullen, Member  
Vacant, Member

Clay Sears, Member  
Jim McAfee, Member  
Ashley Hunter, Member  
Vacant, Member

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The City of Fredericksburg Zoning Board of Adjustment will meet in a regular session on **Thursday, June 16, 2022, at 5:30 p.m.** The meeting will be in person at the Law Enforcement Center 1601 E. Main Street. This meeting will be held in person and live stream on our YouTube Channel.

Link to City of Fredericksburg YouTube Channel Fredericksburg, Texas USA - YouTube  
<https://www.youtube.com/channel/UCrhnIFjVfDS1SPBJD2pYKcQ/featured>

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#### 1. CALL TO ORDER

#### 2. ROLL CALL

#### 3. ELECT CHAIRMAN

#### 4. ELECT VICE-CHAIRMAN

#### 5. APPROVAL OF MEETING MINUTES

April 2020 regular meeting minutes

#### 6. PUBLIC COMMENTS ON ITEMS LISTED ON AGENDA

NOTE: The Texas Open Meetings Act permits a member of the public or a member of the governmental body to raise a subject that has not been included in the notice for the meeting. However, any discussion of the subject must be limited to a proposal to place the subject on the agenda for a future meeting and any response to a question posed to the City Council is limited to either a statement of specific information or recitation of existing policy. TEX. GOV'T CODE § 551.042.

Written Comments: to be submitted remotely:

1. Must be received by 2 p.m. on June 16, 2021.
2. Complete the Citizen Comment Form online at [www.fbgtx.org](http://www.fbgtx.org); or
3. Email your comments to [scollier@fbgtx.org](mailto:scollier@fbgtx.org)

Verbal Comments:

1. Sign up in-person between 5:00 p.m. and 5:30 p.m. at the Law Enforcement Center, 1601 E. Main Street, in order to comment.

You will be limited to 3 minutes to speak.

**7. PUBLIC HEARING**

- A. Consider ZBA2022-01 – Request by Jordan Muraglia & Richard Beaupre to Consider a Variance to Section 3.100 – R1, Single Family Residential. Applicants are requesting a Variance to Build a 2 Story Garage in the Interior Side Yard Setback on Property Located at 110 N. Bowie.

**8. ACTION ITEMS**

- A. Receive recommendation and consider (ZBA2022-01)

**9. ADJOURN**

This is to certify that I, Shelby Collier, posted this Agenda before 12:00 PM. on June 11, 2022 on the entrance door and bulletin board at the City of Fredericksburg City Hall, 126 W. Main St., Fredericksburg, Texas.



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Shelby Collier,  
Associate Planner

**STATE OF TEXAS  
COUNTY OF GILLESPIE  
CITY OF FREDERICKSBURG**

**BOARD OF ADJUSTMENT  
April 21, 2020  
5:30 P.M.**

On this the 21<sup>st</sup> day of APRIL 2020, the BOARD OF ADJUSTMENT convened in regular session via Zoom with the following members present to constitute a quorum.

PRESENT  
MARCUS VIDRINE  
CYNTHIA SCROGGINS  
DONNIE FINN  
JIM MCAFEE  
ASHLEY HUNTER  
DEVIN MULLEN  
TRAVIS NEAL

ABSENT:

ALSO PRESENT:  
BRIAN JORDAN – Director of Development  
DANIEL JONES – City Attorney  
SHELBY COLLIER - Development Coordinator

The meeting was called to order at 5:30 P.M. by Donnie Finn.

**MINUTES**

Marcus Vidrine made a motion to approve the minutes from the February 2020 Meeting. Jeff Lawrence seconded the motion. All voted in favor and the motion carried.

**PUBLIC HEARING**

**Receive recommendation and consider (ZBA2020-05) Request by Glenn & Conya Wiseman For a Variance to Section 7.825 Subsection C of the Zoning Ordinance pertaining to Off Street Parking for Property located at 319B E. Main Street. Applicant requests a Variance to use existing Off-Street Parking as Outdoor Dining.**

Jim McAfee made a motion to open the public hearing. Cindy Scroggins seconded the motion. All voted in favor and the motion carried.

Glenn Wiseman explained that he owns the property including all of the buildings on it. He has a tenant that would like to provide outdoor seating and understands this is the process for that. He

went on to say that having the driveway and using it in its current location is a bad idea and that it is dangerous for his guests on the property as well as the people walking on Main Street.

Jim McAfee made a motion to close the public hearing. Jeff Lawrence seconded the motion. All voted in favor and the motion carried.

Brian Jordan, Director of Development, stated that when the applicant's first approached the City about converting this driveway and parking area to outdoor dining and seating, staff met with them on-site to evaluate possible alternatives. Since we were under restrictions due to the Covid-19 Pandemic, staff mentioned that it might be possible to allow the area to be utilized for outdoor dining on a temporary basis. In other words, since the occupancy was limited, the need for parking would be reduced as well. The applicant was not interested in a temporary solution. Staff does not support a permanent elimination of the required parking, and a conversion of this area to outdoor dining. It was the previous owner's desire to add the building and create the need for parking, and the current owners should have been aware of this situation. We recommend denial of the request.

Marcus Vidrine commented that the driveway location makes it dangerous as people are walking on the sidewalk. He said he never realized that this area was even parking.

Jim McAfee commented that he believes this situation is unsafe and asked why Staff would disagree with removing it.

Brian Jordan stated it was not a matter of Safety, this scenario is existing, and the parking was required as part of the development.

Motion made to approve Application ZBA2020-05 by Jim McAfee. Travis Neal seconded the motion. All voted in favor and the motion carried.

### **ADJOURN**

With nothing further to come before the Board, Jim McAfee moved to adjourn the meeting and Devin Mullen seconded the motion. All voted in favor and the meeting was adjourned at 6:18 P.M.

PASSED AND APPROVED this the 15<sup>th</sup> day of April 2021.

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SHELBY COLLIER, DEVELOPMENT COORDINATOR

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DONNIE FINN, CHAIR



## ZONING BOARD OF ADJUSTMENT MEMO

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**DATE:** June 16, 2022  
**TO:** Zoning Board of Adjustment  
**FROM:** Shelby Collier  
**SUBJECT:** ZBA2022-01 – Request by Jordan Muraglia & Richard Beaupre to consider a variance to section 3.100.

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**Summary:** A variance request has been submitted to construct a two (2) story garage fronting on West Austin Street for property located at 110 N. Bowie Street. The placement of the building as proposed would result in a 2.5-foot encroachment of the 5-foot Interior Side Yard Setback.

Applicant received Historic Review Board Approval for construction of the two (2) story garage and its placement on May 10, 2022. Historic Review Board approval was provided based on Board findings of exceptional design and small or irregular lot size.

It is worth noting, that the applicants own the vacant lot to the West on West Austin. The current lot size may be adjusted through an amending plat.

This application was reviewed for its conformity with relevant City Ordinances including [Sec. 5.650](#), Board of Adjustment, Findings.

**Applicant:** Jordan Muraglia & Richard Beaupre

**Zoning:** R1, Single Family Residential [Sec. 3.100](#)

**Location:** 110 N. Bowie Street

**Findings:** The property is currently utilized as the applicant’s residence and includes a main residence fronting on North Bowie Street, one

story wood frame house to the Southwest of the Main residence, and a one-story log cabin at the rear of the property

The owners also own the .47 Acre lot abutting this property to the West on West Austin Street.

[Sec. 3.100](#) of the Zoning Ordinance prohibits building placement in the Interior Side Yard Setback.

The property in question has C2 (Commercial) Zoned tracts to the South and R1 (Residential) Zoned tracts to the West with R2 (Residential) Zoned tracts across North Bowie Street to the East.

The Board of adjustment may grant a variance **if it makes affirmative findings of fact on each of the criteria described below:**

- a. The Zoning Regulations applicable to the property do not allow for reasonable use.

**The property is being utilized for the use intended by the R1 Zoning District. While the interior side yard setback may create an obstacle to the desired placement of the new two (2) story garage, it does not keep the property from being utilized for its intended use.**

- b. The plight of the owner of the property is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial and are not due to or the result of general conditions in the zoning district in which the property is located.

**The circumstances in this case were created by the applicant, as it is their desire to construct the building in such a way that places it in the interior side yard setback. There are no unique circumstances existing on the property that would keep the owner from adhering to the regulations in the ordinance. Furthermore, the applicant could construct a structure that would meet the needs of the applicant and the facility through an altered design or through an amended plat as the applicant also owns the property to the West. The conditions or regulations regarding setbacks are the same general conditions that apply to all other properties in R1 Zones.**

- c. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purposes or regulations to the zoning district in which the property is located.

**Staff recognizes that this variance would alter the character of the area by creating a precedent allowing buildings to be placed in setbacks without a hardship, in which other properties would seek to utilize. It would also impair the zoning district and regulations as this would be in direct violation and intent of the regulations.**

**OPPOSITION/SUPPORT OF REQUEST:** No letters received.

**STAFF RECOMMENDATION:** The applicant has been made aware of the setback violation and chose to plan future development outside of the required Zoning Setbacks. Through the Historic Review Board Review process the applicant was again made aware of the violation and encouraged to remedy the issue through a redesign or amending plat. Staff recommend denial of the request.

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**Attachments:**

1. Application
  2. Site Plan
  3. Approved Certificate of Appropriateness
  4. Location Map
  5. Zoning Map
  6. Sec. 5.650 of the Zoning Ordinance
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# VARIANCE APPLICATION TO BOARD OF ADJUSTMENT

City of Fredericksburg - Development Services Department  
126 W. Main St., Fredericksburg, TX 78624 – (830)997-7521

1. Applicant: Jordan Muraglia & Richard Beaupre  
2. Owner: Jordan Muraglia & Richard Beaupre  
3. Phone: 3034786508 Email: Jordan@vanderbilt.com

4. Description of property involved in this request.  
Address: 110 N. Bowie St.  
Legal Description: BLK 10 Lot 121-PT  
Lot Size: .47 acres Zoning District: R1

5. Request is made to the Board of Adjustment that a variance be granted to the following provisions of the Zoning Ordinance.  
Section: \_\_\_\_\_ Subsection: \_\_\_\_\_  
Item: \_\_\_\_\_ Relating To: \_\_\_\_\_  
Requiring: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. INFORMATION TO BE SUBMITTED BY THE APPLICANT:  
A. Site plans, preliminary building elevations, preliminary improvement plans, or other maps or drawings, sufficiently dimensioned as required to illustrate the following, to the extent related to the Variance application:

- i. Existing and proposed location and arrangement of uses on the site, and on abutting sides within 50-feet.
- ii. Existing and proposed site improvements, buildings, and other structures on the site, and any off-site improvements related to or necessitated by the proposed use. Building elevations shall be sufficient to indicate the general height, bulk, scale, and architectural character.
- iii. Existing and proposed topography, grading, landscaping, and screening, irrigation facilities, and erosion control measures.

05/19/22 \$150.00  
CN# 5052

- iv. Existing and proposed parking, loading, and traffic and pedestrian circulation features, both on the site and any off-site facilities or improvements related to or necessitated by the proposed use.

The Board of Adjustment may grant a variance if it makes affirmative findings of **FACT** on EACH of the criteria. The applicant shall give a reason why the request complies with the following criteria:

1. The Zoning Regulations applicable to the property do not allow for a reasonable use.

We are asking to use 2.5 feet of our 5' set-back. We also own the neighboring lot 122.

2. The plight of the owner of the property is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial and are not due to or the result of general conditions in the zoning district in which the property is located.

working with the historic review on design compromise widened the structure to allow for two smaller garage doors instead of one large imposing door.

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purposes or regulations to the Zoning District in which the property is located.

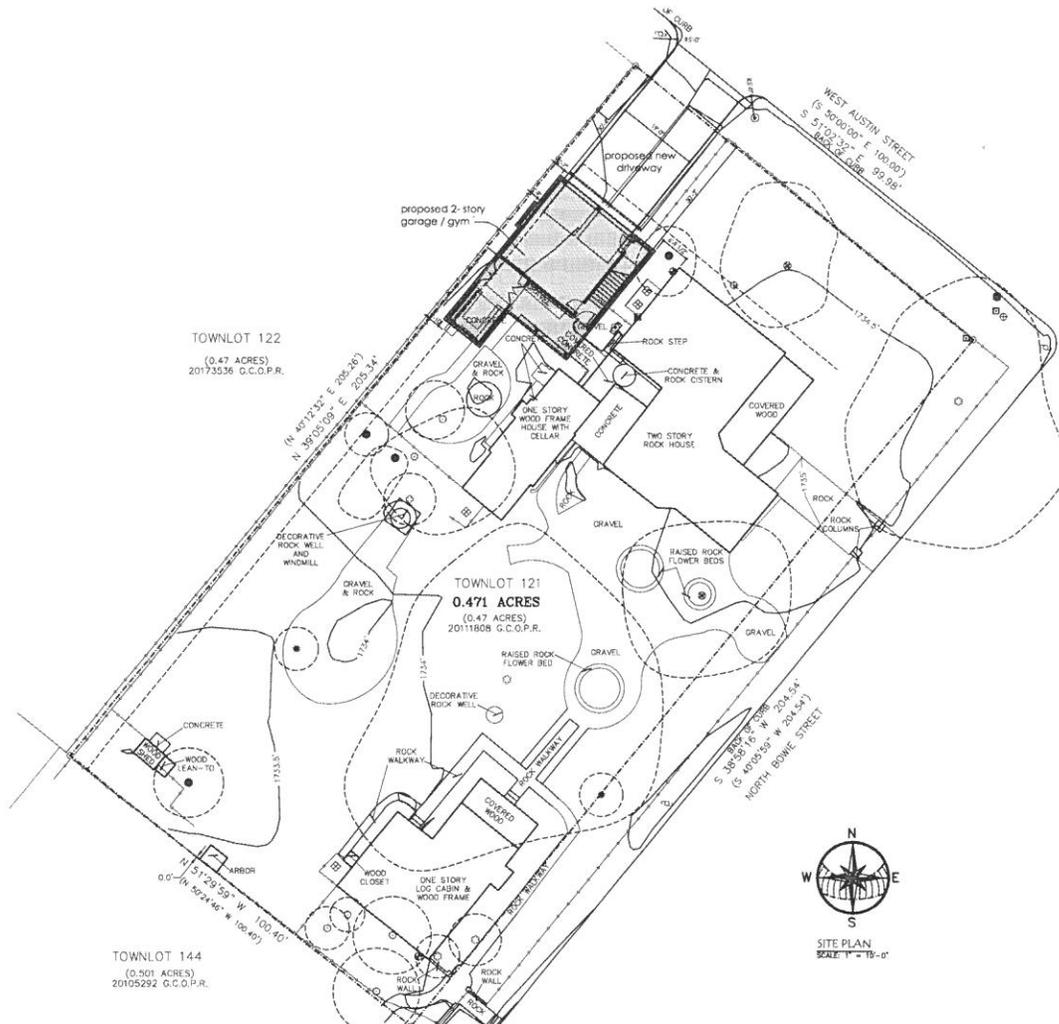
we need to build slightly into our lot setback to accommodate for a two car garage. However we are also the owners of lot 122 and this won't encroach on future lot development. The proposed garage would be built 2.5 ft into the setback.

TOWNLOT 143  
372/529 G.C.O.P.R.

TOWNLOT 144  
(0.501 ACRES)  
20105292 G.C.O.P.R.

TOWNLOT 122  
(0.47 ACRES)  
20173536 G.C.O.P.R.

TOWNLOT 121  
0.471 ACRES  
(0.47 ACRES)  
20111808 G.C.O.P.R.



SITE PLAN  
SCALE: 1" = 15'-0"

110 N. Bowie St.  
Fredricksburg, Texas  
Gilesburg County

design visions  
unique residential design  
800.972.3400 • 512.565.4911  
www.designvisions.com



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PROJECT  
110 N. Bowie  
A-1  
of 4  
date 4.22  
project # 21174



**Historic Review Board  
Certificate of Appropriateness**

**Application Number:** 22-044  
**Date:** May 10, 2022  
**Address:** **110 N Bowie**  
**Zoning:** R1  
**Owner:** Jordan Muraglia & Richard Beaupre  
**Applicant:** Chad Faucheux  
**Rating:** High  
**Proposal:** removal of existing garage and construction of new 2- story garage

**Request:**

The applicant is requesting a Certificate of Appropriateness for the following:

1. Remove of existing garage estimated to date to the 1950's or 1960's;
2. Build a new stand-alone 2-story garage with an exercise room located on the second floor. The new garage will go in place of the existing. The materials and colors and windows to match closely to main house. Street side (front elevation), right elevation and left elevation to include windows matching size and style as main house. The roof is single pitched with the low end on the street side. A stone fireplace is incorporated as well to tie into the aesthetic of main house. The garage will be completely detached from the main house structure and is designed to incorporate the materials of stone and siding used on the main house. The shed roof over the garage doors is designed to break up the 2-story façade. Garage doors will be painted to match the color of the front door of the home. Siding and fascia color to match existing home. The roof will be a standing seam metal roof to match the existing home. Stone: Large Format Hewn Limestone

Garage doors: Custom Wood Clad Clopay Doors

**Relevant Sections Fredericksburg Design Guidelines/Standards:**

***3.4.1 Lot Coverage***

*Site Layout*

(b) Consider the complex types prevalent among contributing properties on the block based on Section 2.3. Design the new site plan so that it generally reflects the character-defining features of the prevalent neighboring complex type(s).

*High Priority -Required*

(c) Consider maintaining historic-site development patterns for the relevant complex type discussed in Section 2.3; for example, residential rear yards should maintain a central open core for domestic and recreational use, and industrial complexes should maintain wide circulation paths historically needed for machinery.

*High Priority -Recommended*

(d) Appropriate setbacks from the property lines must be consistent with the surrounding context: for new residential construction, as well as commercial construction on Main Street west of Milam Street, front and side yard setbacks must be within 5 feet of the average setbacks of contributing buildings on the same block; on Main Street east of Milam Street, the front wall must be set flush with the property line. This may allow setbacks that are deeper or shallower than the base zoning. (Refer to the map in Appendix C.) *High Priority- Required*

(e) Maintain appropriate setbacks between new accessory buildings and historic primary buildings on the property, reflecting historic patterns within the district, unless granted an exception due to small lot size. (See fig. 3-58.)

*High Priority- Maintain at least a 15-foot setback*

(g) In areas zoned R1 and R2, the footprint of any single accessory dwelling building (commonly referred to as “Accessory Dwelling Unit” or “ADU”) shall not cover a larger footprint of the lot than the primary building. (See zoning map in Appendix C.)

*High Priority – Required*

(h) All accessory buildings, except any accessory dwelling building subject to Section 3.4.1(g) above, shall not exceed 800 sf or 50% of the primary building square footage, whichever is greater.

*High Priority - Required*

**3.4.3 Accessory Buildings**

*Height and Massing*

(c) Design new buildings to be subordinate and not visually overpower the surrounding historic buildings; The maximum height for an accessory building on a historically designated parcel relates to the preservation priority assigned to the primary building on the parcel.

*High Priority - Required; maximum of one story, 18 feet in height*

(d) Design Applied architectural ornament or stylistic detailing of any kind is not appropriate for new accessory buildings.

*High Priority- Required*

(i)The palette of exterior materials for new accessory buildings should not use more than two different primary siding materials; a third material may be added if used for trim

only. At least one exterior material on the accessory building must match the primary building on the property.

*High Priority -Required*

(k)The exterior color palette for new accessory buildings must generally be in the same range as the primary building on the property.

*High Priority -Required*

**Staff Findings/Recommendation:**

The removal of the non-historic garage is appropriate, staff recommends approval.

The materials and style of the new structures are in keeping with the Design Guidelines. However, staff recommends the chimney not be included in the design as it is not a common feature of garages.

The size of the proposed new auxiliary structure is more than 50% of the main house square footage. (3.4.1.h) Main house = 3,108 sf; Proposed Garage = 1,971 sf; Max allowed 1,554 sf

While the location of the proposed garage faces Austin Street it is in the rear of the yard and no other viable location exists on the lot and it replaces an existing garage. The development of the lot is not in keeping with the traditional pattern but does take advantage of the corner lot access to the rear of the property. The proximity of the new garage to the rear of the historic house is closer than the 15' required by 3.4.1.e

The proposed height of the new garage does not meet the standard for new auxiliary structures which is 18'. The new garage is shown at 20'6" (measured at mid point per building code). (3.4.3.c).

**Board Action:**

Approval of the design as presented except for the chimney which is to be removed from the design. This approval for exceptions to above cited standards/guidelines was based on Historic Review Board findings of exceptional design, and small or irregular lot size.

The placement of the new garage is within the R1 zoning setback and will require ZBA approval.



Anna Hudson

Historic Preservation Officer

# ZBA2022-01



<all other values>

desc\_



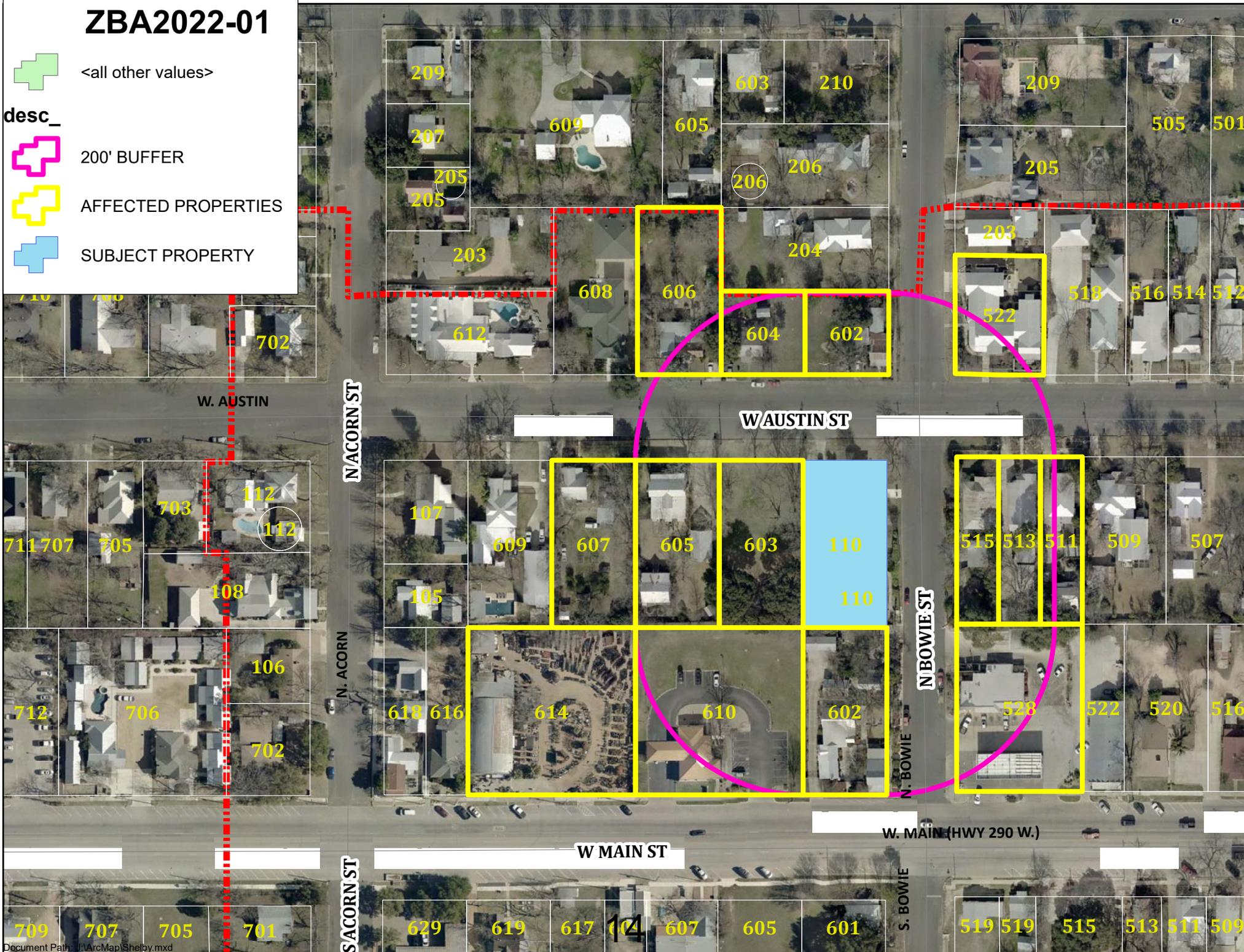
200' BUFFER



AFFECTED PROPERTIES



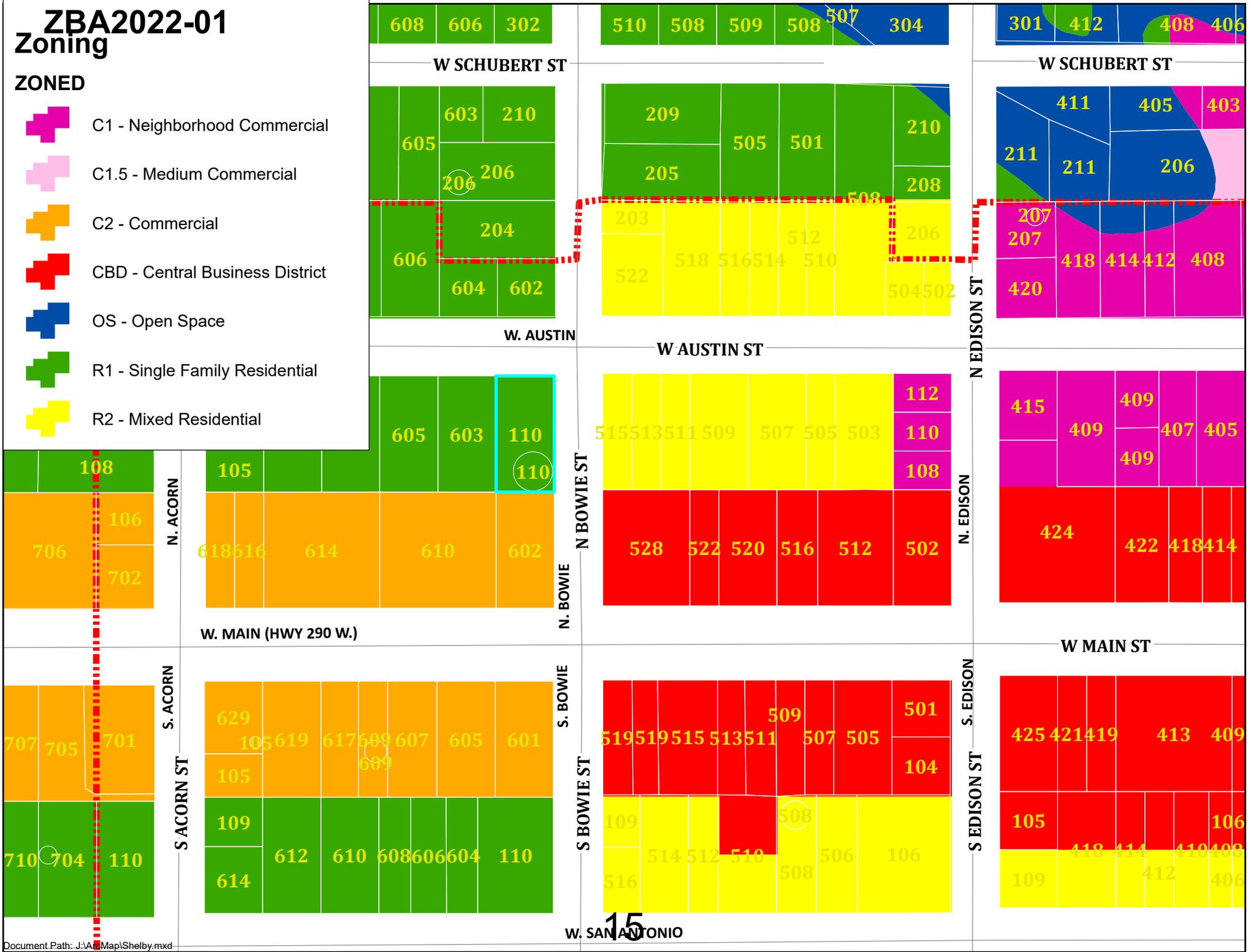
SUBJECT PROPERTY



# ZBA2022-01 Zoning

## ZONED

-  C1 - Neighborhood Commercial
-  C1.5 - Medium Commercial
-  C2 - Commercial
-  CBD - Central Business District
-  OS - Open Space
-  R1 - Single Family Residential
-  R2 - Mixed Residential



Sec. 5.500. - BOARD OF ADJUSTMENT.

The Board of Adjustment shall have the following powers:

**Variations.** To authorize upon appeal in specific cases such variance from the terms of the Zoning Property Development Regulations and Sign Ordinance as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provision of the Zoning Regulations will result in unnecessary hardship, and so that the spirit of the Zoning Regulations shall be observed and substantial justice done. See Section 5.600.

**Administrative Appeals.** To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Regulations. See Section 5.700.

Sec. 5.600. - VARIANCE PROCEDURE.

This procedure is intended to provide relief from the terms of the Zoning Property Development Regulations and Sign Ordinance when, because of special circumstances applicable to the property, the strict application of the Zoning Property Development Regulations and Sign Ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification, and to ensure that any adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the district in which such property is situated.

Sec. 5.610. - Application.

Application for a Variance shall be filed with the Director of Planning and Building. The application shall include the following:

Name and address of the owner or applicant.

Address and legal description of the property.

If the applicant is not the legal owner of the property, a statement that the applicant is the authorized agent of the owner.

A statement describing the Variance requested and the reasons why it complies with the criteria for Variations provided in Section 5.650.

Site plans, preliminary building elevations, preliminary improvement plans or other maps or drawings, sufficiently dimensional as required to illustrate the following, to the extent related to the Variance application:

Existing and proposed location and arrangement of uses on the site, and on abutting sites within fifty (50) feet.

Existing and proposed site improvements, buildings and other structures on the site, and any off-site improvements related to or necessitated by the proposed use. Building elevations shall be sufficient to indicate the general height, bulk, scale and architectural character.

Existing and proposed topography, grading, landscaping, screening, irrigation facilities and erosion control measures.

Existing and proposed parking, loading and traffic and pedestrian circulation features, both on the site and any off-site facilities or improvements related to or necessitated by the proposed use.

The Director of Planning and Building may request additional information necessary to enable a complete analysis and evaluation of the variance request, and a determination as to whether the circumstances prescribed for the granting of a Variance exist.

The application shall be accompanied by a fee established by the City Council. A single application may include requests for Variances for more than one regulation applicable to the same site, or for similar Variances on two or more adjacent parcels with similar characteristics.

Sec. 5.620. - Report of the Director of Planning and Building.

The Director of Planning and Building shall review and prepare a report on the application. The report shall be filed with the Board of Adjustment and made available to the applicant at least five (5) days prior to the public hearings.

Sec. 5.630. - Public Hearing and Notice.

The Board of Adjustment shall hold a public hearing within forty-five (45) days on each application for a Variance. Notice shall be given as prescribed in Section 5.800. The Board shall adopt rules governing the conduct of its public hearings, including rules for the presentation of evidence.

Sec. 5.640. - Action by the Board of Adjustment.

The Board of Adjustment shall act upon the application not more than twenty (20) days following the close of the public hearing on a Variance. The Board may grant a variance as the Variance was applied for or in modified form, or subject to conditions, or the application may be denied. A Variance may be revocable, may be granted for a limited time period, or may be granted subject to conditions as the Board may prescribe. The Board shall notify the applicant of its decision.

The concurring vote of four (4) members of the Board of Adjustment shall be necessary to grant a Variance.

Sec. 5.650. - Findings.

Basic Criteria. The Board of Adjustment may grant a Variance if it makes affirmative findings of fact on each of the following criteria:

The Zoning Regulations applicable to the property do not allow for a reasonable use.

The plight of the owner of the property is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the zoning district in which the property is located.

The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property and will not impair the purposes or regulations to the Zoning District in which the property is located.

Parking: Additional Criteria. The City Council may grant a Variance to a regulation prescribed by this ordinance with respect to the number of off-street spaces or loading facilities required if it makes findings of fact that the following additional criteria are also satisfied:

Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretations and enforcement of the specific regulation.

The granting of the Variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets.

The granting of the Variance will not create a safety hazard or any other condition inconsistent with the objectives of this ordinance.

The Variance shall run with the use or uses to which it pertains, and shall not run with the site.

Sec. 5.652. - Signs: Additional Criteria.

The Board may grant a variance to a regulation prescribed by the Sign Ordinance with respect to the placement of signs, the height of signs or the area of signs if it affirmatively finds each of the following:

That a sign is being replaced. For the purposes of this Section, replacement shall include the erection of a new or different sign due to the removal of another sign for any reason, including the change of name of a business whether from change of ownership, business being conducted, or otherwise, the change of a sign for a continuing business containing the same or different information as the sign being replaced, and the replacement of signs due to damage or vandalism.

That all structures on the property for which the sign is proposed that would impede the replacement of a sign were constructed prior to February 17, 1986.

That it is impractical to abide by existing placement, height or area regulations due to the placement, size of construction of existing structures in relationship to the physical characteristics of the site. For purposes of illustration, physical characteristics may include topography of the site or surrounding sites, structures on surrounding sites, traffic conditions, street layouts and existing natural vegetation.

That the other types of signs which are permitted by this Ordinance cannot practically be used. In making this determination of practicality, the Board may consider

The undesirability of altering a historic site to accommodate a sign which would be permitted with no variance under this Ordinance; or

That alternatives permitted by this Ordinance would involve extensive reconstruction of structures; or

That alternatives permitted by this Ordinance are prohibitively expensive; or

That alternatives permitted by this Ordinance will not effectively identify the subject of the sign.

That the proposed sign has been reviewed by the Historic Review Board if applicable.

That the proposed variance is as close to the requirements of the sign ordinance as is feasible.

Sec. 5.660. - Effective Date of Variance.

A decision of the Board of Adjustment on a Variance shall be effective immediately.

Sec. 5.670. - Lapse of Variance.

Unless a longer time period shall be specifically established as a condition of approval, a Variance shall lapse and shall become void one year following the date on which the Variance became effective, unless prior to the expiration of one year a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the Variance application, or a certification of occupancy is issued for the site or structure which was the subject of the Variance if no building permit or certificate of occupancy is required.

A Variance subject to lapse may be renewed by the Board for an additional period of one year, provided that prior to the expiration date, a written request for renewal is filed with Board.

The Board may grant or deny any application for renewal.

Sec. 5.671. - Suspension and Revocation.

Upon violation of any applicable provision of this ordinance, or, if granted subject to conditions, a Variance shall be suspended after thirty (30) days written notification to the owner of the use or property to the Variance.

Sec. 5.680. - Variance to Run With Land or Structure.

Unless pertaining to off-street parking and loading regulations, or otherwise specified at the time a Variance is granted, a Variance shall run with the land and shall continue to be valid upon a change of ownership of the site or structure to which it applies.

Sec. 5.690. - Variance Appeal Procedure.

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department or board of the City may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision in the office of the Board of Adjustment.

Sec. 5.700. - ADMINISTRATIVE APPEALS PROCEDURES.

This procedure is intended to afford review of administrative actions taken pursuant to the Zoning Regulations where such actions may be in error.

Appeals to the Board of Adjustment may be taken by any person aggrieved, or by any officer, department, or board of the City affected by any administrative decision of the Director of Planning and Building. Such appeal shall be taken within 30 days after the decision, by filing with the Director of Planning and Building, and with the Board of Adjustment a notice of appeal, which shall specify the grounds thereof. The Director of Planning and Building shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

Sec. 5.710. - Fee.

The appeal shall be accompanied by the fee set forth in Appendix A of this Code. The fee shall be refunded to the applicant if the Board of Adjustment renders a decision in favor of the applicant.

(Ord. No. 23-016, 9-16-2013)

Sec. 5.720. - Stay of Proceedings.

An appeal from the action of the Director of Planning and Building shall stay all proceedings in furtherance of such action unless the Director of Planning and Building certifies to the Board of Adjustment after the notice of appeal has been filed with him/her, that by reason of the fact stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property. In the event the Director of Planning and Building shall make and file such certificate, his/her action shall not be stayed otherwise than by a restraining order that may be granted by the Board of Adjustment or by a court of record, upon application of the party aggrieved by the action of the Director of Planning and Building and after notice to him/her and upon due cause shown.

Sec. 5.730. - Public Hearing and Notice.

The Board of Adjustment shall hold a hearing within 45 days on the appeal. Notice shall be given as prescribed in Section 5.800. Upon the hearing of such appeal, any interested party may appear in person or by an agent or by an attorney.

Sec. 5.740. - Action.

The Board of Adjustment shall act on the appeal within 20 days following the closing of the public hearing. In exercising the powers set out in this section, the Board of Adjustments may, in conformity with the provisions of this Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the Director of Planning and Building from whose action the appeal is taken. The Board shall notify the applicant of its decision.

The concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order, requirement decision, or determination of the Director of Planning and Building or to decide in favor of the applicant any matter upon which it is required to pass under this subsection.