



**AGENDA
BOARD OF ADJUSTMENT / APPEAL MEETING
CITY OF LEANDER, TEXAS**



Pat Bryson Municipal Hall

201 North Brushy Street ~ Leander, Texas

Monday ~ September 12, 2016 at 7:00 PM

Gil Debner - Chairman
John Cosgrove
Tim Luke

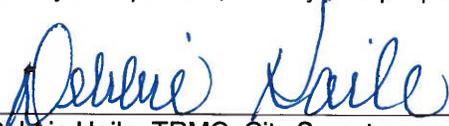
Joseph Eckels
Mary Orton
Linda Alger – Building Official

1. Call to Order and Roll Call
2. Approval of Minutes: April 11, 2016
3. Appointment of Chairperson and Vice Chairperson
4. Variance 16-VA-003: Hold a public hearing and consider action on a request for a variance to Article VI, Section 8 (b) and Article VI, Section 15 (b) of the Composite Zoning Ordinance regarding the required ten (10') foot landscape lot, six (6') foot privacy fence, and ten (10') foot concrete sidewalk associated with the property located at 71 Fair Oaks Street, Leander, Texas
Applicant/Agent: Matt Tolbert and Frank Todd
 - a. Open Public Hearing
 - b. Close Public Hearing
 - c. Discussion
 - d. Consider Action
 - e. Prepare Findings
5. Adjourn

CERTIFICATION

This meeting will be conducted pursuant to the Texas Government Code Section 551.001 et seq. At any time during the meeting, the Board of Adjustment / Appeal reserves the right to adjourn into executive session on any of the above posted agenda items in accordance with the sections 551.071 [litigation and certain consultation with attorney], 551.072 [acquisition of interest in real property], 551.073 [contract for gift to city], 551.074 [certain personnel deliberations] or 551.076 [deployment/ implementation of security personnel or devices]. The City of Leander is committed to compliance with the American with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. **Please call the City Secretary at 512/ 528-2743 for information.** Hearing impaired or speech disabled persons equipped with telecommunications devices for the deaf may call 512/ 528-2800.

I certify that the above agenda for this Meeting of the Board of Adjustment / Appeal of the City of Leander, Texas, was posted on the bulletin board at City Hall, in Leander, Texas, on the 8th day of September, 2016 by 5:00 pm pursuant to Chapter 551 of the Texas Government Code.


Debbie Haile, TRMC, City Secretary



**MINUTES
BOARD OF ADJUSTMENT / APPEAL MEETING
CITY OF LEANDER, TEXAS**



Pat Bryson Municipal Hall
201 North Brushy Street ~ Leander, Texas

Monday ~ April 11, 2016 at 7:00 PM

Gil Debner - Chairman	Bill Barton – Vice Chairman
John Cosgrove	Mary Orton
Tim Luke	Linda Alger – Building Official

1. Call to Order and Roll Call
Bill Barton, Vice Chairman called the meeting to order at 7:00 pm
Gil Debner was absent
2. Approval of Minutes: November 9, 2015
Motion made by John Cosgrove to approve. Second by Tim Luke.
Motion passes, all voting “aye”
3. Discussion and possible action on adoption of the 2015 ICC Building Codes
Linda Alger, Building Official explained

Motion made by John Cosgrove to adopt the 2015 ICC Building Codes and the 2015 National Electric Code. Second by Mary Orton. Motion passes, all voting “aye”
4. Adjourn
With no further business, the meeting adjourned at 7:15 pm

Attest:

Gil Debner, Chairman

Debbie Haile, TRMC, City Secretary



EXECUTIVE SUMMARY

SEPTEMBER 12, 2016

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- Agenda Subject:** Appointment of Chairperson and Vice Chairperson
- Background:** According to the Ordinance outlining duties of the Board of Adjustment, the Board is to appoint a chairperson once per year.
- Origination:** Code of Ordinances
- Financial Consideration:** None
- Recommendation:** Appoint a Chairperson to run the meetings and appoint a vice chairperson to fill in when chairperson is absent.
- Attachments:** 1. Code of Ordinances: Section 4- Board of Adjustment
- Prepared By:** Debbie Haile, TRMC
City Secretary

SECTION 4 BOARD OF ADJUSTMENT

(a) Established: A Board of Adjustments (Board) is established in accordance with the provisions of Section 211.008, et seq., Tex. Loc. Gov't. Code, and the City Charter, regarding the zoning of cities. The Board shall have the powers and duties as provided in Chapt. 211 and this Ordinance.

(b) Organization and Membership.

(1) Regular Membership. The Board shall consist of five citizens appointed or reappointed by the City Council. The Mayor shall have the authority to nominate persons for appointment. Members of the Board shall be removable for cause by the City Council, upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of the member whose term becomes vacant. The Board shall elect its own chair, who shall serve for a period of one (1) year or until his or her successor is elected.

(2) Alternate Members. The Board shall also consist of not more than four alternate members who will serve in the absence of one or more regular members, as and when requested to do so by the Mayor or City Manager. Alternate members shall be appointed in the same manner as regular members; shall serve for the same period as a regular member; and are subject to removal in the same manner as a regular member. Vacancies among the alternate members shall be filled in the same manner as vacancies among the regular members.

(c) Meetings: Meetings of the Board shall be held at the call of the chair and at such other times as the Board may determine.

(d) Hearings: All meetings and hearings held by the Board of Adjustment shall be public; provided that upon the advice and consent of the City Attorney the Board may go into executive session pursuant to Chapt. 551, Tex. Gov't. Code.

(e) Rules and Regulations: The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and such minutes shall be immediately filed in the office of the Board and shall be a public record. The Board shall act by resolution in which four members must concur. The Board may adopt rules in accordance and consistent with this Ordinance as necessary and required. A copy of any such rules shall be furnished to any person requesting same. All rules and regulations shall operate uniformly in all cases and all resolutions and orders shall be in accordance therewith.

(f) Appeals:

(1) Procedure. Any person aggrieved by a decision of an administrative officer in the enforcement of Chapt. 211, Tex. Loc. Gov't. Code, or this ordinance, or any officer, department, board or bureau of the City affected by any such decision by an administrative officer, may appeal such decision to the Board. Such appeal shall be made by filing with the office of the Board and the officer whose action is being appealed, a notice of appeal specifying the grounds thereof. The officer from which the appeal is taken shall forthwith transmit to the Board a certified, true and correct copy of all of the papers constituting the record upon which the action appealed from is taken.

(2) Stay of Proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer whose decision is appealed shall certify to the Board that by reason of facts stated in the certificate, a stay would, in his or her opinion, cause imminent peril to life or property, in

which case proceedings shall not be stayed other than by restraining order granted for just cause by the Board, or by a court of record, after notice to the officer from whom the appeal is taken.

(3) Notice of Hearing on Appeal. The Board shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and shall give public notice of the hearing and due notice to the parties in interest. The Board shall mail notices of such hearing to the petitioner, to the owners of the property that is the subject of the hearing, to the owners of property lying within two hundred (200) feet of any point of the lot or portion thereof that is the subject of the appeal or variance request, the Building Official and the Director of Planning. The owners of property shall be determined according to the current tax rolls of the City, and the deposit of the notice in the U.S. mail, addressed to the name and address on the tax rolls, postage prepaid, shall be deemed actual notice and full compliance with the requirements of this Ordinance for notice.

(4) Decision by Board. The Board shall decide appeals within a reasonable time. Any party to the appeal may appear in person or by agent or attorney at any hearing. The Board may, upon the concurring vote of four (4) members, reverse or affirm, in whole or in part, or modify the administrative official's order, requirement or decision, and make the correct order, requirement, decision, or determination on the matter appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made, and to that end, shall have all powers of the officer or department from whom the appeal is taken. The Board shall promptly file in the office of the Building Official and City Secretary a written decision on each appeal and variance request. The decision shall be signed by the Board Chair or, as applicable in his/her absence, the Vice-Chair of the Board.

(g) Powers and Duties of the Board: The Board shall have authority and jurisdiction to hear appeals from the decisions of an administrative official in the interpretation and application of this Ordinance, and to hear and consider variance requests only as authorized by Chapt. 211, and this Ordinance.

(1) Appeals Based on Error. The Board shall have the power to hear and decide appeals based solely upon the applicable law and facts, where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of Chapt. 211, Tex. Loc. Gov't. Code, or this Ordinance.

(2) Special Exceptions. The Board shall have the power to hear and decide special exceptions to the terms of this Ordinance when this ordinance by specific provision authorizes the Board to do so. Such special exceptions shall be as follows:

(i) To permit a public utility or public service use or structure in any district as necessary to house equipment, pumps, switching gear, and similar devices only, required for the provision of the utility service or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the provision of utility service and the public health, convenience, safety or general welfare.

(ii) Authorize a variance from the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, and where the topography or unusual shape of the lot and regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.

(iii) The Board shall have the authority to recommend to the Council the classification of any use not specifically named in this ordinance, in cases of uncertainty; and that Council consider authorizing and granting a special use permit or otherwise amending this Ordinance, in those instances where:

(a) A business, commercial or industrial use that requires less restrictive zoning be permitted within 300 feet of the boundary of such a required zoning district but in an abutting more restrictive commercial or industrial district, because of the methods by which it would be operated and its limited effect upon uses within surrounding zoning districts; or

(b) In those cases where an extension of use authorized in subsection (h)(iii) [(h)(3)] below should be considered for an extension beyond the 100-foot limitation, or beyond the lot line.

(h) Variances: The Board shall have the power to authorize upon application for variance in specific cases when such variance from the terms of this Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done, including the following:

(1) Yard and Setback. Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardship in the carrying out of these provisions due to an irregular shape of the lot, topography or other conditions; provided that such variance will not significantly affect any adjoining property or the general welfare.

(2) Structures. Authorize upon appeal, whenever a property owner can show that a strict application of the terms of this Ordinance relating to the construction or alteration of a building or structure or the use of land will impose unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of this Ordinance as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variance will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance as established by this Ordinance, and at the same time, the surrounding property will be properly protected; provided that the Board shall not in any event permit a use on any property that is not permitted within the Zoning category for which such property is zoned.

(3) Extension of Use. To grant a permit for the extension of a use, height, area, site and/or architectural regulation into an adjoining district to include an entire legal lot but not to exceed an extension of 100 feet, where the boundary line of the district divided a lot under single ownership on the effective date of this ordinance.

(i) Subpoena Witnesses: The Board shall have the power to subpoena witnesses, administer oaths, and punish for contempt, and may require the production of documents, under such regulations as it may establish.

(j) Changes: The Board shall have no authority to change any provision of this Ordinance and its jurisdiction is limited to hardship and borderline cases which may arise from time to time.

Charter reference—Board of adjustment, sec. 10.08.



EXECUTIVE SUMMARY

SEPTEMBER 12, 2016

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- Agenda Subject:** Variance 16-VA-003: Hold a public hearing and consider action on a request for a variance to Article VI, Section 8 (b) and Article VI, Section 15 (b) of the Composite Zoning Ordinance, regarding the required ten (10') foot landscape lot, six (6') foot privacy fence, and ten (10') foot concrete sidewalk associated with the property located at 71 Fair Oaks Street, WCAD Parcel ID R037202 & R525995, Leander, Texas.
- Background:** The applicant is requesting a variance from Article VI Site Standards, Section 8 (b) from the Composite Zoning Ordinance regarding the requirement for a ten (10') foot landscape lot and a six (6') feet masonry wall, and from Article VI, Section 15 (b) requiring a sidewalk along the west side of Ronald W. Regan Blvd.
- Origination:** Applicant/Agent: Matt Tolbert and Frank Todd
- Financial Consideration:** None
- Recommendation:** See Planning Analysis.
- Motion:** APPROVAL: The Zoning Board of Adjustment recommends approval of the variance request based on the findings of fact.
DENIAL: The Zoning Board of Adjustment recommends denial of the variance request based on the findings of fact.
- Attachments:**
1. Planning Analysis
 2. Current Zoning Exhibit
 3. Aerial Exhibit
 4. Letter of Intent
 5. Findings of Fact
- Prepared By:** Jacob Brackmann
Assistant Planner

09/07/2016



PLANNING ANALYSIS

BOARD OF ADJUSTMENT / APPEAL COMPOSITE ZONING ORDINANCE VARIANCE 16-VA-003 71 FAIR OAKS STREET

GENERAL INFORMATION

- Owner:** Matt Tolbert and Frank Todd
- Current Zoning:** Interim SFS-2-B (Single Family Suburban)
Interim SFR-1-B (Single Family Rural)
- Size and Location:** The subject property is located at 71 Fair Oaks and includes WCAD Parcels R037202 and R525995.
- Staff Contact:** Jacob Brackmann
Assistant Planner

ABUTTING ZONING AND LAND USE:

The table below lists the abutting zoning and land uses.

	ZONING	LAND USE
NORTH	Interim SFS-2-B Interim SFR-1-B	Established Single-Family Home (Ridgmar Landing)
EAST	MF-2-A	Undeveloped Lot (Sarita Valley Subdivision)
SOUTH	Interim SFS-2-B Interim SFR-1-B	Established Single-Family Home (Ridgmar Landing)
WEST	Interim SFR-1-B	Established Single-Family Home (Ridgmar Landing)

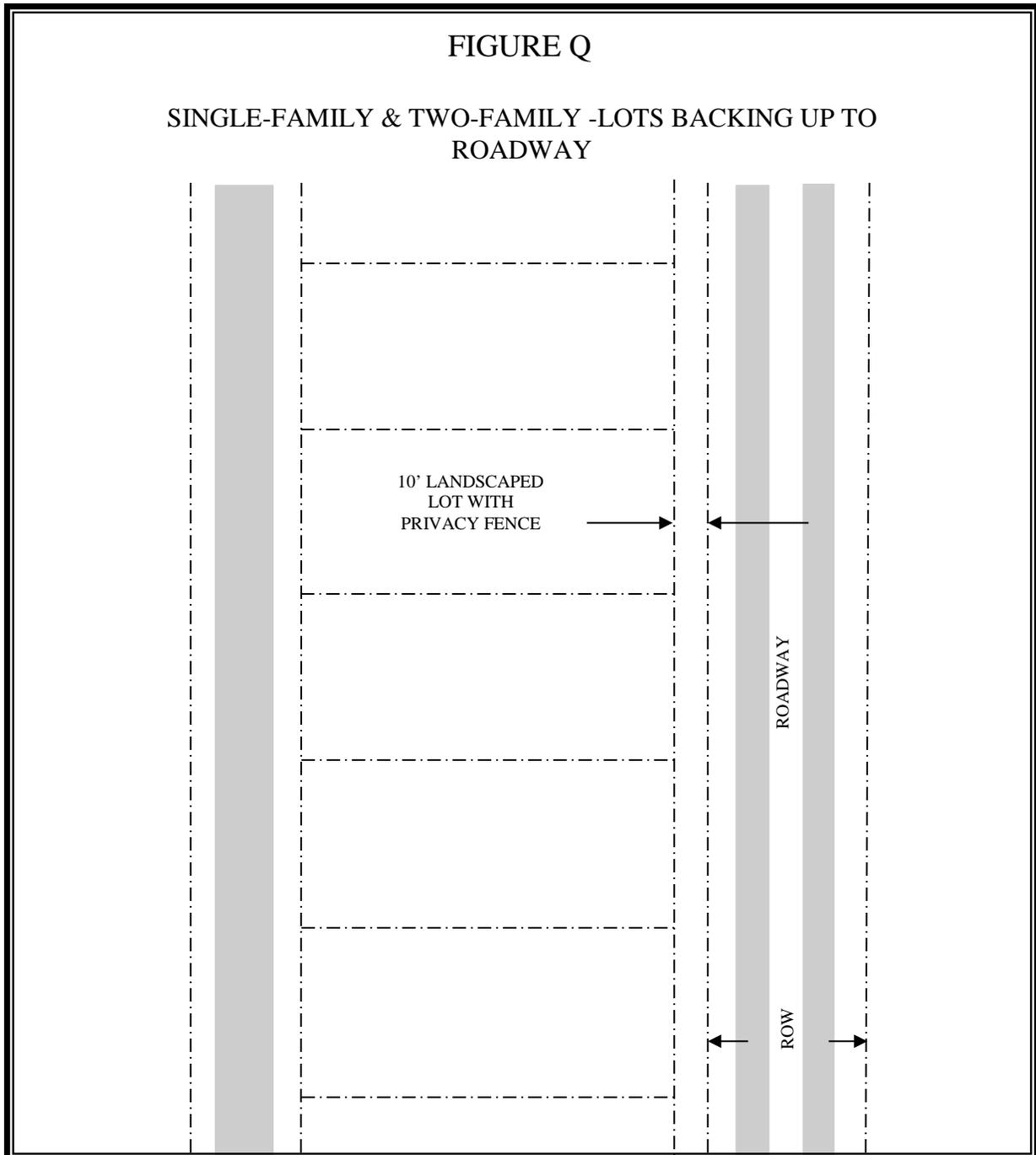
ORDINANCE PROVISION FOR WHICH VARIANCE IS REQUESTED:

COMPOSITE ZONING ORDINANCE (2016)

Article VI, Section 8 (b)

For lots adjacent to tollway, highway, arterial, or collector roadways and backing up to such roadway (having frontage on another roadway of a lesser classification), the following shall be provided (see Figure Q – following pages):

- (1) A landscape lot is required between the lot and the specified roadway. Such landscape lot is required to be at least ten (10) feet wide and is required to be planted as follows: for every six hundred (600) square feet of landscape area, two (2) shade trees (two-inch caliper or larger) and four (4) shrubs (five gallon container size or larger) shall be planted and maintained. Two ornamental trees per shade tree may be substituted for up to fifty percent of the shade trees if desired.
- (2) A six-foot privacy fence is required to be constructed at the common lot line between the landscape lot and the single-family or two-family lots. The fence is required to be constructed of one or more of the following materials: brick, stone, cast stone, factory tinted (not painted) split-faced concrete masonry unit, or other similar material approved by the Director of Planning. In addition to the materials listed above, textured pre-cast concrete (e.g. WoodCrete) is also permitted when the privacy fence is adjacent to collectors. All columns are required to have concrete footings. The landscape lot is required to be maintained by a private association.



Article VI, Section 15 (b)

(b) Single-family and two-family residential: For single-family and two-family residential development, six (6') foot concrete sidewalks shall be installed on major arterial roadways, and four (4') foot concrete sidewalks shall be installed on all other roads, parallel to both sides of roadways in accordance with the Transportation Criteria Manual, unless sidewalks already exist or if such lot was platted with a subdivision approved prior to November 6, 1997. An additional foot is required to be added to the width of a sidewalk for sidewalks or portions of a sidewalk abutting a curb.

ANALYSIS:

The applicant is requesting a variance from the Composite Zoning Ordinance, which requires the applicant to provide a ten (10') foot landscape lot, a six (6') foot masonry wall, and a sidewalk on the west side of Ronald W. Reagan Blvd on the subdivision side of the property. The ordinance provisions adopted by the City of Leander requiring the landscape lot and masonry wall were adopted with the intent of providing a buffer between new subdivisions and major arterial and collector roadways. The landscape lot and masonry wall would serve as a buffer to reduce the noise generated by traffic on these highly traveled roadways. The ordinance provision applies to all subdivision applications submitted to the City and does not take into account applications for replats of existing subdivisions developed prior to the adoption of the regulations.

The Ridgmar Landing subdivision is an older large lot subdivision that was developed prior to the annexation of the subdivision into the city limits and without a masonry wall, sidewalk, or landscaped lot adjacent to Ronald W. Reagan Blvd. The applicant is proposing to the property. The replatting triggers the application of the current regulations that include the requirement for a ten (10') foot landscape lot, six (6') foot masonry wall, and sidewalk.

STAFF RECOMMENDATION

Staff recommends approval of the applicant's request for a variance from providing a ten (10') foot landscape lot, a six (6') foot masonry wall, and a ten (10') foot sidewalk along Ronald W. Reagan Blvd.

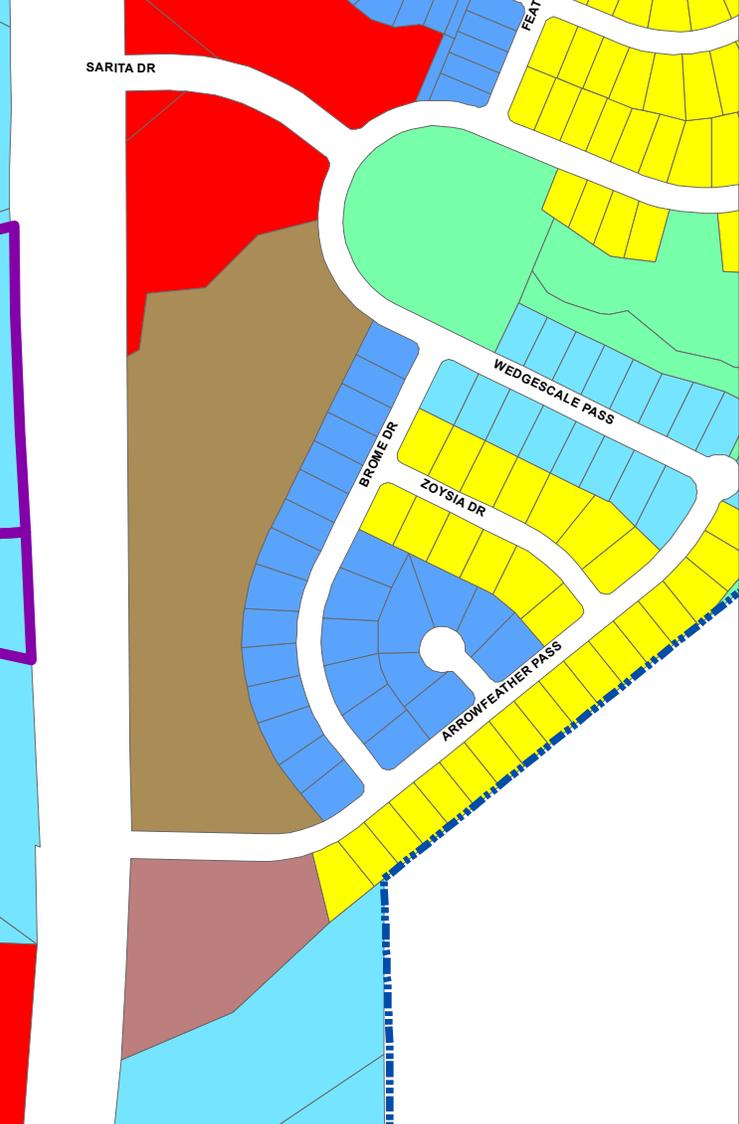
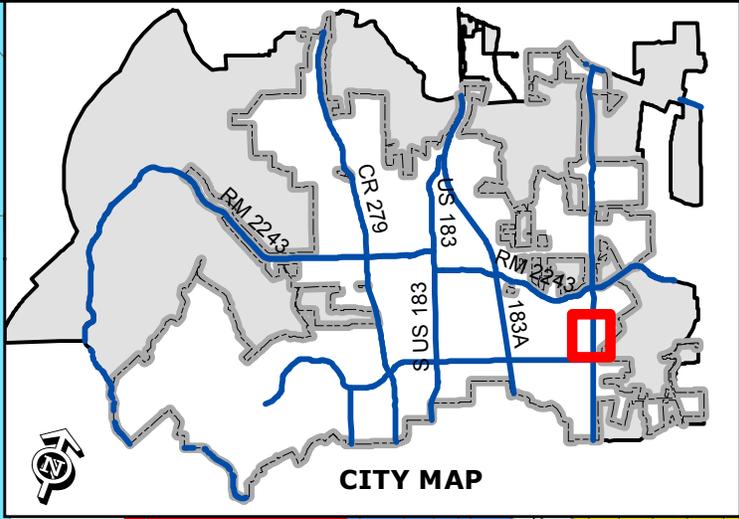
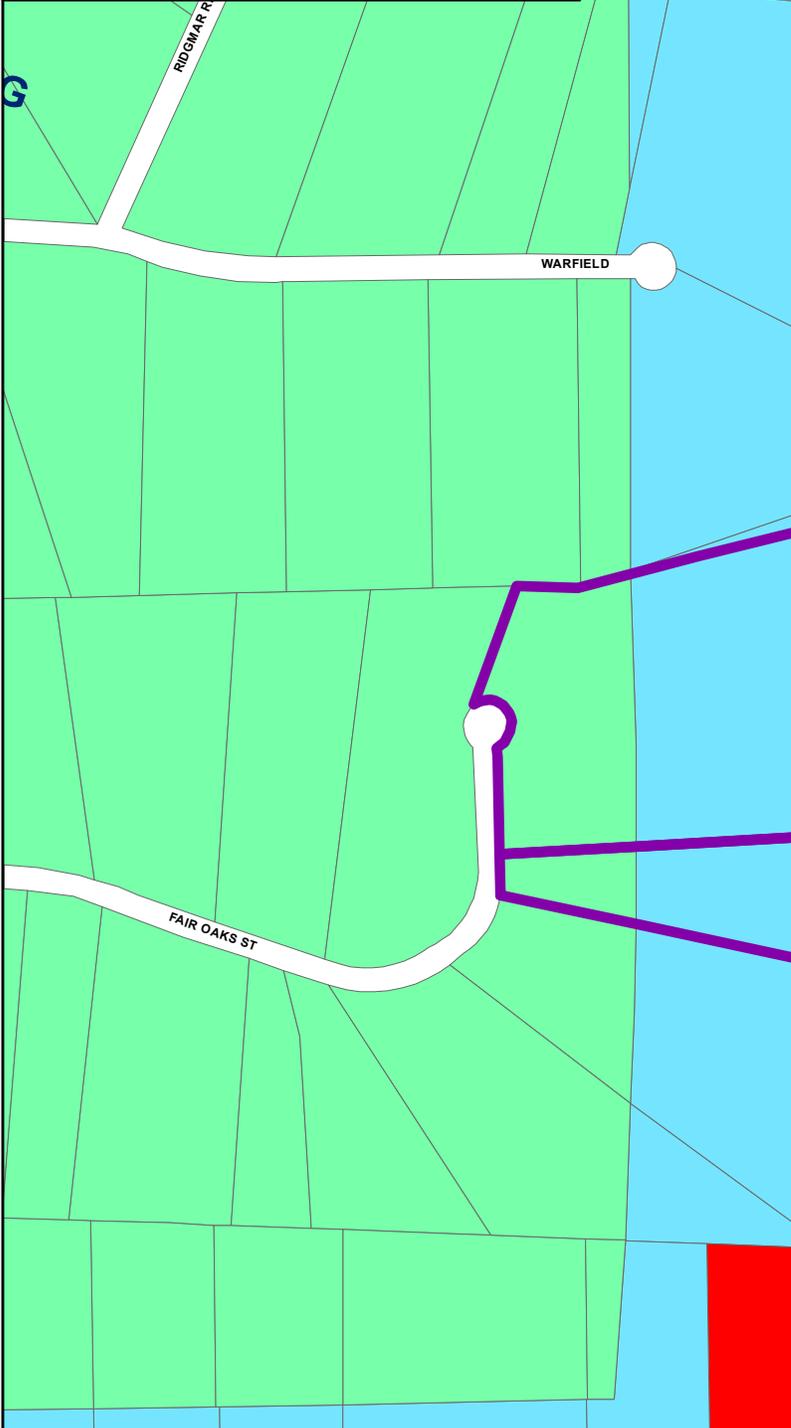
The requirement for the applicant to construct a masonry wall, provide a landscape lot, and construct a sidewalk would create a hardship on the proposed replat of the applicant's property. The result of the literal application of the ordinance would provide a portion of a masonry wall, landscape lot, and sidewalk on one lot of the entire subdivision. The intent of the masonry wall and landscape lot is to provide a buffer and screen the view of the major roadway along the perimeter of the subdivision. The construction of a masonry wall and landscape lot adjacent to only a portion of the subdivision does not meet the complete intent of the ordinance. Furthermore, the masonry wall would require the applicant to remove a substantial amount of existing trees that follows the western boundary of the subject property. In addition, the subject property is zoned SFR-1-B (Single-Family Rural) and SFS-2-B (Single-Family Suburban). These zoning districts include an exception to the sidewalk construction due to the rural nature of the development.

FINDINGS OF FACT:

In granting approval of a request for variance, the Board of Adjustment / Appeal shall conclude that the variance is not contrary to the public interest and, due to special conditions; a literal enforcement of this Ordinance would result in unnecessary hardship, and so that the variance observes the spirit of this Ordinance and concludes that substantial justice is done. The Board of Adjustment / Appeal shall meet these requirements by making findings that

1. The public convenience and welfare will be substantially served;
2. The appropriate use of surrounding property will not be substantially or permanently impaired or diminished;
3. The applicant has not created the hardship from which relief is sought;
4. The variance will not confer upon the applicant a special right or privilege not commonly shared or available to the owners of similar and surrounding property;
5. The hardship from which relief is sought is not solely of an economic nature;
6. The variance is not contrary to the public interest;
7. Due to special conditions, the literal enforcement of the ordinance would result in an unnecessary hardship; and
8. In granting the variance the spirit of the ordinance is observed and substantial justice is done.

This map has been produced by the City of Leander for informational purposes only. No warranty is made by the City regarding completeness or accuracy, please refer to the official ordinance for zoning verification. This data should not be construed as a legal description or survey instrument. No responsibility is assumed for damages or other liabilities due to the accuracy, availability, completeness, use or misuse of the information herein provided.



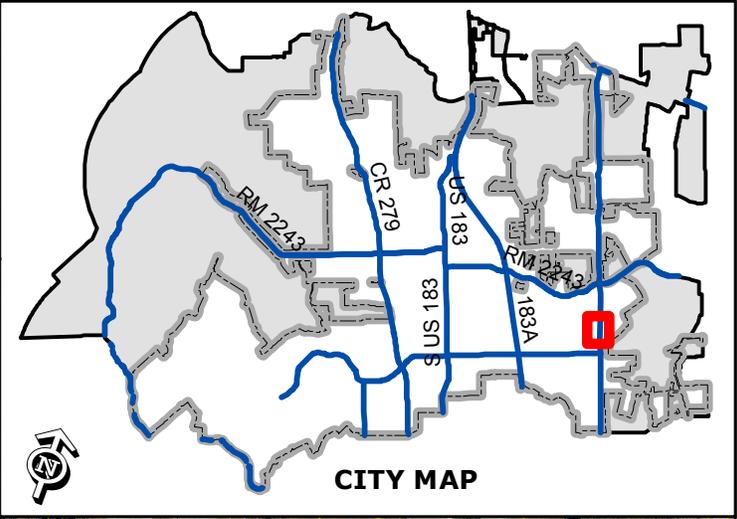
VARIANCE CASE 16-VA-003 ATTACHMENT #2 Current Zoning Map - 71 Fair Oaks St

 Subject Property	 SFR	 SFL	 LO	 PUD - Commercial
 City Limits	 SFE	 SFT	 LC	 PUD - Mixed Use
	 SFS	 SFU/MH	 GC	 PUD - Multi-Family
	 SFU	 TF	 HC	 PUD - Townhomes
	 SFC	 MF	 HI	 PUD - Single-Family



 Feet

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CITY MAP

VARIANCE CASE 16-VA-003 ATTACHMENT #3

Aerial Exhibit - Approximate Boundaries
71 Fair Oaks Street



-  Subject Property
-  City Limits

ATTACHMENT #4

8/02/2016

City of Leander Planning Department
104 North Brushy Street
PO Box 319
Leander, TX 78646

Re: Variance of Waiver Checklist #4 Item for 71 Fair Oaks Street, Leander

To whom it may concern,

I, Mr. Tolbert have a vacant residential lot next to my residence in Leander (3.442 Acres, Lot 27, Tract 1, Block 2. In which is for sale and under contract to my new neighbor Clayton Mitchell who would like to purchase and build a house for his family in the future. I am requesting this Variance or Waiver to avoid the construction of the masonry wall, landscape and landscaping and the sidewalk down Ronald Reagan Blvd.

Please feel free to contact me if you have any questions or if you need any additional information in this application for your decision making.

Call anytime,
Matt Tolbert
71 Fair Oaks Street
Leander, TX 78641
512-914-7045
Mtoltbert1@sbcglobal.net

CITY OF LEANDER
BOARD OF ADJUSTMENT / APPEAL
September 12, 2016

Case # 16-VA-003
Agenda Item Number:

Property: R037202 & R525995 Request: Variance

Address: 71 Fair Oaks Street
 Leander, Texas 78641

Description of Variance Request: A variance to Article VI, Section 8 (b) and Article VI, Section 15 (b) regarding the requirements for a landscape lot, masonry wall, and sidewalk when a subdivision application is made where lots are adjacent to collector or higher class roadway.

NOW COMES the Board of Adjustment/Appeal for the City of Leander, having heard the request of Matt Tolbert to be granted a variance from Article VI, Section 8 (b) and Article VI Section 15 (b) of the City concerning the property described above. The application for a variance dated August 2, 2016 was presented to the Board of Adjustment/Appeal on September 12, 2016. The Board of Adjustment/Appeal having given the applicant, interested parties and the City representatives an opportunity to present arguments and evidence at a public hearing makes the following findings:

1. The public convenience and welfare will be substantially served. [Yes] / [No]
2. The appropriate use of surrounding property will not be substantially or permanently impaired or diminished. [Yes] / [No]
3. The applicant has not created the hardship from which relief is sought. [Yes] / [No]
4. The variance will not confer upon the applicant a special right or privilege not commonly shared or available to the owners of similar and surrounding property. [Yes] / [No]
5. The hardship from which relief is sought is not solely of an economic nature. [Yes] / [No]
6. The variance is not contrary to the public interest. [Yes] / [No]
7. Due to special conditions, the literal enforcement of the ordinance would result in an unnecessary hardship. [Yes] / [No]
8. In granting the variance the spirit of the ordinance is observed and substantial justice is done. [Yes] / [No]

Comment [RMG1]: Include both property owners

The specific facts that the Commission finds to support the findings are:

Motion: _____ By: _____

Second By: _____

	In Favor	Opposed
Vote: Chairman Gil Debner	<input type="checkbox"/>	<input type="checkbox"/>
John Cosgrove	<input type="checkbox"/>	<input type="checkbox"/>
Joseph Eckels	<input type="checkbox"/>	<input type="checkbox"/>
Mary Orton	<input type="checkbox"/>	<input type="checkbox"/>
Tim Luke	<input type="checkbox"/>	<input type="checkbox"/>

Based on the foregoing facts and findings, the Board of Adjustment/Appeal has determined that the variance requested by applicant should be [Denied], or should be [Granted] / with the conditions stated below.

Conditions of variance to alleviate potential negative effects:

Signed this _____ day of _____, _____.

Board of Adjustment/Appeal, Chairman

Name: Gil Debner