



CITY OF FREDERICKSBURG

ZONING BOARD OF ADJUSTMENT MEETING AGENDA THURSDAY AUGUST 18, 2022, ~ 5:30 P.M. LAW ENFORCEMENT CENTER – 1601 E. MAIN STREET

Devin Mullen, Chair
Marcus Vidrine, Vice Chair
Clay Sears, Member
Vacant, Member

Ashley Hunter, Member
Jim McAfee, Member
Vacant, Member

The City of Fredericksburg Zoning Board of Adjustment will meet in a regular session on **Thursday, August 18, 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/UCrhnlFjVfDS1SPBJD2pYKcQ/featured>

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF MEETING MINUTES

June 16, 2022, regular meeting minutes

4. 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 August 18, 2022.
2. Complete the Citizen Comment Form online at www.fbgtx.org; or
3. Email your comments to 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.

5. PUBLIC HEARING

- A.** Consider ZBA2022-02 – Request by Karen Pong to consider a Variance to Section 3.100 of the Zoning Ordinance. Applicant is requesting a Variance to Obtain a STR-Unoccupied Permit for Property Located in a R1 – Single Family Residential Zoned District at 410 South Orange.

6. ACTION ITEMS

- A.** Receive recommendation and consider (ZBA2022-02).

7. ADJOURN

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

Shelby Collier,
Associate Planner

Jordan Muraglia presented the application. He stated it was their intent to build a two-story garage and after working with the Historic Review Board have chosen to construct it in the proposed location.

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

Shelby Collier, Associate Planner, stated 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.

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. Staff recommend denial of the request.

Jim McAfee stated he understood the applicants desire to improve the property, however, he did not see where their variance request met the requirements and would have a hard time making a recommendation to approve this application. Devin Mullen agreed.

Jim McAfee made a motion made to deny Application ZBA2022-01. Marcus Vidrine 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 Jeff Neal seconded the motion. All voted in favor and the meeting was adjourned at 5:48 P.M. PASSED AND APPROVED this the 18th day of AUGUST 2022

SHELBY COLLIER, ASSOCIATE PLANNER

DEVIN MULLEN, CHAIRMAN



ZONING BOARD OF ADJUSTMENT MEMO

DATE: August 18, 2022
TO: Zoning Board of Adjustment
FROM: Shelby Collier, Associate Planner
SUBJECT: ZBA2022-02 – Request by Karen Pong, to consider a Variance to Section 3.100.

Summary: A variance request has been submitted to allow the applicant to obtain a STR-Unoccupied Permit for property located in a R1-Single Family Residential Zoned district.

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

Applicant: Karen Pong

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

Location: 410 South Orange Street

Findings: The property was purchased by the applicant on August 10, 2021 and underwent a remodel that was completed on July 8, 2022.

The applicant requested a STR-Unoccupied Permit on May 30, 2022, which Staff denied on July 14, 2022. [Sec. 3.100](#) does not permit STR-Unoccupied units by right.

In order to operate a STR-Unoccupied in an R1 Zoned area, the applicant would need to obtain a Conditional Use Permit. In order to qualify for a Conditional Use Permit, 2 or more lot lines (1 for a corner lot) must be abutting a lawfully permitted STR Unoccupied & 75 % or more of the properties on the same side of the street, between intersecting streets, are lawfully permitted STR Unoccupied. [Section 3.100](#)

After researching 410 S. Orange, staff found that it does not meet the requirements necessary to qualify for a Conditional Use Permit.

The property is eligible to operate as a STR-B&B or an STR-Accessory, provided the property is owner occupied.

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 Zoned R1, and its development is in keeping with the intended use of the Zoning, Single Family Residential. While the applicant may desire a more profitable use, the regulations do not prevent 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 operate a STR-Unoccupied. 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's interest in obtaining the STR-Unoccupied is purely financial as stated in the application and it is important to note that the conditions or regulations regarding permitted uses are the same regulations that apply to all other properties in R1 Zoned areas.

- 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 as it would impair the zoning district as allowances such as requested would be in direct violation and intent of the regulations. In addition, this neighborhood's primary use is Single Family Residential with 11 of the 15 properties affected operating as a Primary Residence or Homestead.

Please see attached Use Map.

OPPOSITION/SUPPORT OF REQUEST: 1 Protest letter received.

STAFF RECOMMENDATION: The City of Fredericksburg went through a 14-month long public process regarding potential amendments to the Short-Term Rental Ordinance with the first Public Meeting addressing this topic occurring on November 30, 2020. All property owners were given notice of potential changes and provided the opportunity to attend the Public Hearings. The applicant was made aware of the changes as notice was mailed to her regarding these Public Hearings on Friday, February 4, 2022, and upon adoption of Ordinance No. 2022-13, which went into effect April 1, 2022, the STR-Unoccupied use is no longer permitted by right in the R1 Zoned districts.

Staff recommends denial of the request.

Attachments:

1. Application
 2. Location & Use Map
 3. Sec. 5.650 of the Zoning Ordinance
-

Overview
July 22, 2022

Our retirement plans are to relocate to Fredericksburg, TX. We will be able to make this move in approximately 3 years. Consequently, our 'homestead' will be Fredericksburg, TX

We have purchased 475 Wolf Creek, Fredericksburg, TX 78624 for our soon-to-be 'homestead.'

The long-range plans have been in the works for a couple of years now. A large part of our plans is to allow STR income property help supplement us during retirement.

Our house located at 410 S Orange St., Fredericksburg, TX is a large part of our retirement plan. STR permit was going to aid to complete our long-range plans.

Orange Street was purchased on **August 10, 2021**

At the time of purchase, the house was nearly uninhabitable (See pictures - Before)

Renovation was completed on **July 8, 2022**. (See pictures – After)



VARIANCE APPLICATION TO BOARD OF ADJUSTMENT

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

-
1. Applicant: KAREN L PONG
2. Owner: ALLEN & KAREN PONG
3. Phone: 713-724-4518 Email: KLpong34@gmail.com
4. Description of property involved in this request.
Address: 410 S. ORANGE ST, Fredericksburg TX 78624
Legal Description: SCHULTZ GARDEN ADDITION - BK2, Lot 46447
Lot Size: 0.276 ACRES Zoning District: R-1
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: STR - PERMIT REQUEST
Requiring: REVIEW CASE FOR EXEMPTION TO CURRENT ORDINANCE & GRANT STR PERMIT.
-

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.

CRITERIA #2 ANSWER

It is with great respect that I submit the following information

Statutory provision applies *– The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance.

The property was purchased on August 10, 2021 with a clear title. The deed restrictions do not prohibit STR's. We purchased 410 S. Orange St. with the knowledge that an STR permit could be granted.

Respectfully, 410 S. Orange Street should be '**grandfathered**' to the previous ordinances of the city of Fredericksburg, TX are be granted a STR permit.

Respectfully, I've discovered that the Texas Appellate court* as found that the prohibition of dedicated STR in residential neighborhoods is unconstitutional. In short, because STR's were historically allowed, STR will still be allowed. Additionally, under the Texas constitution property owners and guests' rights to freedom of assembly would be violated by prohibiting an owner to STR his/her property.

I will be a full-time, voting part of this community very soon. I, too, want to be a very good neighbor. I want to enjoy the wonderful uniqueness that is Fredericksburg.

*Turik v. own of Surf City, 182 N.C. App, 642 S.E.2d 251 (2007)

*Zaatari V. City of Austin, 2019 WL 6336186 (Tex, App. Nov 27, 2019)

*****I am NOT an attorney and it is NOT my intention to practice law in any way. This information is simply research I've discovered in preparation for this request.***

CRITERIA #3

Granting an STR permit to 410 S. Orange St., Fredericksburg, TX would not alter the character of the area adjacent to the property. The operation of a STR will not impair the use of adjacent confirming property nor will it impair the purpose or regulations to the zoning district in which the property is located.

The house was an 'eye-sore' to the neighborhood. It could be argued that the house could have been deemed uninhabitable at the time of our purchase. **(Refer to Pictures – Before)**

It could be argued that the poor condition of the house was actually keeping guests away for the adjacent park.

The renovation of 410 S. Orange has improved the view from the park. Now, there are two well-maintained homes directly across from the park. STR- 412 S. Orange St. and our house. Additionally, 410 S. Orange has become an asset to the neighborhood and the community as a whole. **(Refer to Pictures – After)**

There are other established STR's in the neighborhood. I believe 9 or 10 other homes in the two-block area. I can observe that the STR's in this area are well maintained and have added to the appearance and appreciation of the neighborhood.

I have become friends with my neighbors. Each one has expressed happiness that the house isn't an 'eye-sore' any longer. Each one knew of my STR plans and each one was pleased with those plans.



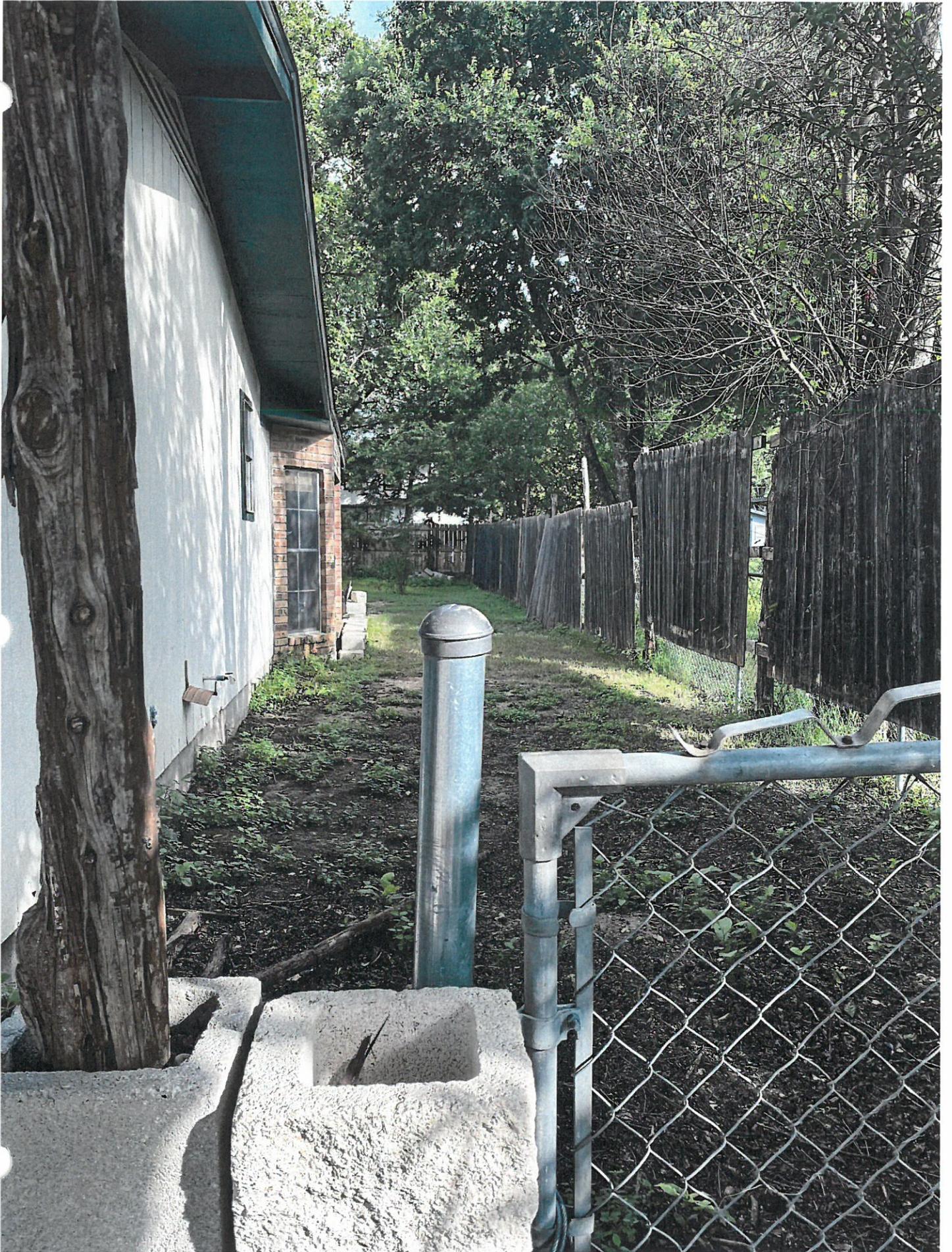
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Sold: (3 beds, 2 baths, 1,700 Square Feet)























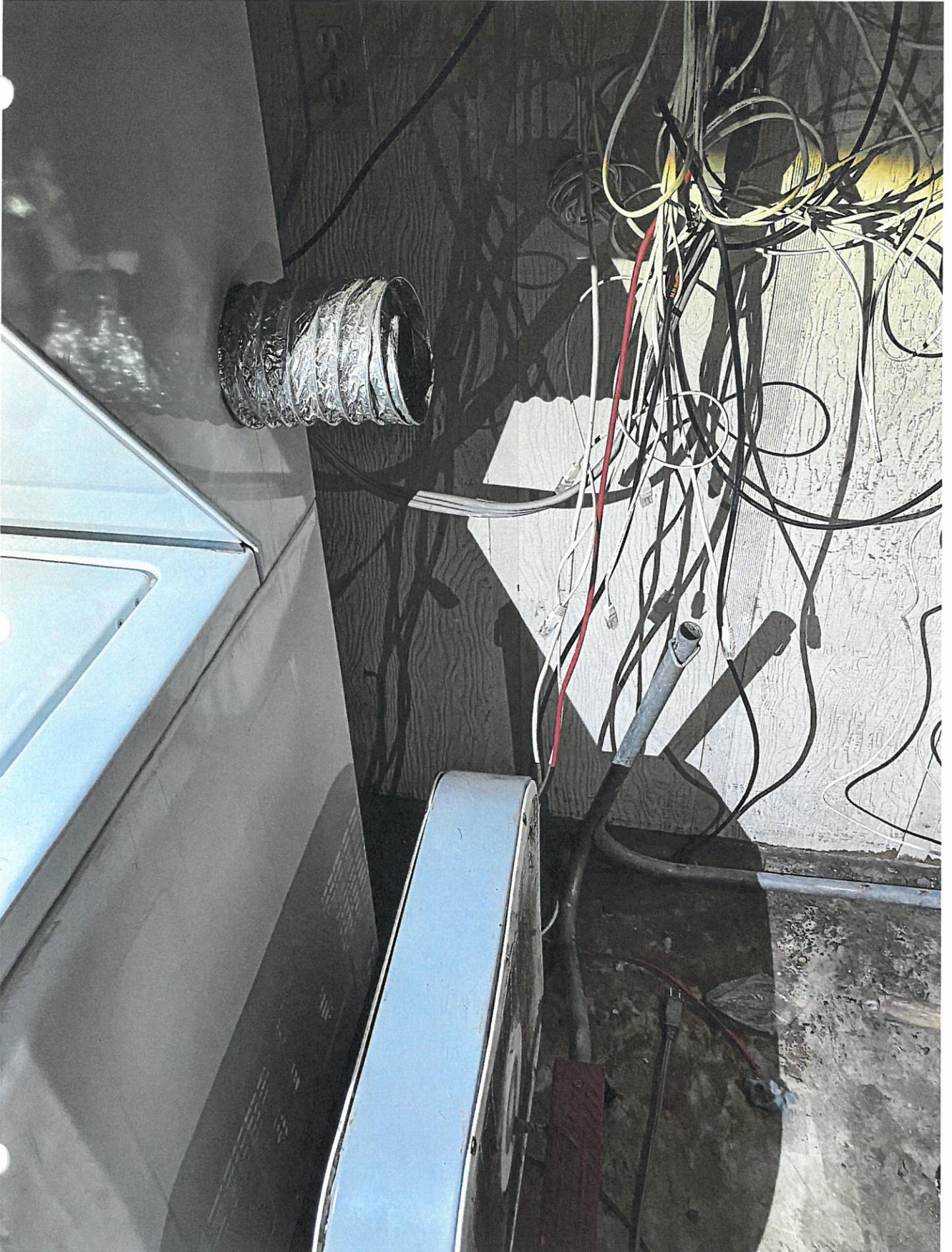
















My Granddaughters Feeding the Deer



@ 410. S. Orange

Exterior view

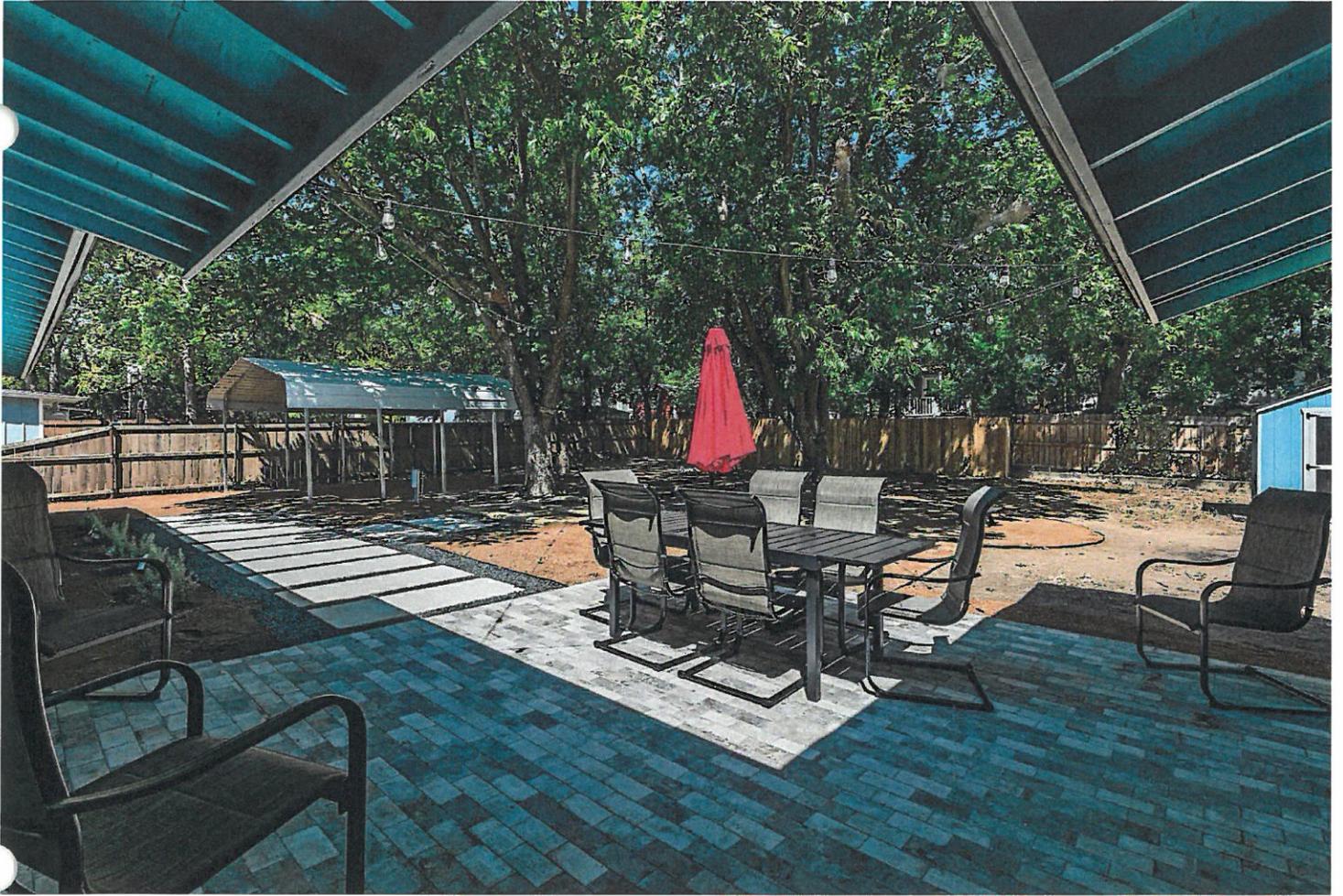








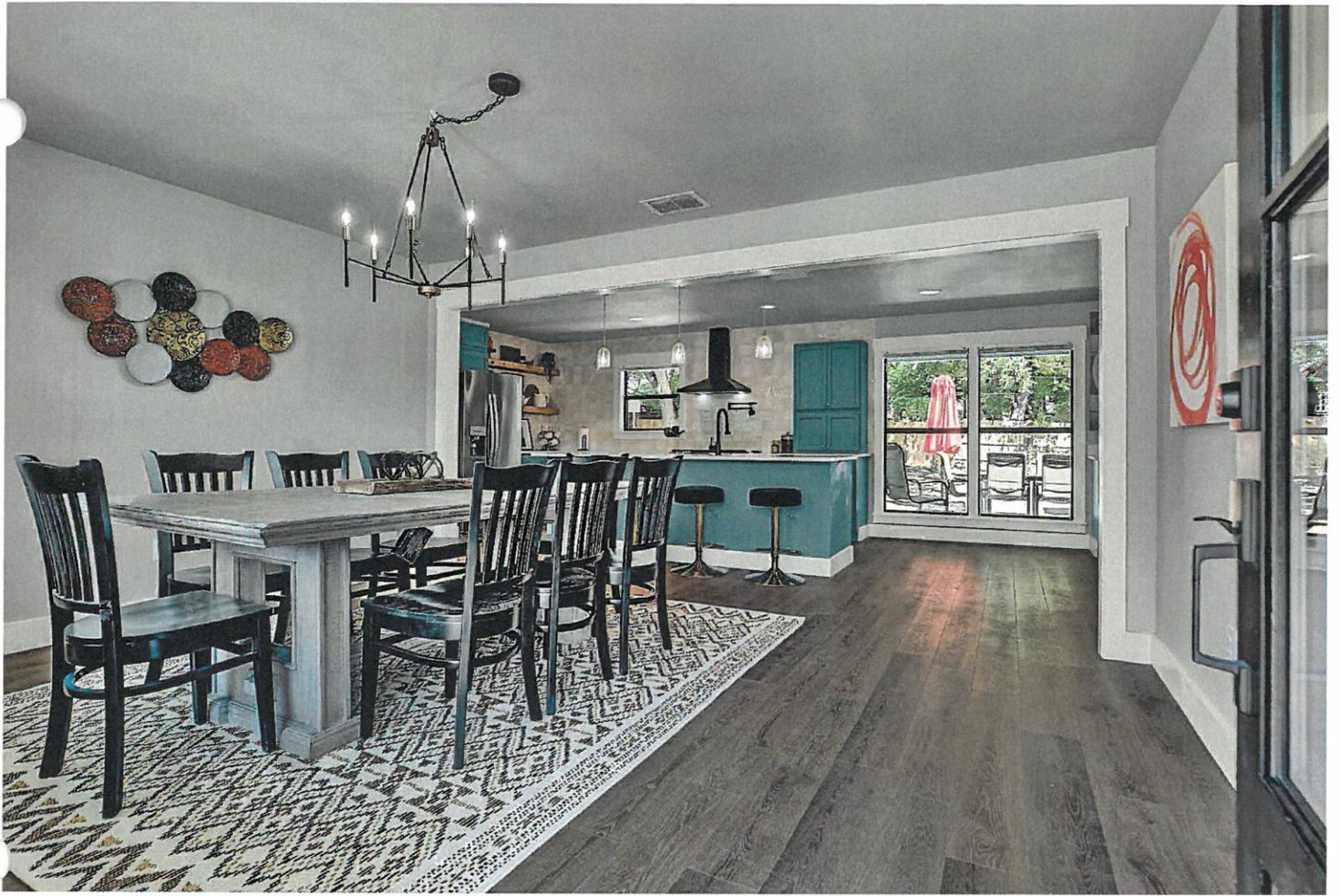






Kitchen & Dining











(no subject)

1 message

Karen Pong <klpong34@gmail.com>
To: klpong34@gmail.com

Sun, Jul 17, 2022 at 4:53 PM



Laundry Room





Master Bedroom





Master Bath





Bedroom #1



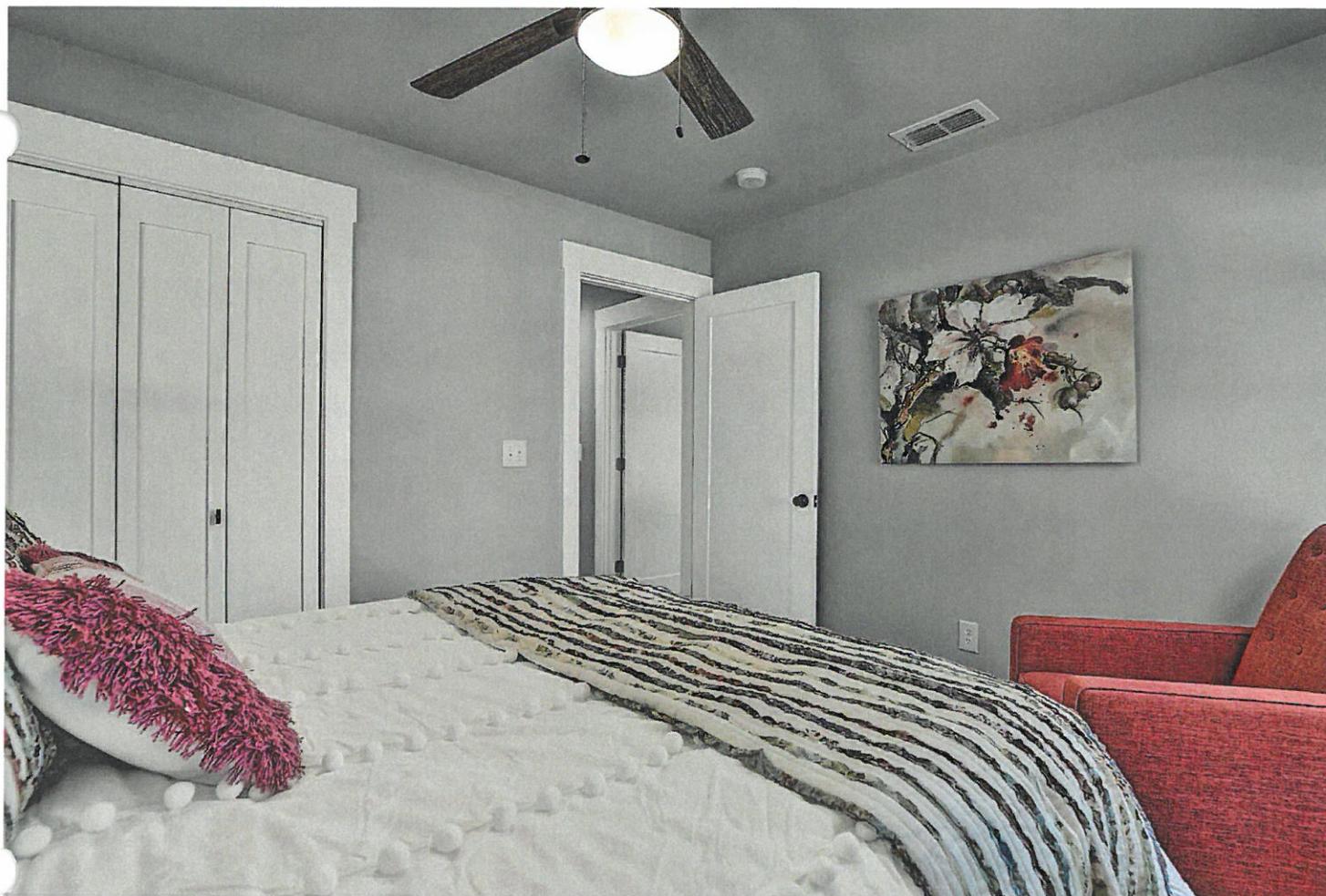


Bedroom #2



Bedroom #3





Hall Bathroom











ZBA2022-02

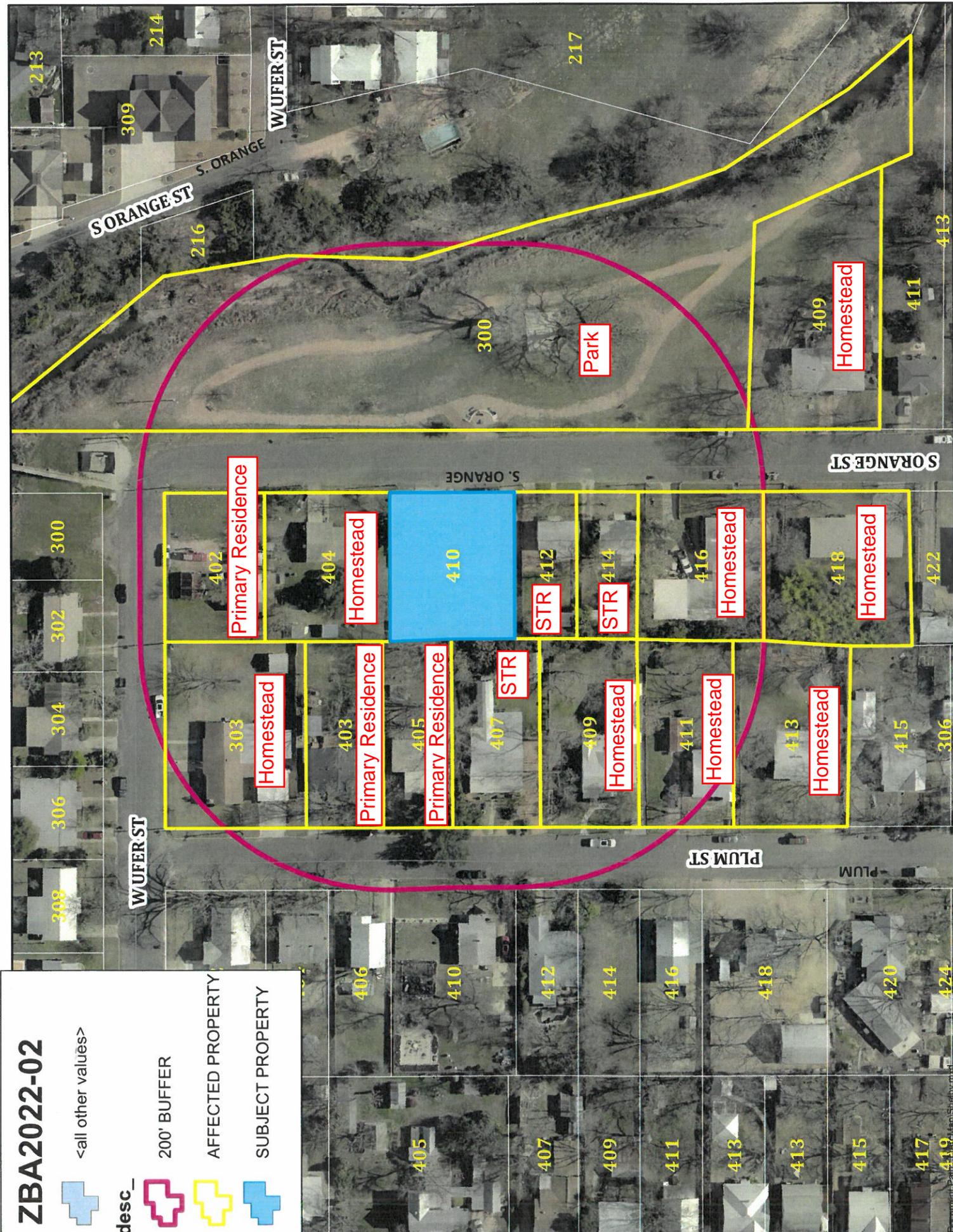
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desc_

200' BUFFER

AFFECTED PROPERTY

SUBJECT PROPERTY



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.