



November 17, 2022

Notice is hereby given of a Regular Meeting of the Zoning Board of Adjustments to be held on November 17, 2022 at 4:00 p.m., via videoconference, with the opportunity to appear in person in the **Council Chambers, Room 119 of City Hall, 202 E. Pilar Street, Nacogdoches, Texas**, for the purpose of considering the following agenda items. All agenda items are subject to action.

The City of Nacogdoches Zoning Board of Adjustment meeting will be deemed as being conducted via teleconference or videoconference. However, some board members may attend virtually, while others may be present in the above stated physical location. Regardless, the meeting will be streamed live at www.nactx.us. There will be an opportunity for the public to comment on agenda items either by teleconference or in person in Council Chambers.

Members of the public who wish to submit comments by telephone on a listed agenda item must contact the Planning and Zoning office by email at cloutiera@nactx.us or by calling 936-559-2574 and providing their name, telephone number and relevant agenda item upon which they wish to speak. All requests to make comments via telephone must be received by 12:00 p.m. on Thursday, November 17, 2022. For all timely requests received, staff will call the submitted phone numbers directly during the meeting when the corresponding item comes up for comment. NOTE: The incoming phone call from City staff will be an unfamiliar number.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. Call to Order.
2. Pledge of Allegiance
3. Administer Statement of Officer and Oath of Office for newly appointed Planning & Zoning Commission members.
4. **CONSENT AGENDA**
 - A. Approval of Minutes: Consider approval of minutes from the October 20, 2022 Zoning Board of Adjustment meeting.
5. **REGULAR AGENDA**
 - A. **Public Hearing:** Consider a request for a variance to the Zoning Ordinance Section 118-427.(a), for a reduction in the minimum lot dimension requirements for a proposed subdivision of Lot 12, City Block 50, located on the west side of Pearl Street, approximately 600 feet south of W. Austin St. This request has been submitted by DW Clark Land Investments, LLC. Case File ZBA2022-06.

City of Nacogdoches Planning Department
202 E. Pilar – PO Box 635030 – Nacogdoches, TX 75963
936-559-2574 · Fax 936-559-2912 · www.nactx.us
Home of Stephen F. Austin State University · www.sfasu.edu



6. Adjourn.

Rhonda Lewis, Office Assistant II

The City Council Chambers is wheelchair accessible and accessible parking spaces are available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Planning Department at (936) 559-2574 or FAX (936) 559-2910 for further information.

CERTIFICATION

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on November 17, 2022 at 3 p.m. and remained posted until meeting convened.

Rhonda Lewis, Office Assistant II

**MINUTES TO THE
ZONING BOARD OF ADJUSTMENT
October 20, 2022 – 4:00 p.m. Hybrid Meeting**

All Present: Sarah Jones, George Middlebrook, Rhonda Ward, and Charles Wheeler

Members Absent: Olivia Kiritsy and Mary Ann Bentley

Others Present: City Planner, Alaina Helton; Planning Technician, Juan Pollette; Office Assistant, Rhonda Lewis; Engineer, Sam Cramer

Guests: Halimah Price; Brenda Madlock; Margie Jones (via Google Meet)

1. Call to Order: Chairman Middlebrook called the meeting to order at 4:00 p.m.

2. Pledge of Allegiance

3. Consent Agenda: Approval of the Minutes: September 15, 2022, Regular Session

Chairman Middlebrook called for a motion to approve the minutes as written. Board Member Jones made a motion to approve and was seconded by Board Member Ward. The minutes were approved unanimously (4-0).

4. Public Hearing:

A. Consider a request for a variance to the Zoning Ordinance Section 118-427.(a), for a reduction in the minimum lot dimension requirements for a proposed subdivision of Lot 5, Block 15, of the John G. Orton 1st Addition Subdivision, located at 603 Arthur Weaver Street. This request has been submitted by Halimah Price. Case File ZBA2022-05.

City Planner (CP) Helton stated that the applicant plans to subdivide the property and build an additional single family home on the new lot. There were thirty-five (35) notice letters sent to property owners within 200 feet of the subject property. There were three (3) written responses returned with concerns of overcrowding of the lot, and the

increase in density. Staff recommended denial of the request as the applicant did not show any special circumstances or unique characteristics of the property.

Halimah Price addressed the Board stating that she has done repairs and clean-up to the existing property and would like to place a 550 to 600 sqft. house there for an elderly family member.

Chairman Middlebrook opened the floor for public comment.

Brenda Madlock, a nearby resident, stated that she wanted to see what the applicant was proposing. Ms. Madlock said that she was fine with the applicant's plans, and changed her previous written response from 'opposed' to 'in favor of'.

Margie Jones stated that her concern was where the applicant proposed to place the new building. She also stated that she wanted to make sure that the development was appropriate for the area.

Chairman Middlebrook closed the public comment portion of the meeting.

Chairman Middlebrook called for a motion from the Board. Board Member Ward made a motion to approve the request and Chairman Middlebrook seconded the motion. There was discussion amongst the Board about the lack of unique physical characteristics associated with the property. Chairman Middlebrook called for a final vote for the variance request. The request was denied (3-1), with Chairman Middlebrook dissenting.

5. Adjourn: Meeting was adjourned at 4:31 p.m.

Board Member Middlebrook,
Chairman

Attest: Aimee Cloutier, P&Z Office
Assistant III



Zoning Board of Adjustments

Date: November 17, 2022

Case No: ZBA2022-06

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider a request for a variance to the Zoning Ordinance Section 118-427.(a), for a reduction in the minimum lot dimension requirements for a proposed subdivision of Lot 12, City Block 50, located on the west side of Pearl Street, approximately 600 feet south of W. Austin St. This request has been submitted by DW Clark Land Investments, LLC. Case File ZBA2022-06.

TYPE OF REQUEST: Variance from the literal enforcement of the zoning ordinance in order to achieve a reasonable development of the property.

The ZBA rules and procedures state this type of variance may be requested “whenever, owing, to exceptional and extraordinary conditions, the literal enforcement of the provisions of the zoning regulations will result in unnecessary hardship in the development of the property.”

The applicant is requesting a variance to the Zoning Ordinance *Sec. 118-427(a). – District development standards* in order to subdivide Lot 12, City Block 50, in order to create a new lot for an existing communications tower located at 2903 Pearl Street. This section of the ordinance outlines the minimum lot dimensions for each zoning district, including lot width, depth, and lot area. The specific variance being requested is to reduce the minimum lot depth and area for a property with a zoning designation of R-4, Multi-Family.

Variance Specifics:

Lot Standard for R-4	Minimum Required	Proposed Tract
Lot Width	50 ft.	50 ft.
Lot Depth	100 ft.	70 ft.
Lot Area	5,000 sq. ft.	3,500 sq. ft.

The purpose of minimum lot dimensions is to: create orderly, predictable and efficient development; safeguard and enhance property values; protect public and private investment by preventing landowners from overcrowding the property of others; and, allow for adequate spacing between buildings for emergency access.

BACKGROUND INFORMATION:

The applicant is proposing to subdivide a 10-acre tract into two lots to separate an existing communications tower from the remainder of the property. The remainder of the lot is undeveloped, but was recently zoned R-4, Multi Family for a future apartment development. The R-4 zoning district has a minimum lot width of 50 feet and a minimum lot depth of 100 feet, resulting in a minimum lot area of 5,000 sq. ft. per lot.

The proposed subdivision would create a 3,500 sq. ft lot encompassing the ground lease area and access easement where the existing communications tower is located. The tower is located on the west side of Pearl Street, approximately 600 feet south of W. Austin St. The new lot created by the proposed subdivision does not meet the minimum lot depth and area of the R-4 zoning district as shown in the table below:

Lot Standard for R-3	Minimum Required	Proposed Lot 1	Proposed Lot 2
Lot Width	50 ft.	320 ft.	50 ft.
Lot Depth	100 ft.	1,000 ft.	70 ft.
Lot Area	5,000 sq. ft.	435,000 sq. ft.	3,500 sq. ft.

Most subdivisions are intended to create new lots for future private development. The purpose of this proposed subdivision is to create a new lot to separate the existing communications tower from the remainder of the property, and is not intended for future redevelopment. Lots established for special purposes such as common area, open space, parkland, floodplain, drainage, and utilities (such as a communications tower) are not intended for typical private development.

The new lot will not impact the overall density of the area, and the communications tower will meet the required building setbacks for the R-4 zoning district. This communications tower was subject to approval of a Specific Use permit (SUP) in 2018, and any major changes to the structure would require an amendment to the SUP.

Adjacent Land Use & Zoning

The subject property is zoned R-4, Multi-Family and is undeveloped with the exception of the communications tower on the southeast corner of the property. The surrounding zoning and land uses are as follows:

Direction	Zoning	Existing Land Use
North	R-4, Multi-Family	Vacant
South	R-4, Multi-Family	Apartments
East (Across Pearl St.)	R-4, Multi-Family	Single Family & Duplex
West	A, Agricultural	Union Pacific Railroad

Physical Characteristics

1. Frontage: The property has approximately 370 feet of frontage on Pearl Street.
2. Access: Both lots will have direct access to Pearl Street. The proposed lot will utilize and existing driveway to access Pearl Street.
3. Topography and vegetation: The property is relatively flat with a ten foot drop in elevation towards the western portion of the lot. There are several mature trees located on the north, south and east sides of the property. The west side of the property borders Banita Creek and has a dense tree line.
4. Floodplain: The western portion of the subject property is located within the FEMA regulated floodplain.

REVIEW CRITERIA & REQUIRED FINDINGS (STAFF COMMENTS UNDERLINED):

Per Section 118.99 of the Nacogdoches Zoning Ordinance, the applicant must demonstrate to the satisfaction of the board that the decisions of the board will be in the best interest of the community and would carry out the spirit and intent of the zoning regulations. The board of adjustment may grant variances and exceptions upon finding that the following conditions have been met:

1. Such variance is in harmony with the intent and purpose of the comprehensive plan and zoning ordinance.

The general purpose of the comprehensive plan and zoning ordinance is to promote the health, safety, and welfare of Nacogdoches through orderly and efficient development. More specifically, the purpose of minimum lot dimensions are to: create orderly, predictable and efficient development, safeguard and enhance property values; protect public and private investment by preventing landowners from overcrowding the property of others; and, allow for adequate spacing between buildings for emergency access.

Most subdivisions are intended to create new lots for future private development. The purpose of this proposed subdivision is to create a new lot to separate a utility, being the existing communications tower, from the remainder of the property. Lots established for special purposes, such as common area, open space, parkland, floodplain, drainage, and utilities (such as a communications tower) are not intended for the typical private development that is regulated by the Zoning Ordinance.

2. Such variance will not substantially or permanently injure the appropriate use of adjacent property in the same district.

The property fronts Pearl Street and all of the other surrounding properties are developed with single and multifamily residences with the exception of the vacant tract located immediately to the north of the property.

3. Such variance will not adversely affect the health, safety or general welfare of the public. The purpose of minimum lot dimensions is to protect public and private investment by preventing landowners from overcrowding the property of others, and allowing for adequate spacing between buildings for emergency access. While the proposed subdivision will create a deficit for lot depth minimum, the existing communications tower will still meet all other building setbacks.

4. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance sought is located.

The variance will not authorize a use other than those permitted under the current R-4, Multi Family zoning district or the Specific Use Permit approved for the communications tower in 2018.

5. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, including but not limited to the area, shape or slope; and that 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 district in which the property is located.

Lots established for special purposes, such as common area, open space, parkland, floodplain, drainage, and utilities are intended for a unique purpose, and are not intended for the typical private development that is regulated by the Zoning Ordinance

6. The variance itself is not a self-created hardship.

A self-created hardship is one that is created by the owner or his or her predecessor in interest, rather than the nature of the property itself, and thus implies an intent to create a hardship. The current owner has a ground lease in place with the existing communications utility provider. The owner wants to retain the ground lease, and so must legally separate the tower from the remainder of the property. Lots established for these special purposes are unique and not intended for the typical private development that is regulated by the Zoning Ordinance.

STAFF RECOMMENDATION:

The purpose of the variance request is to separate an existing communications tower and ground lease area from the original tract, the remainder of which is intended for future residential development. Staff recommends approval due to the special purpose of the subdivision, and finds that the request would not adversely impact the adjacent properties.

NOTICES:

Staff sent out 13 notices to property owners within the 200-foot notification area. At the time of this report, Staff has not received any responses.

- ATTACHMENTS:**
1. Variance Application
 2. ZBA Exhibit
 3. Location Map
 4. Aerial Map
 5. Zoning Map
 6. Notification Map
 7. Site Photos

APPLICATION FOR VARIANCE OR SPECIAL EXCEPTION

PROPERTY INFORMATION:

Address: 3007 PEARL ST NACOGDOCHES, TX
 Legal Description: Lot(s) 10A 12 in Block 50 of the CITY OF NAC Subdivision in City Block 50

OWNER INFORMATION:

Owner Name A W CURK LAND INVESTMENTS, LLC Daytime Phone _____
 Mailing Address 6505 GLENWOOD DR AMARILLO TX 79119 State _____ Zip Code _____
 DocuSigned by: David Clark 9/29/2022
 6FAF029A09AF4AA...

APPLICANT INFORMATION:

Applicant Name A W CURK LAND INVESTMENTS, LLC Daytime Phone _____ Email Address _____
 Mailing Address 6505 GLENWOOD DR AMARILLO TX 79119 State _____ Zip Code _____
 DocuSigned by: David Clark 9/29/2022
 6FAF029A09AF4AA... Signature

PLEASE SELECT ONE TYPE OF APPEAL (Per Texas Local Government Code § 211):

- ☐ 1. Interpretation of the meaning or intent of the zoning ordinance
- ☐ 2. Special exception for use or development of property
- ☒ 3. Variance from the literal enforcement of the zoning ordinance in order to achieve a reasonable development of property

REQUIRED ATTACHMENTS (Per ZBA Rules & Procedures 602, 702 & 802)

1. For an appeal requesting **interpretation** of the meaning or intent of the zoning ordinance, attach:

- ☐ A statement by the applicant describing the way it is alleged the regulation should be interpreted,
- ☒ Diagrams and charts illustrating the erroneous and the proper application of the map or text provisions.

2. For an appeal requesting a **special exception** for use or development of property, attach:

- ☒ A site plan, drawn to scale, showing all lot dimensions, and the location and dimensions of all existing and proposed lot improvements
- ☐ A statement by the applicant describing the way in which all conditions prescribed by zoning regulations will be or have been met.

3. For an appeal requesting a **variance** from the literal enforcement of the zoning ordinance in order to achieve a reasonable development of property, attach:

- ☒ A site plan, drawn to scale, showing the location and dimension of the lot and all existing and proposed improvements;
- ☐ Statement of facts and reasons why the zoning regulations should not be applied to the property in question and how standards governing the board's actions would be satisfied

NECESSARY FINDINGS (per City of Nacogdoches Code of Ordinances § 118-99):

The board of adjustment, pursuant to the powers conferred upon it by state law, the city ordinances, and this article, may grant variances and exceptions to the sections of this chapter upon the findings listed below. Please **explain** in your own words, how the request meets each of the findings listed below:

1. Such variance is in harmony with the intent and purpose of the comprehensive plan and this chapter

YES

2. Such variance will not substantially or permanently injure the appropriate use of adjacent property in the same district;

YES

3. Such variance will not adversely affect the health, safety or general welfare of the public

YES

4. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located;

YES

5. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, including but not limited to the area, shape or slope; and that 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 district in which the property is located

YES

6. The variance is not a self-created hardship.

IT IS NOT

NOTE: This application will not be processed unless it is filled out in its entirety and accompanied by required attachments and filing fee of \$350.00.

☒ Completed Application Form

☒ Required Attachments

☒ Application Fee

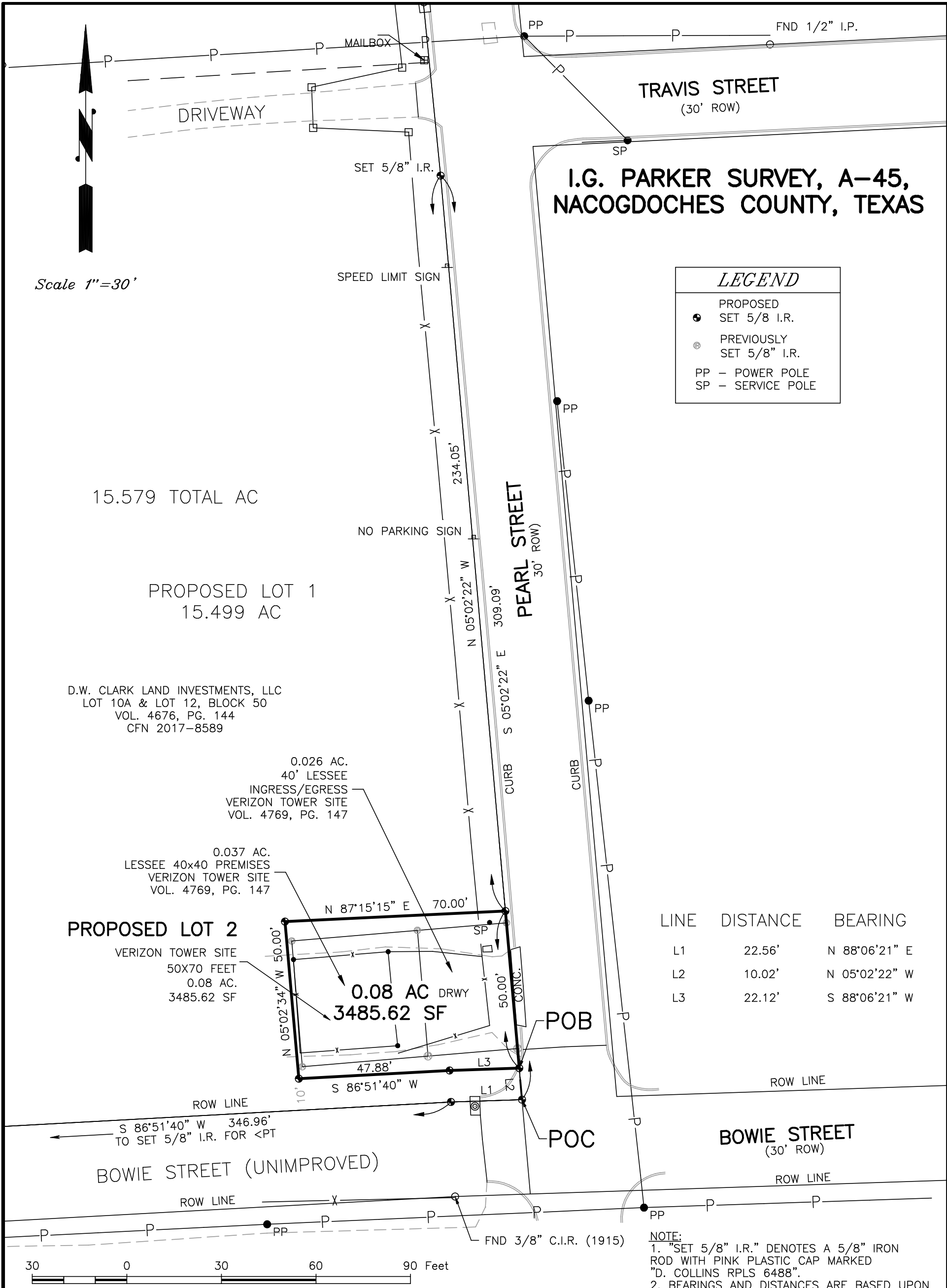
☒ Copy of current deed

FOR OFFICE USE ONLY

Date Filed: _____ Case Number: _____ Accepted By: _____ Tentative ZBA Date: _____

City of Nacogdoches – Planning Department
202 East Pilar St. Room 218 – P.O. Box 635030 Nacogdoches, TX 75963
Office: 936-559-2571 Fax: 936-559-2910

Form Ver 01-05-10



I, David R. Collins, Jr., Reg. Professional Land Surveyor,
do hereby certify that this Plat is true and correct
according to a survey made upon the ground
NOVEMBER 9, 2022.

David R. Collins, Jr.
Firm License #10023000

R.P.L.S. #6488



MBI CONSTRUCTION, LLC
EXHIBIT
VERIZON TOWER SITE

Collins Surveying & Mapping, Inc.
910 Judson Road
Longview, Texas 75601
Phone: (903) 234-8051

Job Number: MBI5899_22 EXHB



**COLLINS SURVEYING
& MAPPING, INC.**
TEXAS • ARKANSAS • LOUISIANA

MBI Construction
5721 Adair Lane
Plano, Texas 75024

PROPOSED
50x70 Verizon Tower Site
Field Notes On 0.08 Acre Tract
I.G. Parker Survey, Abstract-45
Nacogdoches County, Texas

All that certain 0.08 acre tract of land in the I.G. Parker Survey, A-45, Nacogdoches County, Texas, being all the tract of the called 40x40 Lessee Premises as describe by Memorandum of Land Lease Agreement between D.W. Clark Land Investments, LLC and Verizon Wireless recorded in Volume 4769, Page 147, of said Real Property Records and shown as Exhibit "B" therein, all of the tract of the called 40' Lessee Ingress/Egress Easement as describe by Memorandum of Land Lease Agreement between D.W. Clark Land Investments, LLC and Verizon Wireless recorded in Volume 4769, Page 147, of said Real Property Records and shown as Exhibit "B" therein, of which is part of the tract of land described as Lot 10A & 12, of the City Block 50, of Nacogdoches Texas conveyed to D.W. Clark Land Investments, LLC by Special Warranty Deed dated November 27, 2017, and recorded in Clerk's File No. 2017-8589 of the Real Property Records of Nacogdoches, Texas of which is part of the tract of land described as Lot 10A & 12, of the City Block 50, of Nacogdoches Texas conveyed to D.W. Clark Land Investments, LLC by Special Warranty Deed dated November 27, 2017, and recorded in Clerk's File No. 2017-8589 of the Real Property Records of Nacogdoches, Texas, also surveyed by Collin Surveying & Mapping, Inc. and reported to be 15.579 acres, said 0.08 acre tract being more particularly described as follows:

Note: 1. All Set Iron Rods herein are 5/8" rebar with pink cap marked "D. Collins RPLS 6488".
2. Bearings and Distances are based upon the Texas State Plane Coordinate System, North Central Zone (4202), 1983 North American Datum.

COMMENCING a 5/8" iron rod set in the intersection of the north right of way line of the unimproved right of way of Bowie Street and west right of way line of Pearl Street for the southeast corner of said 15.579 acre tract, from which a 5/8" iron rod set in the north right of way line of said Bowie Street bears S 88°06'21" W - 22.56 feet;

THENCE: N 05°02'22" W with the west right of way line of aid Pearl Street and east line of said 15.579 acre tract 10.02 feet to a 5/8" iron rod set for the POINT OF BEGINNING:

THENCE: S 88°06'21" W parallel and 10 feet north of the undeveloped right of way line of said Bowie Street 22.12 feet to a 5/8" iron rod set for an angle point;

THENCE: S 86°51'40" W parallel and 10 feet north of the undeveloped right of way line of said Bowie Street 47.88 feet to a 5/8" iron rod set for the southwest corner of this tract;

THENCE: N 05°02'34" W generally along the west side of a fence 50.00 feet to a 5/8" iron rod set for the northwest corner of this tract;

THENCE: N 87°15'15" E with the north line of this tract 70.00 feet to a 5/8" iron rod set in the west right of way line of said Pearl Street for the northeast corner of this tract, from which a 5/8" iron rod set in said right of way line for an angle point bears N 05°02'22" W- 234.05 feet;

THENCE: S 05°02'22" E with the west right of way line of said Pearl Street 50.00 feet to the POINT OF BEGINNING, containing 0.08 acres of land, more or less.

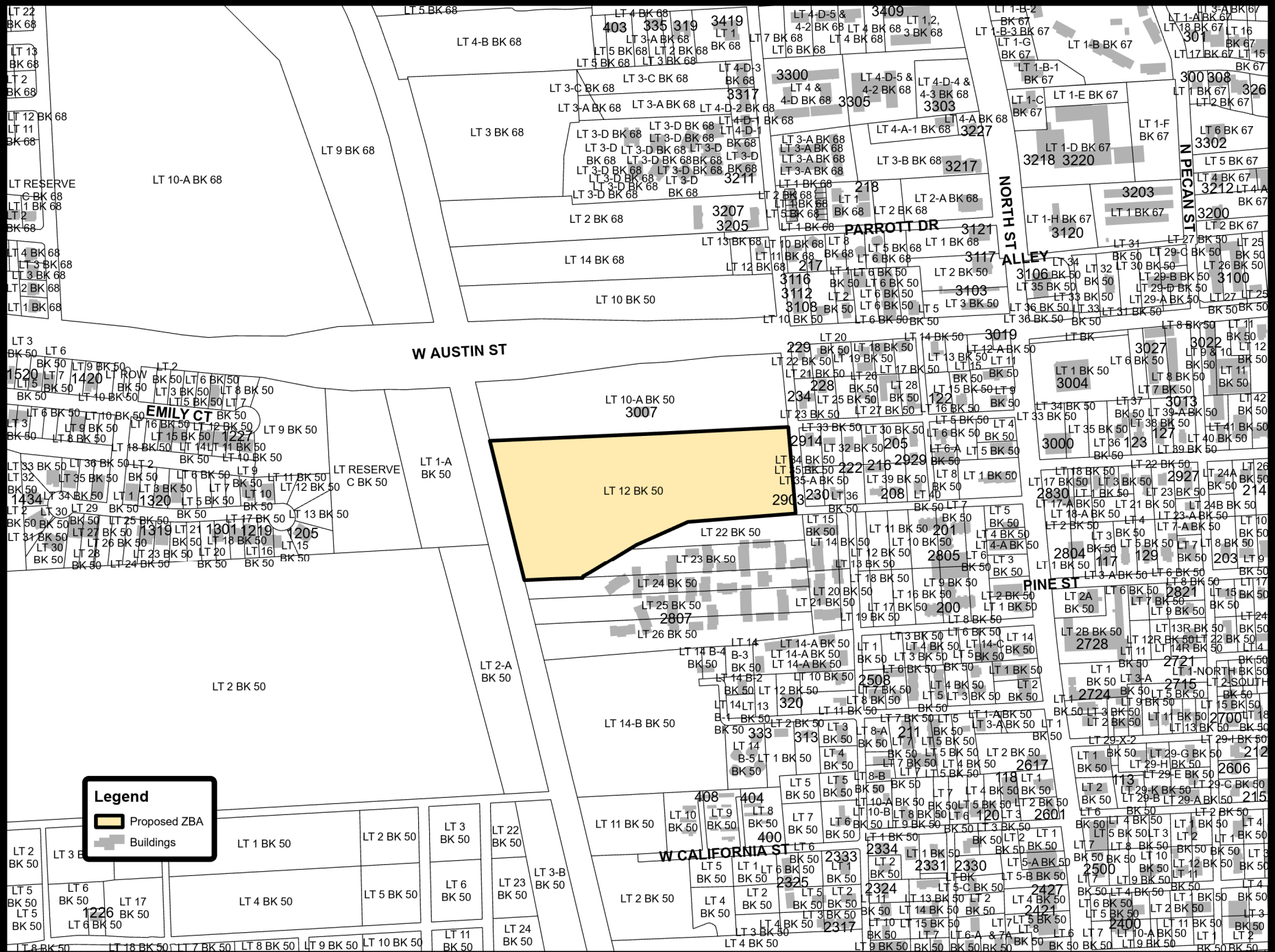
I, David R. Collins, Jr., Registered Professional Land Surveyor #6488, do hereby certify that the above field notes are true and correct as shown on the Plat MBI5899-22_EXHBT, according to a survey made by me upon the ground November 9, 2022.



A handwritten signature in blue ink, consisting of stylized, overlapping loops and strokes.

David R. Collins, Jr. RPLS #6488
910 Judson Road
Longview, Texas, 75601
Firm License No. 10023000

ZBA 2022-06



Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



0 125 250 500 Feet

Date Created: October 27, 2022 Software: ArcGIS Pro 3.0.2



ZBA 2022-06



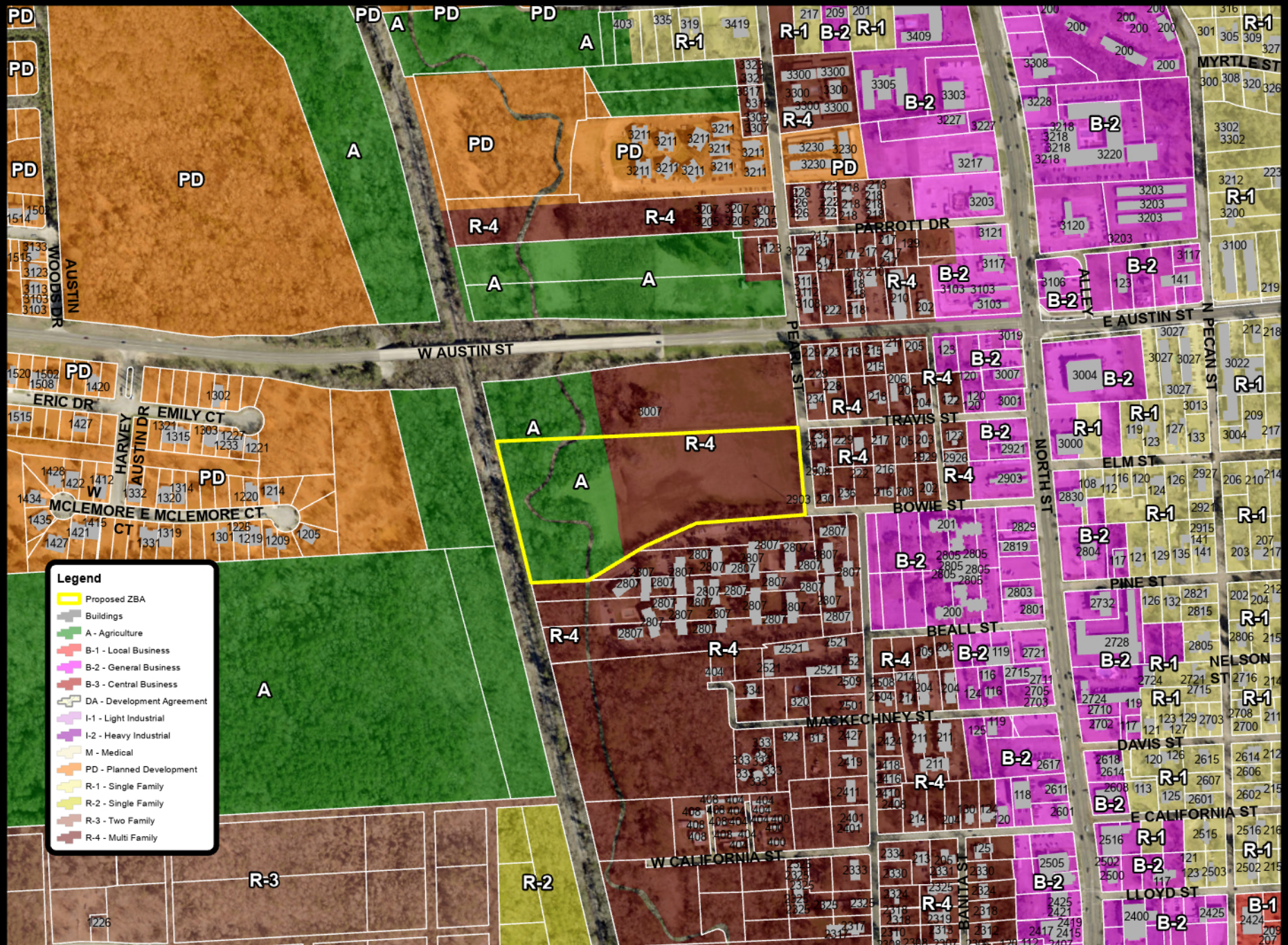
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0 125 250 500 Feet

Date Created: October 27, 2022 Software: ArcGIS Pro 3.0.2

ZBA 2022-06



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0 125 250 500 Feet

Date Created: November 14, 2022 Software: ArcGIS Pro 3.0.2



Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



0 125 250 500 Feet

Date Created: October 27, 2022 Software: ArcGIS Pro 3.0.2



Site Photos – ZBA2022-06





Property to the north
of the cell tower

Apartments to the south
of the cell tower

