



April 20, 2023

Zoning Board of Adjustment

Notice is hereby given of a Regular Meeting of the Zoning Board of Adjustments to be held on April 20, 2023, 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 pz@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 April 20, 2023. 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. **CONSENT AGENDA**

A. Approval of Minutes: Consider approval of minutes from the March 16, 2023 meeting of the Zoning Board of Adjustment.

4. **REGULAR AGENDA**

A. Presentation, discussion, and possible action regarding conflict of interest provisions and process for recusal of Board members. (City Attorney)

B. **Public Hearing:** Consider an Appeal of the decision of the City Planner in interpreting the Zoning Ordinance, *Section 118-202. – Continuing nonconforming use*, and *Section 118-466. – Off-street parking requirements*, as it applies to a building permit submitted for the construction of duplexes at 1102 Logansport Street. This request has been submitted by Phillip Blackburn. Case File ZBA2023-02.

City of Nacogdoches Planning Department
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- C. **Public Hearing:** Consider an Appeal of the decision of the City Planner in interpreting the Zoning Ordinance, *Section 118-202. – Continuing nonconforming use*, and *Section 118-466. – Off-street parking requirements*, as it applies to a building permit submitted for the construction of duplexes at 1102 Logansport Street. This request has been submitted by Pat Castella. Case File ZBA2023-03.

5. ADJOURN.

Aimee Cloutier, Office Assistant III

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 April 17, 2023, at 12 p.m. and remained posted until the meeting convened.

Aimee Cloutier, Office Assistant III



**MINUTES TO THE
ZONING BOARD OF ADJUSTMENT
March 16, 2023, 2:00 p.m. Hybrid Meeting**

All Present: Sarah Jones; George Middlebrook; Rhonda Ward; Ed Pool; Olivia Kiritsy;

Members Absent: Mary Ann Bentley

Staff Present: City Planner, Alaina Helton; Planning Technician, Juan Pollette; Office Assistant, Aimee Cloutier; City Engineer, Steve Bartlett;

Guests: Applicant, Tim Badders

Call to Order: Chairwoman Olivia Kiritsy called the meeting to order at 2:02 p.m.

1. Pledge of Allegiance: Chairwoman Kiritsy led the pledge of allegiance.

2. Consent Agenda: Approval of the Minutes: November 17, 2022, Regular Session

Chairwoman Kiritsy called for a motion to approve the minutes as written. Board Member Rhonda Ward made a motion to approve which was seconded by Board Member Middlebrook. The minutes were approved as written unanimously (5-0).

3. 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 12, 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 Planner (CP), Alaina Helton addressed the Board and stated there was an error on the agenda that needed to be corrected for the record. The error on the agenda reads the request was submitted by 'DW Clark Land Investments' and needs to say 'Tim Badders'.

CP Helton presented the requested variance stating the applicant is asking to expand a current access easement from 30 feet to 50 feet to satisfy the minimum 50 feet of street frontage requirement for Lot 2-R. CP Helton stated the access easement is not just for private use, that the public can access it. CP Helton stated staff finds the request does meet the conditions and recommends approval of the variance.

Board Member Ward asked if the buildings on the north corner of the property fulfilled the setbacks.

CP Helton responded saying the buildings are not in the setbacks and there will not be any encroachments.

Chairwoman Kiritsy opened the floor for public comment.

There were no comments from the public.

Board Member Pool asked if Parmley Street was a private or public street.

City Engineer (CE), Steve Bartlett responded stating that neither city records nor the appraisal district records show Parmley Street being a public street.

Applicant, Tim Badders addressed the Board stating the variance is not a self-created hardship, as the property has been like this for years.

There was a discussion regarding the access easement and deed requirements amongst the Board.

Chairman Kiritsy called for a motion. Board Member Pool made a motion to grant the variance as presented and Board Member Ward seconded the motion. The variance was granted unanimously (5-0).

4. Adjourn: Chairwoman Kiritsy adjourned the meeting at 2.34 p.m.

Chairwoman, Olivia Kiritsy

Attest: Aimee Cloutier, Planning Department

Chapter 171 of the Local Government Code – Conflicts of Interest

Chapter 171 of the Local Government Code regulates local public officials' conflicts of interest. TEX. LOC. GOV'T CODE §§ 171.001-.010. It prohibits a local public official from voting on or participating in a matter involving a business entity or real property in which the official has a substantial interest if an action on the matter will result in a special economic effect on the business that is distinguishable from the effect on the public, or in the case of a substantial interest in real property, it is reasonably foreseeable that the action will have a special economic effect on the value of the property, distinguishable from its effect on the public. *Id.* §171.004(a).

A public official who has such interest is required to file, before a vote or decision on any matter involving the business entity or real property, an affidavit with the city's official record keeper, stating the nature and extent of the interest. *Id.* §171.004(b). In addition, a public official is required to abstain from further participation in the matter. *Id.* However, a public official that is required to file an affidavit is not required to abstain from participating in the matter if a majority of the members of the governing body have a substantial interest and are required to file and do file affidavits of similar interests on the same official matter. *Id.* §171.004(c).

Local Public Official

A "local public official" is defined as "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any...municipality ... or other local governmental entity who exercises responsibilities beyond those that are advisory in nature." *Id.* §171.001(1). This term includes a member of a planning and zoning commission. Tex. Att'y Gen. Op. Nos. KP-0105 (2016), DM-309 (1994).

Substantial Interest

A public official has a substantial interest in a business entity if the official:

- (1) owns 10 percent or more of the voting stock or shares of the business entity; (2) owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
- (3) receives funds from the business entity that exceed 10 percent of the person's gross income for the preceding year.

TEX. LOC. GOV'T CODE §171.002(a).

A person has a substantial interest in real property if the interest is an equitable or legal ownership interest with a fair market value of \$2,500 or more. *Id.* §171.002(b).

A public official is also considered to have a substantial interest in a business entity or real property if the official's relative within the first degree of consanguinity (blood) or affinity (marriage) has a substantial interest in the business entity or real property. *Id.* §171.002(c). As such, any "substantial interest" that a public official's spouse, parent, child, step-child, father or mother-in-law, or son or daughter-in-law has is imputed to the public official. TEX. GOV'T CODE §§ 573.023-.024; Tex. Att'y Gen. Op. No. DM-267 (1993), at 2; Tex. Att'y Gen. LO-95-080, at 3. For example, a public official has a "substantial interest" in a business that employs the official's daughter if the official's daughter earns a small income, which exceeds ten percent of her gross income. See Tex. Att'y Gen. Op. No. JC-0063 (1999).

Business Entity

A business entity is defined as “a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.” TEX. LOC. GOV’T CODE § 171.001(2). A nonprofit corporation is also considered a business entity. Tex. Att’y Gen. Op. No. JM-424 (1986) at 2. The term also includes a business entity that represents an entity or person with an interest in a matter before the city council. Tex. Att’y Gen. Op. No. DM-309 (1994), at 2. A city and other public entities, such as a state university or school district, are not a business entity. Tex. Att’y Gen. Op. Nos. DM-267 (1993), at 2, JM-852 (1988), at 2.

Further Participation

The limit on “further participation” does not preclude the interested public official from attending meetings, including executive session meetings, relevant to the matter in which he has a substantial interest, provided that the official remains silent during the deliberations. Tex. Att’y Gen. Op. No. GA-0334 (2005), at 6. As such, an interested public official does not participate in a matter by merely attending an executive session on the matter and remaining silent during the deliberations. *Id.*

Special Economic Effect

The question of whether a vote or decision has a “special economic effect” on a business entity or on the value of real property is generally a question of fact. Tex. Att’y Gen. Op. No. GA-0796, at 4 (2010); Tex. Att’y Gen. LO-98-052. However, a vote or decision will, as a matter of law, have a “special economic effect” if the governing body considers purchasing goods or services from a business entity in which a local public official has a substantial interest. Tex. Att’y Gen. Op. No. GA-0136 (2004), at 3. Additionally, the issue of whether a vote or decision has a special economic effect may be answered as a matter of law in the context of the purchase or sale of an interest in real property. Tex. Att’y Gen. Op. No. GA-0796 (2010), at 4 (discussing *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 281-82 (Tex. App.-Dallas 1991, writ denied)).

Reasonably Foreseeable

Whether it is “reasonably foreseeable” that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, is fact specific. Tex. Att’y Gen. LO-96-049. In instances where the economic effect is direct and apparent at the time of the action, both a court and the attorney general have concluded that the economic effect was “reasonably foreseeable.” *Dallas Cnty. Flood Control Dist. No. 1 v. Cross*, 815 S.W.2d 271, 278 (Tex. App.—Dallas 1991, writ denied), Tex. Att’y Gen. Op. No. GA-0796 (2010), at 6.

Budget Adoption

There are special rules beyond the filing of an affidavit and abstaining from voting that apply to the adoption of a budget. If an item of the budget is specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest, the governing body must vote on that line item separately. TEX. LOC. GOV’T CODE § 171.005. The affected member may not generally participate in consideration of that item. *Id.*

Depositories

A city may select a bank as its depository even if one or more of the members of the governing body is an officer or director of the bank or owns or has a beneficial interest, individually or collectively, in ten percent or less of the outstanding capital stock of the bank, so long as two conditions are met. *Id.* §131.903(a)(2). First, a majority of the members of the governing body must vote to select the bank as a depository. *Id.* §131.903(a)(2)(A). Second, the interested

member must abstain from voting or taking part in the proceedings. *Id.* §131.903(a)(2)(B). The attorney general has concluded that this provision regarding conflicts of interests in the selection of depositories is an exception to Chapter 171. Tex. Att’y Gen. LO-97-093.

Public Official Acting Individually

The attorney general has concluded that when the law contemplates an individual public official perform a specific duty, Chapter 171’s disclosure and abstention requirements may not apply. Tex. Att’y Gen. Op. Nos. GA-0784 (2010), GA-0510 (2007). The attorney general recognizes that the term “local public official” as defined in Chapter 171 could be an individual official or an official who is a member of a governing body. Tex. Att’y Gen. Op. No. GA-0784 (2010), at 4. And while an official acting individually does not “vote,” arguably such an official may make a “decision.” *Id.* Thus, when the law imposes on a single, specific official a duty and the official has a conflict under Chapter 171, the attorney general has concluded that the legislature could not have intended for the disclosure and abstention requirements to apply. *Id.* (concluding that section 171.004’s disclosure and abstention requirements did not apply to a sheriff’s statutory bail bond and forfeiture duties).

Enforcement

If a public official votes on a matter that he or she has a substantial interest in or fails to abstain from further participation, the action of the governing body on the matter is not voidable, unless the matter that was the subject of the action would not have passed without the vote of the person who had a “substantial interest.” TEX. LOC. GOV’T CODE §171.006. A knowing violation of Chapter 171 is a Class A misdemeanor, which is punishable by a fine and/or confinement.

Updated November 2017

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider an Appeal of the decision of the City Planner in interpreting the Zoning Ordinance, *Section 118-202. – Continuing nonconforming use*, and *Section 118-466. – Off-street parking requirements*, as it applies to a building permit submitted for the construction of duplexes at 1102 Logansport Street. This request has been submitted by Phillip Blackburn. Case File ZBA2023-02.

TYPE OF REQUEST: *Appeal of city planner's decision.* This Appeal is an allegation that there was an error in the determination or application of the requirements of the zoning regulations by the City Planner. That is, whether the decision of the City Planner that the building permit for 1102 Logansport Street is compliant with the Zoning Ordinance. This Appeal is not a request for a variance.

The Appellant/applicant claims that the City Planner incorrectly applied Section 118-202. – Continuing nonconforming use, and Section 118-466. – Off-street parking requirements of the Nacogdoches Zoning Ordinance to a building permit submitted for the construction of three duplexes at 1102 Logansport Street. The receipt of the Appeal suspends the review of these building plans by the City permitting office, until such time that a public hearing can be scheduled for the Appeal to be presented to the Board of Adjustment.

Pursuant to ZBA Rules & Procedures 6.03(2) The Board will make such interpretation as ought to be made provided the applicant has demonstrated to the satisfaction of the board that one or more of the following conditions exist and that the decision of the board would be in the interest of the community and would carry out the spirit and intent of the zoning regulations.

1. That there is reasonable doubt or difference of interpretation as to the specific intent of the regulations or map;
2. That an appeal of use provisions would clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question; and
3. That the resulting interpretations will not grant a special privilege to one property inconsistent with other properties or similarly situated.

BACKGROUND INFORMATION:

On January 25, 2023, Bohac Contractors, applied for a building permit to construct three (3) duplexes at 1102 Logansport Street. The building plans include the preservation of an existing single family residence on the property. The duplex buildings have two (2) dwelling units in each building, each dwelling unit having three (3) bedrooms.

The permit was subsequently reviewed by the City Planner and determined to be in compliance with the Zoning Ordinance. Prior to issuance of the building permit, City staff received two

applications for ‘Appeal of the decision of the City Planner’ from Philip Blackburn (2/16/23) and Pat Castella (2/21/23).

ZONING & PHYSICAL CHARACTERISTICS

The subject property is zoned R-4, Multi Family and is developed with a single family residence. The lot depth of approximately 90 feet. The lot was created prior to 1963, per the Nacogdoches Central Appraisal District; which means it was created in its current form prior to any City zoning ordinances (ordinance dated 9/8/1970). The standards in the current ordinance adopted in 1970 are:

R-4 Standards	Minimum Required	1102 Logansport St.
Lot Width (frontage)	50 ft.	495 ft.
Lot Depth	100 ft.	90 ft.
Lot Area	5,000 sq.ft.	43,560 sq.ft. (1 acre)

REVIEW CRITERIA & REQUIRED FINDINGS (STAFF COMMENTS UNDERLINED): **ANALYSIS:**

The applicant claims that because the lot located at 1102 Logansport Street is ‘legal nonconforming’ due to the lot depth, that the existing single family residence is a ‘legal nonconforming use’, and that building three (3) duplexes as proposed by the owner would be an expansion of a existing ‘nonconforming use’.

The sections of the ordinance that City staff uses to determine the “grandfathering” of legal nonconforming uses of structures and land are: (Division 5. - Nonconforming Structures And Uses) Section 118-201. - Applicability., and Section 118-202. - Continuing nonconforming use. (3) Nonconforming use of lands. Section 118-201(a) states:

If the city or other governmental agency takes an act or action which transforms a previously conforming structure or lot of record in terms of the city's previous ordinance, or the minimum requirements in this division or in division 1 of article VI of this chapter, such structure or lot shall be deemed to be in conformance with this division and article VI of this chapter.

Based on staff’s review, the lot in question was created prior to 1963, per the Nacogdoches Central Appraisal District. Therefore, it predates any City zoning ordinance, which was adopted in September 1970. Pursuant to 118-201(a), the lot is deemed 'conforming' due to the time it was created, which predates the city's action of adopting the Zoning Ordinance. Furthermore, the existing single family residence is a permitted land use in the R-4 zoning district, per (Article III. - District Regulations) Section 118-273. - Land use schedule, and is a legal use of the property, and is therefore **not** a nonconforming use.

In addition, (Article VI. - Development Standards) Section 118-423. - General requirements, outlines the requirements for issuing a building permit, and states that:

- a. Requirements for a building permit. No permit for the construction of a building upon any tract or plot shall be issued until a building site, building tract or building lot has been created by compliance with one of the following conditions:
 1. Subdivided. The lot or tract is part of a plat of record, properly approved by the city, and filed in the plat records of the county.
 2. Planned development (PD) district. The site, plot or tract is all or part of a site

plan officially approved by the city planning and zoning commission, in accordance with subdivision II of division 4 or article II and article V of this chapter pertaining to zoning-related applications, which site plan shows all utility and drainage easements, alleys, streets and other public improvements necessary to meet the normal requirements for platting including the designation of building areas and such easements, alleys, and streets as are required and have been properly dedicated, and the necessary public improvements which have been provided.

3. Unplatted prior to ordinance or annexation. The plot, tract, or lot faces upon a dedicated street and was separately owned prior to the effective date of the ordinance from which this chapter derives or prior to annexation to the city, whichever is applicable.

This is the manner in which City staff have operated for years on multiple permit reviews of lots all over the City because of the age of when these lots were created prior to zoning being established.

Section 118-466. – Off-street parking requirements

The applicant also claims that the City Planner did not enforce the applicable off-street parking requirements to the building plans for 1102 Logansport Street. The applicant has stated that because the property is zoned R-4 Multi Family, and allows for the construction of ‘Multifamily – Apartments’, that the parking requirements for Multifamily – Apartments (Section 118-466) should be applied to the development; which requires one (1) parking spaces per bedroom plus 5% for additional visitor parking. Based on this interpretation, the applicant contends that because the proposed duplex buildings include 18 bedrooms, the property owner should provide 19 paved parking spaces (18 + 1 for visitors) for the new duplexes.

Parking minimums are based on the specific building, improvement, or use of land being constructed. Ex: Clothing stores and restaurants are both permitted land uses in the B-2, General Business zoning district, but each have different minimum parking requirements. The R-4, Multi Family zoning district allows for a mixture of residential uses, including single-family, two-family (duplex), and multiple-family dwellings. In Section 118-466. the Schedule of Off-street Parking Requirements lists the minimum parking requirements for each permitted land use. This section identifies the parking ratio for ‘Two Family Dwellings’ (duplex) as two (2) parking spaces for each dwelling unit (2 units per duplex building = 4 spaces total per building).

FIGURE 3 - SCHEDULE OF OFF-STREET PARKING REQUIREMENTS

<u>Permitted Use</u>	<u>Parking Requirement</u>
<u>Multifamily - Apartments</u>	<u>1 per bedroom + 5% for visitors</u>
<u>Single Family Attached</u>	<u>2 per dwelling unit</u>
<u>Single Family Detached</u>	<u>2 per dwelling unit</u>
<u>Single Family Zero Lot Line</u>	<u>2 per dwelling unit</u>
<u>Two Family Dwelling</u>	<u>2 per dwelling unit</u>

This requirement is not relative to the number of bedrooms, and a duplex is defined as a single family home per the City-adopted residential building code. The building plans show 3 duplexes

(6 dwelling units) which require 12 hard surface parking areas. The property owner is proposing 12 paved parking spaces for the new duplex buildings, plus a few additional overflow spaces on a gravel surface. Again, this is the manner in which City staff has operated for years on multiple permit reviews of lots all over the City.

REVIEW CRITERIA & REQUIRED FINDINGS

As stated previously, this Appeal is an allegation that there was an error in the determination or application of the requirements of the zoning regulations by the City Planner. That is, whether the decision of the City Planner that the building permit for 1102 Logansport Street is compliant with the Zoning Ordinance. This Appeal is not a request for a variance.

Pursuant to ZBA Rules & Procedures 6.03(2), the board will make such interpretation as ought to be made provided the applicant has demonstrated to the satisfaction of the board that one or more of the following conditions exist and that the decision of the board would be in the interest of the community and would carry out the spirit and intent of the zoning regulations.

- a. That there is reasonable doubt or difference of interpretation as to the specific intent of the regulations or map;
- b. That an appeal of use provisions would clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question;
and
- c. That the resulting interpretations will not grant a special privilege to one property inconsistent with other properties or similarly situated.

STAFF RECOMMENDATION:

Staff recommends affirming the Staff interpretation of the ordinance.

NOTICES:

Staff mailed 15 notices to property owners within the 200-foot notification area. At the time of this report Staff has not received any responses.

- ATTACHMENTS:**
1. Appeal Application
 2. Building Plans - 1102 Logansport Street
 3. Aerial Map
 4. Zoning Map
 5. Notification Map
 6. Site Photos
 7. Relevant Sections of Zoning Ordinance
 8. ZBA Rules & Procedures

APPLICATION FOR VARIANCE OR SPECIAL EXCEPTION

PROPERTY INFORMATION:

Address: 1102 Logansport St.

Legal Description: Lot(s) 12 in Block 41 of the _____ Subdivision in City Block _____

Property ID 23383

OWNER INFORMATION:

Owner Name _____ Daytime Phone _____ Signature _____

Mailing Address _____ City _____ State _____ Zip Code _____

APPLICANT INFORMATION:

Philip Blackburn 936-645-7743 pblackburn@suddenlink.net Philip Blackburn
Applicant Name Daytime Phone Email Address Signature

819 Logansport St. Nacogdoches TX 75961
Mailing Address City State Zip Code

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

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

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

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;

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

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

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: 2/21/23 Case Number: ZBA 2023-02 Accepted By: _____ Tentative ZBA Date: _____

This is my notice of appeal from certain decisions of the City Planner regarding 1102 Logansport Street. This appeal arises from the application for building permit submitted by RJ Bohac for construction of three duplexes at 1102 Logansport Street. As indicated by the letter from the Building Inspector Don Shoemaker to Mr. Bohac dated February 9, 2023, the City will approve Mr. Bohac's building permit application subject to certain minor requirements. However, the requested building permit violates at least two important provisions of the City's zoning code, and the City planner has apparently decided that she will not enforce these provisions.

I am an aggrieved person in regard to the City planner's failure to enforce such zoning code provisions because I live on Logansport Street and will be affected by the proposed project. Pat Castella will separately send you an email in which she joins in this appeal. Pat lives within 200' of the proposed project. There may be other neighbors who will join in this appeal, and if so they will send separate emails to you. The zoning ordinances that the City Planner has refused to enforce in regard to Mr. Bohac's building permit application are described below:

EXPANSION OF NONCONFORMING USE

My first complaint is that the City planner has failed to enforce Sec. 118-202(3) by denying the building permit application unless a variance is granted by the ZBA regarding the depth of the lot. 1102 Logansport St. has a depth of less than 100 feet (approx. 89 feet scaled from site plan). R-2, R-3 and R-4 lots require a minimum depth of 100 feet per Sec. 118-427. Therefore, the existing use, which is a single family residence, is nonconforming but grandfathered under Sec. 118-202. However, Sec. 118-202(3) prohibits expansion of a nonconforming use. Adding three duplexes on this lot would definitely be an expansion of the existing nonconforming use.

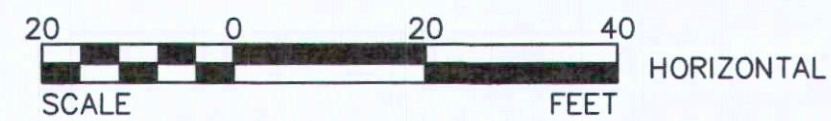
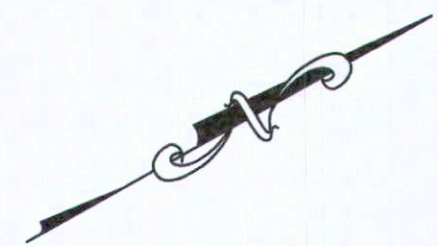
INSUFFICIENT PARKING

My second complaint is that the City Planner has failed to enforce the applicable parking requirement which is 19 spaces because the permitted use of 1102 Logansport St. is Multifamily - Apartments. 1102 Logansport St. is currently zoned R-4. The permitted use in a R-4 zone includes "Multifamily - Apartments" per Sec. 118-273. When the "Permitted Use" is Multifamily - Apartments, Sec. 118-466 requires one parking space for each bedroom + 5% additional for visitors. The project proposed per the building permit application consists of three duplex buildings with two dwelling units in each duplex, each unit having three bedrooms, for a total of 18 bedrooms (plus 3 bedrooms in the existing dwelling that will remain on the property). The site plan submitted by Mr. Bohac provides for only 12 parking spaces for the new duplexes. The City planner has apparently approved Mr. Bohac's site plan with only 12 parking spaces for the duplexes based upon the parking requirement for a Two Family Unit which is 2 spaces for each dwelling unit. I contend that the minimum number of required parking spaces for the duplexes is 19 (18 + 1 for visitors) because the parking requirement for Multifamily - Apartments is the applicable standard. The definition of "Family" in Sec. 118-1 is key. Family is defined as any number of individuals living together in which not more than two individuals are unrelated by blood, marriage or adoption. Each of the six proposed duplex units in question will have 3 bedrooms, and being located in a R-4 zone, more than 2 unrelated individuals may reside together in each unit. Actually, it is likely that there will be at least 3 unrelated students in each dwelling unit, and that living arrangement would definitely be permitted in a R-4 zone such as

1102 Logansport St. Three unrelated individuals is not a Family as defined in Sec. 118-1; therefore the proposed duplexes are not Two Family Units, and the parking requirement for Two Family Units is not applicable.

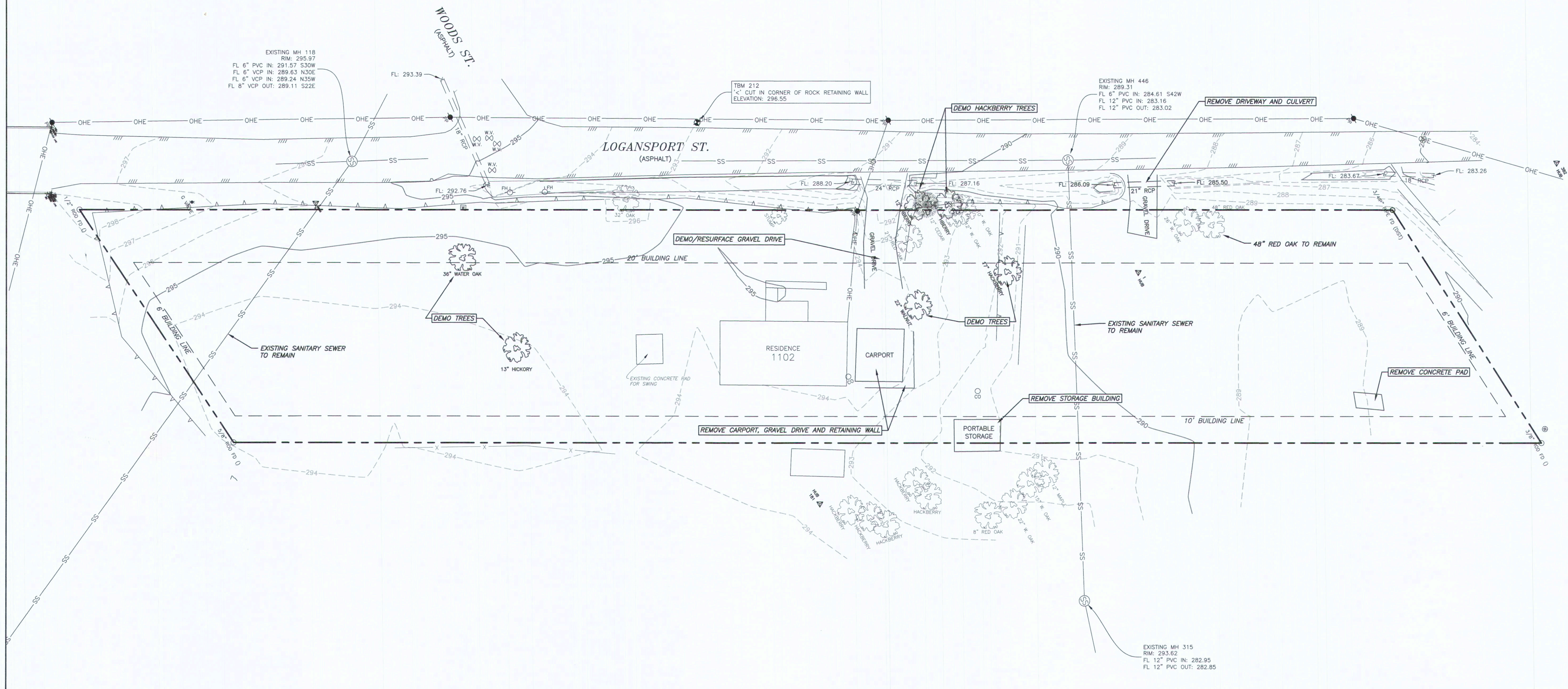
Please set this appeal for hearing by the ZBA in accordance with its rules and the City's zoning ordinance, and upon hearing of this appeal I request that the ZBA reverse the incorrect decisions of the City Planner regarding the pending site plan for 1102 Logansport Street because of the City Planner's failure to enforce the applicable zoning ordinances regarding expansion of nonconforming uses and minimum parking requirements in a Multifamily - Apartments zone.

Please notify the City Planner's office and the office of the building official that pursuant to Sec. 118-100 this notice of appeal stays all proceeding in furtherance of the building permit application for 1102 Logansport Street until this appeal is resolved by the ZBA.



DEMOLITION NOTES:

1. WHEN REMOVING OBJECTS/STUMPS/ROOTBALLS REQUIRING EXCAVATION BACKFILL HOLES WITH SELECT FILL (AS SPECIFIED) COMPACTED IN 8" LIFTS.
 2. DRIVEWAY DEMOLITION SHALL BE COORDINATED WITH OWNER. ALL PAVEMENT REMOVAL NEXT TO PAVEMENTS THAT WILL REMAIN MUST BE SAW-CUT NEATLY.
 3. TEMPORARY SEDIMENT CONTROL FENCING AROUND THE SITE AND THE STORM INLETS, AND CONSTRUCTION EXITS, SHALL BE INSTALLED PRIOR TO DEMOLITION ACTIVITIES AND MAINTAINED THROUGHOUT THE ENTIRE PROJECT.
 4. TREES TO REMAIN THAT ARE WITHIN, OR WITHIN 20' OF, THE DEMOLITION AND CONSTRUCTION AREAS SHALL BE PROTECTED BY INSTALLING ORANGE CONSTRUCTION FENCE AROUND THE ENTIRE TREE OUTSIDE OF THE DRIP LINE OF THE TREE CANOPY. DO NOT PARK OR OPERATE EQUIPMENT UNDER THE CANOPY OF ANY TREE TO REMAIN WITHOUT CONSENT FROM OWNER.
 5. SEQUENCING OF DEMOLITION ACTIVITIES SHALL BE COORDINATED BY G.C. DEMOLITION ACTIVITIES SHALL BE SCHEDULED TO COINCIDE WITH PROPOSED IMPROVEMENTS. DEMOLITION ACTIVITIES MAY REQUIRE MULTIPLE MOBILIZATION EFFORTS THROUGHOUT CONSTRUCTION.
- INDICATES ITEM TO BE DEMOLISHED OR REMOVED



General Notes

1. EXISTING UTILITY LOCATIONS AND/OR MATERIALS SHOWN ON THE PLANS ARE APPROXIMATE. THE CONTRACTOR IS HEREBY NOTIFIED THAT ALL EXISTING UTILITIES, WHETHER BURIED OR OVERHEAD, MAY OR MAY NOT BE SHOWN AND THAT THE CONTRACTOR IS RESPONSIBLE FOR LOCATING AND PROTECTING ALL UTILITIES WITHIN THE PROJECT AREA. THE CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR REPAIRING AND/OR REPLACING ANY AND ALL UTILITIES DAMAGED BY THE CONTRACTOR'S OPERATIONS AND THE COST(S) FOR WHICH SHALL BE BORNE BY THE CONTRACTOR.
2. THE CONTRACTOR IS HEREBY NOTIFIED THAT DANGEROUS UTILITIES MAY EXIST IN THE PROJECT AREA. THESE MAY INCLUDE BUT ARE NOT LIMITED TO: OVERHEAD OR UNDERGROUND ELECTRIC LINES, TELEPHONE LINES, FIBER-OPTIC LINES, AND GAS LINES.
3. THE CONTRACTOR SHALL NOTIFY THE CITY ENGINEERING DEPT. FOR INSPECTION PRIOR TO COVERING UNDERGROUND IMPROVEMENTS, BEFORE POURING BUILDING SLABS, OR MAKING ANY UTILITY TAPS OR CURB CUTS.
4. THIS IS NOT A BOUNDARY SURVEY.
5. THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING EROSION CONTROL (SILT FENCING) ON ALL DOWNHILL SLOPE AREAS OF THIS SITE.

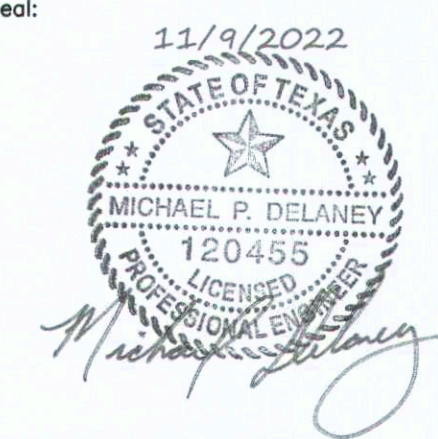
No.	Revision/Issue	Date
1	ISSUED FOR PERMIT AND CONSTRUCTION	11/09/22

TWO FIFTEEN CONSULTING ENGINEERS + SURVEYORS

412 North St.
Nacogdoches, TX 75961
p: 936-569-0505

TBPE F-17461
TBPLS 10184339

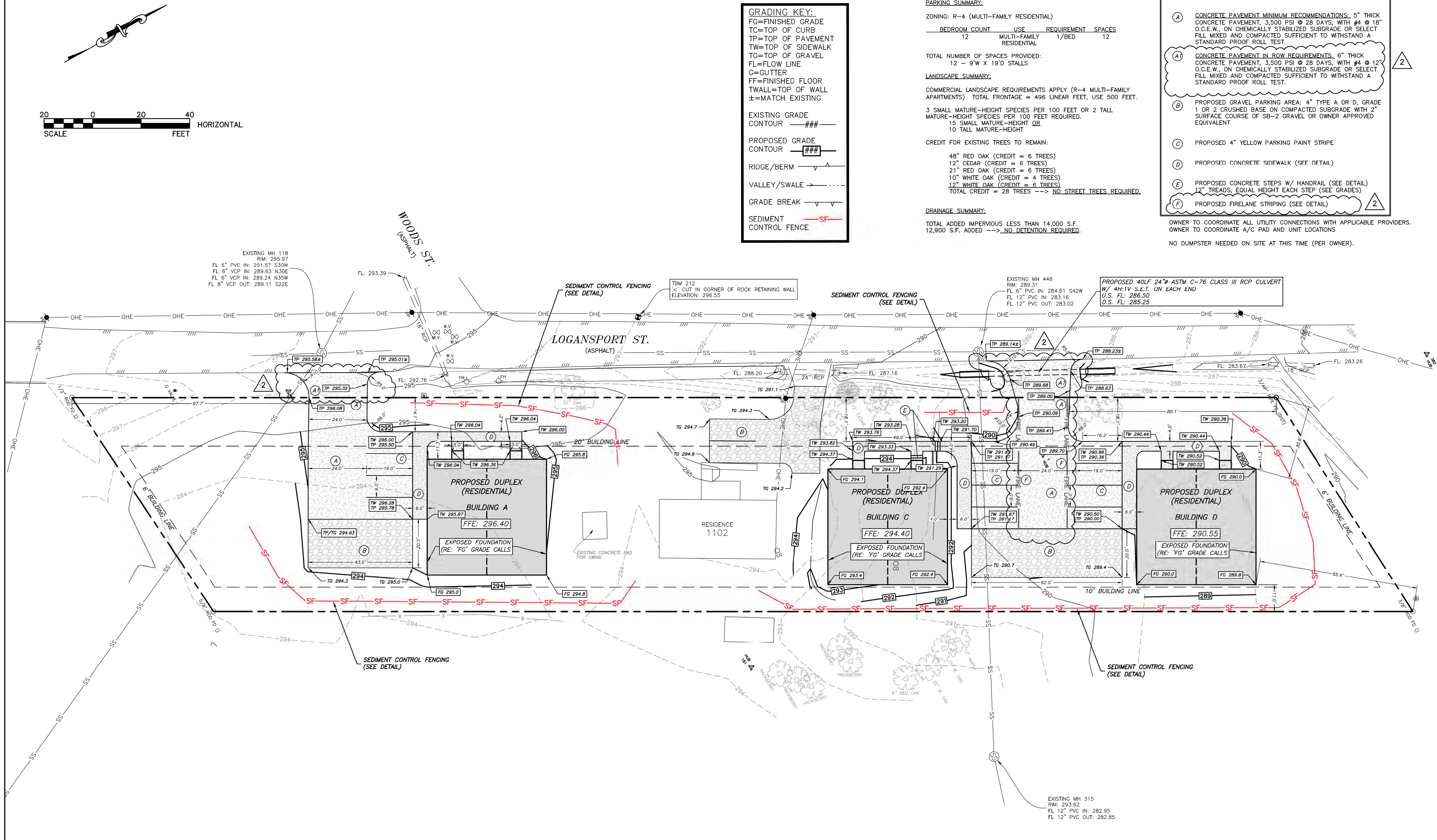
Engineer Seal:



EXISTING SITE AND DEMO PLAN RJ BOHAC DUPLEX DEVELOPMENT

1102 LOGANSPORT ST.
NACOGDOCHES, TEXAS

Scale: SEE PLAN	Issue Date: 11/09/2022
Drawn By: MPD	Checked By: MPD
File: 22034_110.dwg	Drawing No. C-110
THIS DRAWING AND OTHER RELATED DOCUMENTS, INCLUDING DOCUMENTS ON ELECTRONIC MEDIA, WERE PREPARED BY TWO FIFTEEN CONSULTING AND SHALL REMAIN THE PROPERTY OF TWO FIFTEEN CONSULTING. ALL INFORMATION SHALL BE USED ONLY FOR DESCRIBING, CONSTRUCTING, OR INSTALLING THE WORK SHOWN AT THE SITE OF THE WORK SPECIFIED HEREON. ANY OTHER USE OF THIS DRAWING, INCLUDING WITHOUT LIMITATION, ANY REPRODUCTION OR ALTERATION IS STRICTLY PROHIBITED, AND TWO FIFTEEN CONSULTING SHALL BE INDEMNIFIED FROM LIABILITY ARISING FROM THE CONSTRUCTION, USE, OR RESULT OF SUCH UNAUTHORIZED USE OR CHANGES.	



General Notes

- EXISTING UTILITY LOCATIONS AND/OR MATERIALS SHOWN ON THE PLANS ARE APPROXIMATE. THE CONTRACTOR IS HEREBY NOTIFIED THAT ALL EXISTING UTILITIES, WHETHER BURIED OR OVERHEAD, MAY OR MAY NOT BE SHOWN AND THAT THE CONTRACTOR IS RESPONSIBLE FOR LOCATING AND PROTECTING ALL UTILITIES WITHIN THE PROJECT AREA. THE CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR REPAIRING AND/OR REPLACING ANY AND ALL UTILITIES DAMAGED BY THE CONTRACTOR'S OPERATIONS AND THE COST(S) FOR WHICH SHALL BE BORNE BY THE CONTRACTOR.
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- THIS IS NOT A BOUNDARY SURVEY.
- THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING EROSION CONTROL (SILT FENCING) ON ALL DOWNHILL SLOPE AREAS OF THIS SITE.

2	REVISED PER CITY REVIEW COMMENTS	2/20/23
1	ISSUED FOR PERMIT AND CONSTRUCTION	11/09/22
No.	Revision/Issue	Date

TWO FIFTEEN CONSULTING
ENGINEERS + SURVEYORS

412 North St.
Nacogdoches, TX 75961
p: 936-569-0505

TBPE F-17461
TBPLS 10194339

Engineer Seal:



PROPOSED SITE PLAN

DUPLEX DEVELOPMENT

**1102 LOGANSPORT ST.
NACOGDOCHES, TEXAS**

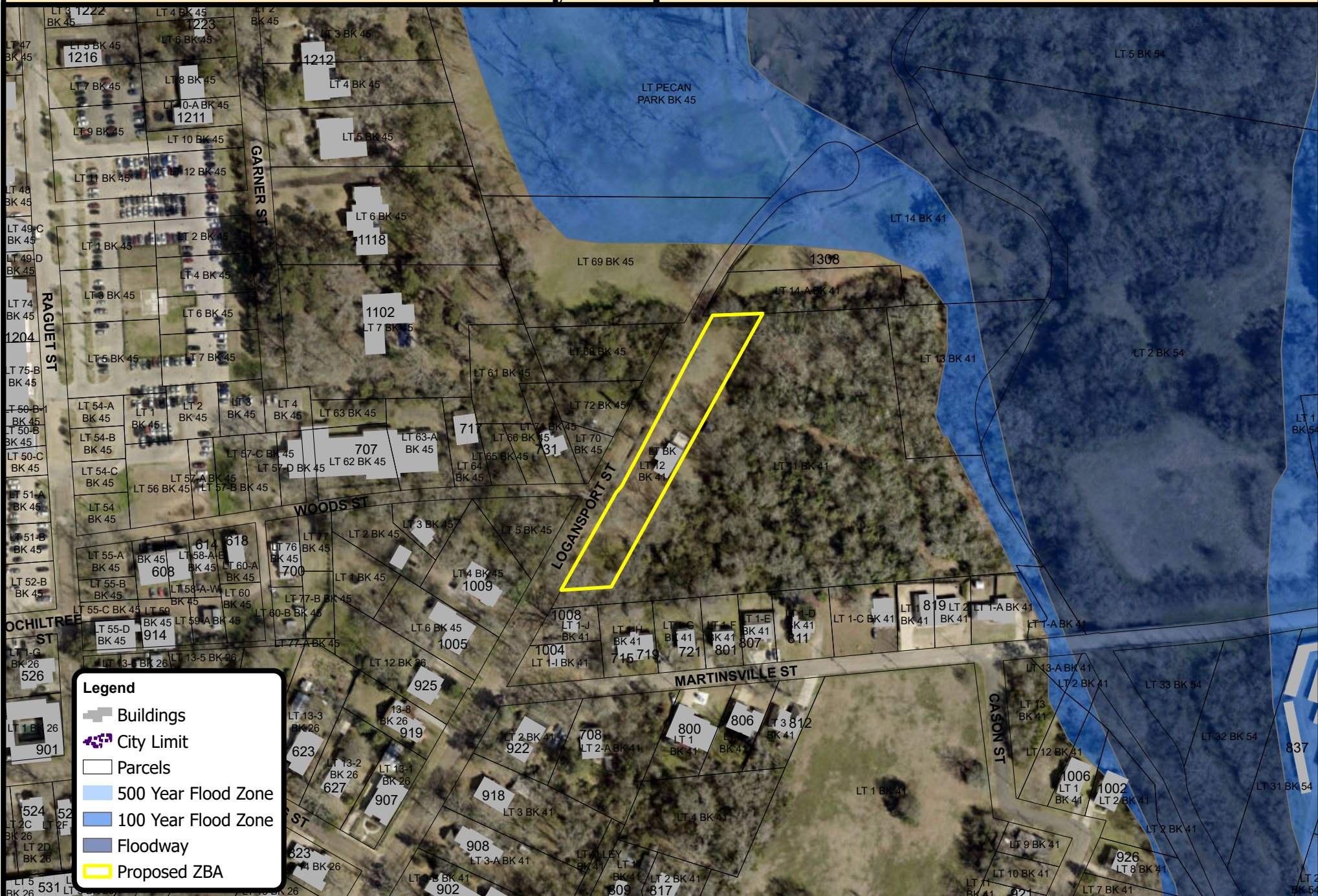
Scale: SEE PLAN
Issue Date: 11/09/2022

Drawn By: MPD
Checked By: MPD

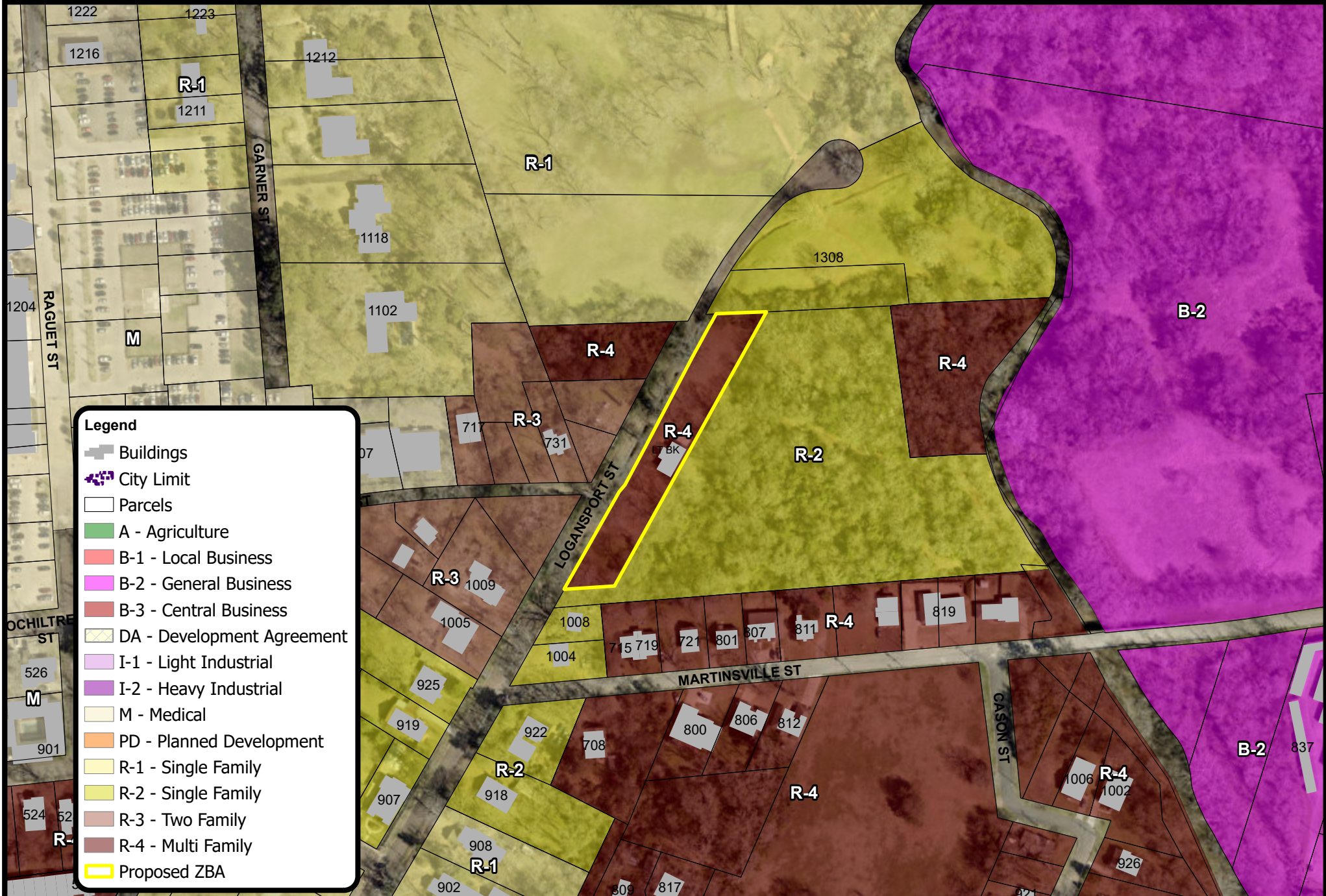
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Drawing No. C-200

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Floodway Map ZBA 2023-02



Zoning Map ZBA 2023-02

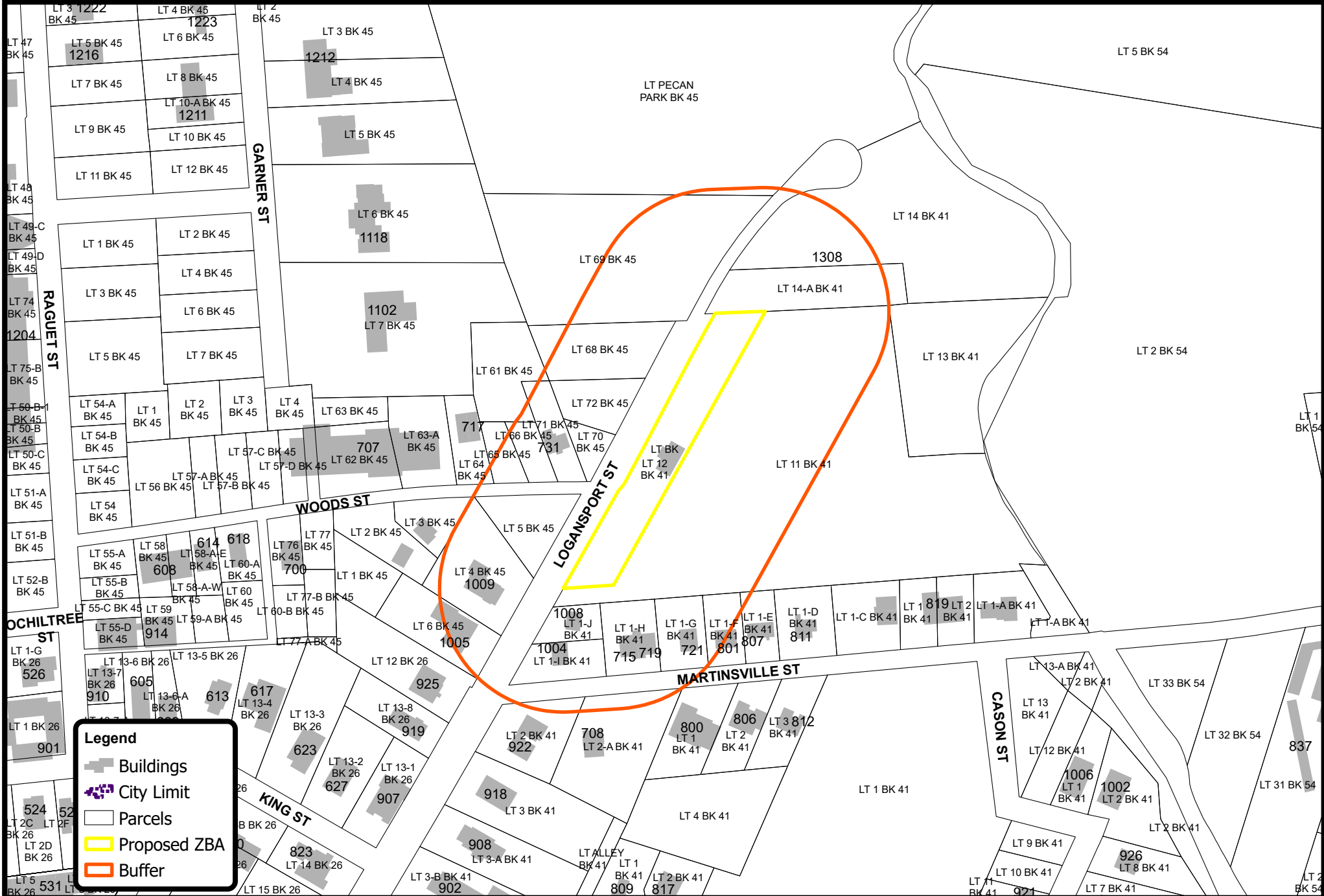


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Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location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

Notification Map ZBA 2023-02



Site Photos: ZBA2023-02

Street view looking north
(subject property located on left)



Street view looking south
(subject property located on left)



RELEVANT SECTIONS OF ZONING ORDINANCE

ARTICLE II. - ADMINISTRATION

DIVISION 3. - BOARD OF ADJUSTMENT

Sec. 118-100. Appeal of decisions made by city officers.

- (a) *Appeal of city planner's decision.* 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 decision of the city planner. Such appeal shall be taken within a reasonable time, not to exceed 90 days, by filing with the city planner and with the board of adjustment a notice of appeal, which shall specify the grounds thereof. The city planner shall forthwith transmit to the board all of the papers constituting the record upon which the action appealed was taken.
- (b) *Appeal stays city planner and building official action.* An appeal from the action of the city planner shall stay all proceedings in furtherance of such action unless the city planner certifies to the board that a stay would, in his opinion, cause imminent peril to life or property. If the city planner shall make and file such certificate, that action shall not be stayed unless by a restraining order which may be granted by the board, or by a court of record, upon application of the party aggrieved by the action of the city planner, and after notice to the city planner.
- (c) *Hearing.* The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and may authorize city staff to do such. The board of adjustment shall decide such appeal within a reasonable time. Upon hearing of such appeal, any interested party may appear in person or by an agent or attorney.
- (d) *Powers.* In exercising the powers set out in this section, the board of adjustment may, in conformity with the provisions of state law, 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 city planner from whose action the appeal is taken.
- (e) *Decision.* Decisions of the board of adjustment shall be as follows:
 - (1) *Required vote.* A reversal by the board of any order, requirement, decision, or determination of the city planner against the applicant, and a finding in favor of the applicant by the board, shall require the concurring vote of four members of the board of adjustment.
 - (2) *Lapse of order.* Any reversal by the board of adjustment shall lapse after the expiration of 90 days where action by the appellant is not taken pursuant thereto within such period. This subsection shall not apply when the applicant has presented to the board of adjustment a development plan which requires a length of time greater than 90 days, in which event the board of adjustment may grant a greater length of time. In no event, however, shall such time granted exceed two years.

DIVISION 5. - NONCONFORMING STRUCTURES AND USES

Sec. 118-201. Applicability.

- (a) *Nonconformity.* If the city or other governmental agency takes an act or action which transforms a previously conforming structure or lot of record in terms of the city's previous ordinance, or the minimum requirements in this division or in division 1 of article VI of this chapter, such structure or lot shall be deemed to be in conformance with this division and article VI of this chapter.
- (b) *Creation of nonconformity.* No lot or structure existing on the effective date of the ordinance from which this chapter derives shall be reduced below the minimum requirements set forth in this chapter, except as otherwise provided.
- (c) *Change in district boundaries.* Whenever a nonconformity is created by changing the boundaries of a zoning district and transferring an area from one district to another district, or when the boundaries of districts are changed as the result of annexation of new territory, or changes in the regulations or restrictions of this chapter, this division shall apply.

Sec. 118-202. Continuing nonconforming use.

The lawful use of any building, structure or land existing on the effective date of the ordinance from which this chapter derives may be continued, even though such use does not conform to the sections of this chapter; provided, however, the right to continue such nonconforming use shall be subject to the following:

- (1) *Nonconforming buildings.* A nonconforming building or structure may be occupied as follows:
 - a. *Repairs and alterations.* Repairs and alterations may be made to a nonconforming building or structure, provided that no structural alterations shall be made except those required by law or ordinance, or those necessary for installing or enclosing required sanitary facilities, such as toilets and bathrooms.
 - b. *Enlargement.* Unless otherwise provided, a nonconforming building or structure shall not be added to or enlarged in any manner unless such additions and enlargements are made to conform to all of the requirements of the district in which such building structure is located.
 - c. *Relocating a nonconforming structure.* A nonconforming building or structure shall not be moved in whole or in part, unless every portion of such building or structure is made to conform to all regulations of the district in which it is to be located.
 - d. *Reconstruction of damaged building.* If a nonconforming building or structure is damaged or destroyed to an extent less than 60 percent of its fair market value by fire, explosion, act of God, or the public enemy, restoration or new construction shall be permitted. If destruction is greater than 60 percent of its fair market value, such building or structure and its use, if repaired or replaced, shall conform to all regulations of the district in which it is located, and it shall be treated as a new building.
 - e. *Unoccupied nonconforming structures.* A nonconforming building or structure lawfully constructed may be occupied by a use for which the building or structure was designed

or intended, if so occupied within a period 180 days after the effective date of the ordinance from which this chapter derives. The use of a nonconforming building or structure lawfully constructed, which becomes unoccupied after the effective date of the ordinance from which this chapter derives, may also be occupied by the use for which the building or structure was designed or intended, if so occupied within a period of 180 days after the building or structure becomes vacant.

- f. *Manufactured home.* A manufactured home on an existing lot lawfully in place at the time of the adoption of this section may remain in use, provided that it does not remain vacant for more than 180 days. Once a manufactured home is removed from a lot, another manufactured home may be placed on the lot, if placed no more than 180 days from the date of the removal of the original manufactured home, provided it meets the applicable requirements of the underlying zoning district.
- (2) *Nonconforming use of building.* The nonconforming use of a building or structure may be continued as follows:
- a. *Changing use of nonconforming structure.* The nonconforming use of a building or structure may be changed to a use of the same or more restrictive classification. Where the nonconforming use of a building or structure is changed to a use of a more restrictive classification, it shall not thereafter be changed to a use of less restrictive classification.
 - b. *Changing or expanding nonconforming use.* A nonconforming use of a conforming building or structure shall not be extended or expanded into any other portion of such conforming building or structure, nor changed except to a conforming use. If such nonconforming use or portion thereof is voluntarily discontinued or changed to a conforming use, any future use of such building, structure or portion thereof shall be in conformity with the regulations of the district in which such building or structure is located.
- (3) *Nonconforming use of lands.* The nonconforming use of land existing at the time of the effective date of the ordinance from which this chapter derives may continue as follows:
- a. *Expansion of nonconforming use of land.* A nonconforming use of land shall not be expanded or extended.
 - b. *Discontinuance of nonconforming use of land.* If a nonconforming use of land, or any portion thereof, is voluntarily discontinued for a period of 180 days, any future use of such land or portion thereof shall be in conformity with the regulations of the district in which such land or portion thereof is located.
- (4) *Single-family residential.* Any legal nonconforming single-family residential structure damaged or destroyed by fire, explosion, act of God, or the public enemy, or is the subject of a city-approved housing rehabilitation or reconstruction program may be reconstructed or repaired, with the following conditions:
- a. A building permit is issued for the reconstruction or repair within 180 days of the occurrence of the damage or destruction.

- b. The repairs or replacement structure shall not increase the extent of the nonconformity or the nature of the nonconforming activity.
- c. The replacement structure shall meet the minimum required building setbacks of the zoning district.

ARTICLE II. - ADMINISTRATION

Sec. 118-273. Land use schedule.

- (a) *Use of land and buildings.* Buildings, structures and land shall be used only in accordance with the uses permitted in the following land use schedule, subject to all other applicable requirements of this chapter. The following symbols are used in the land use schedule:
 - (1) The symbol "P" shall mean that the use is permitted as a principal use in that zoning district by right.
 - (2) The symbol "S" shall mean that the principal use is permitted in that zoning district only after first obtaining a specific use permit.
 - (3) The symbol "A" shall mean that this use is specifically permitted as an accessory use to a principal use in the district. This does not exclude other land uses which are generally considered ancillary to the primary use.
 - (4) An asterisk (*) indicates that the use has special standards or requirements listed in this section, which it must meet in order to be allowed.
 - (5) A blank square shall mean that the use is not allowed in that zoning district.
 - (6) Italicized words are defined in article IV of this chapter or under section 118-1 containing definitions.
- (b) *Organization of land use schedule; category grouping.* Uses are grouped into general categories such as "agriculture" and "residential," and then further organized into subcategories. This organization of land uses is for ease of reference only.

LAND USE SCHEDULE											
(*) Signifies Uses with Special Guidelines (<i>Italic</i>) Signifies a Defined Term											
Residential					Permitted Use P=Permitted, A=Accessory Use, S=SUP	Commercial				Industrial	
AG	R-1	R-2	R-3	R-4		B-1	B-2	B-3	MD	I-1	I-2
					AGRICULTURAL USES						
P	P	P	P	P	Farm, Ranch, Garden or Orchard		S			P	P
P	P	P	P	P	Farm or Ranch for live stock and Animal Specialties		S			P	P
P					Feed Store and Tack for live Stock - No Mill		P			P	P
S					Livestock Auction Pens or Sheds						P
S					Poultry Hatchery						P

S					Stables (Commercial)						P
					RESIDENTIAL USES						
					Household Units						
P	P	P	P	P	Home Occupation	P	P	P	P		
				P	Multifamily - Apartments	S	P	P	P		
			P	P	Single Family Attached						
P	P	P	P	P	Single Family Detached						
			P	P	Single Family Zero Lot Line						
			P	P	Two Family Dwelling						
A	A	A	P	P	Pool House (Detached)*	P	P	P	P		

ARTICLE VI. – DEVELOPMENT STANDARDS

DIVISION 1. - GENERALLY

Sec. 118-423. General requirements.

- (a) *Requirements for a building permit.* No permit for the construction of a building upon any tract or plot shall be issued until a building site, building tract or building lot has been created by compliance with one of the following conditions:
- (1) *Subdivided.* The lot or tract is part of a plat of record, properly approved by the city, and filed in the plat records of the county.
 - (2) *Planned development (PD) district.* The site, plot or tract is all or part of a site plan officially approved by the city planning and zoning commission, in accordance with subdivision II of division 4 or article II and article V of this chapter pertaining to zoning-related applications, which site plan shows all utility and drainage easements, alleys, streets and other public improvements necessary to meet the normal requirements for platting including the designation of building areas and such easements, alleys, and streets as are required and have been properly dedicated, and the necessary public improvements which have been provided.
 - (3) *Unplatted prior to ordinance or annexation.* The plot, tract, or lot faces upon a dedicated street and was separately owned prior to the effective date of the ordinance from which this chapter derives or prior to annexation to the city, whichever is applicable.

DIVISION 1. – OFF-STREET PARKING STANDARDS

Sec. 118-466. Off-street parking requirements.

FIGURE 3 SCHEDULE OF OFF-STREET PARKING REQUIREMENTS

Permitted Use	Parking Requirement
AGRICULTURAL USES	
Farm, Ranch, Garden or Orchard	No Requirement
Farm or Ranch for live stock and Animal Specialties	No Requirement
Feed Store and Tack for live Stock - No Mill	1 for each 1,000 sf
Livestock Auction Pens or Sheds	1 for each 1,000 sf of auction area
Poultry Hatchery	1 for each 300 sf of office space
Stables (Commercial)	1 per each 2 stalls
RESIDENTIAL USES	
Household Units	
Home Occupation	N/A
Multifamily - Apartments	1 for each bedroom + 5% additional for visitors
Single Family Attached	2 for each dwelling unit
Single Family Detached	2 for each dwelling unit
Single Family Zero Lot Line	2 for each dwelling unit
Two Family Dwelling	2 for each dwelling unit
Special Unit Types	
Industrialized Housing*	2 for each dwelling unit
Manufactured Home	2 for each dwelling unit
Mobile Home (House Trailer, Camp)	N/A
Manufactured Home Park	2 for each lot, plot, or stand
Mobile Home Park	N/A
Travel Trailer/RV Park	1 for each lot, plot, or stand
Lodging/Group Quarters	
Bed and Breakfast* - 4 or Less Patrons	1 for each guest room or residence unit
Bed and Breakfast* - 5—8 Patrons	1 for each guest room or residence unit
Boarding or Rooming House	1 for each guest room or residence unit
Accessory Apartment*	1 for each bedroom
Convent or Monastery	1 for each 3 residents, minimum 2
Family Group Home	2 spaces, and 0.3 for each client
Family Home	2 for each dwelling unit
Foster Home	2 for each dwelling unit
Guest House (Detached)	1 for each bedroom

Half-way House - Criminal	1 for each bedroom
Hotel or Motel	1 for each guest room + 5% additional for visitors
Orphanage	1 for each employee on largest shift
Retirement Home	1 for each bedroom
Pool House	N/A

CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES AND PROCEEDURES

I. ZONING BOARD OF ADJUSTMENTS

101. ORGANIZATION

The Board of Adjustment shall consist of those members appointed by the City Commission and shall be organized under the laws of the State of Texas and the ordinances of the City of Nacogdoches.

102. OFFICERS

A chairperson and vice-chairperson shall be elected from among the board's membership at the annual meeting of the board and at such other times as these offices may become vacant. The city's chief executive officer shall designate an employee of the city to serve the board as executive secretary.

103. DUTIES

- (a) The chairperson, or in his/her absence the vice-chairperson, shall preside at all meetings, shall decide all points of order or procedure, and as necessary shall swear in witnesses or compel their attendance.
- (b) The executive secretary shall be custodian of the minutes of other official records, shall attend to the correspondence of the board, and shall cause to be given such notices as are requested in the manner prescribed by law.

104. RULES OF ORDER

Roberts Rules of Order, latest revision, shall be the board's final authority on all questions of procedure and parliamentary law not covered by these rules of procedure.

II. MEETINGS

201. QUORUM

A quorum shall consist of four members.

202. AGENDA

An agenda shall be prepared by the executive secretary for each meeting of the board. The agenda shall include appeals and other matters scheduled for consideration by the board. There shall be attached to the agenda a list of matters pending further action by the board and pending report of disposition by the executive secretary. A copy of the agenda shall be posted in the City Hall as required by law.

203. SPECIAL MEETINGS

Special meetings for any purpose may be held (1) on the call of the chair, or (2) as may be scheduled by a majority of the board.

204. PUBLIC MEETINGS

All meetings shall be held in full compliance with the provisions of state law, the zoning ordinance of the city and these rules of procedure. Any party interested may appear on his own behalf or be represented by counsel or agent.

III. OFFICIAL RECORDS

301. DEFINITION

The official records shall include these rules and regulations, and the minutes of the board together with all findings, decisions, and other official actions. Stenographic notes of the recording secretary and tape recordings of the proceedings and discussions shall not constitute the official record of the board.

302. RECORD OF VOTES

The minutes of the board's proceedings shall show the vote of each member on each decision of the board, or if absent or failing to vote shall indicate that fact.

303. FILES – RETENTION

All appeals and other matters coming before the board shall be filed in the city's records. Original papers of all appeals shall be retained along with other special matter as the executive secretary deems essential for permanent record.

304. PUBLIC RECORD

The official record, appeals accepted for filing, and other matters presented to the board in regular or special meeting shall be on the file in the City Hall and shall be open to public inspection during working hours.

305. THE FILING OF BOARD ACTION

All actions taken by the board shall be filed with the office of the County Clerk.

IV. APPEAL AND PROCEDURES

401. TYPES OF APPEAL

The board shall consider only four types of appeals as are authorized under Texas Local Government Code § 211.

- (a) for interpretation of the meaning or intent of the zoning ordinance,
- (b) for special exception for use or development of property on which the board is required to act, or
- (c) for a variance from the literal enforcement of the zoning ordinance in order to achieve a reasonable development of property.
- (d) hear and decide other matters authorized by ordinance

402. REFUSAL REQUIRED

No appeals shall be taken to the board until and unless the enforcing officer has first refused a permit for plans submitted or has rendered an interpretation of the zoning ordinance.

403. APPLICATION REQUIRED

Every appeal shall be filed on application forms provided by the city, shall be accompanied by the prescribed fee, and shall be complete in all respects before being accepted for filing. The application shall bear the signature of the owner acknowledging taking of the appeal. An incomplete application or a communication purporting to be an application and not made in the form prescribed shall be regarded only as a notice of intent to appeal and shall not be considered or acted upon by the board.

404. GUIDELINES FOR APPLICATION AND DECISION

Every appeal shall be prepared by the applicant and shall be considered by the board according to the guidelines established by the board for the type of appeal under consideration. Where two or more different types of appeals are included in the same application, each set of guidelines shall apply to the consideration of the appeals.

405. FILING DEADLINE

An appeal shall be filed with the board within 10 days after the date of decision of the enforcing officer. Every appeal shall be filed with the executive secretary of the board not later than 15 days prior to the regular meeting date of the board. Appeals filed after the deadline shall be scheduled for the next regular meeting.

406. NOTICE

- (a) Public notice of any appeal affecting a specific property shall be given as prescribed in the zoning ordinance by means of a written notice deposited in the United States mail, postage prepaid, not less than 10 days prior to the date of hearing. The notice shall identify the applicant, the location of the property in question, the nature of the request, and the applicable zoning requirements.
- (b) Public notice of any appeal seeking an interpretation of zoning ordinance regulations which would apply throughout the city, shall be given by means of a legal advertisement appearing in the official newspaper of the city not less than 10 days prior to the date of the hearing. Written notice shall also be given to the applicant and his agent provided in paragraph (a), above. The notices shall identify the applicant, the nature of the question involved, and the affected provisions of the zoning ordinance.

407. SUBMISSION OF EVIDENCE

Evidence supporting the grant or denial of an appeal shall be submitted only through the executive secretary or to the board in public meeting.

408. WITHDRAWAL OF APPEAL

Any appeal may be withdrawn upon written notice to the executive secretary; but no appeal shall be withdrawn after giving of public notice and prior to board action thereon without formal consent of the board.

409. APPEAL AFTER BOARD DENIAL

No appeal that has been denied shall be further considered in a new appeal resulting from the filing of new plans and the obtaining of a new decision from the enforcing officer, unless the new plans materially change the nature of the case.

410. EXPIRATION OF GRANTED APPEAL

Approval of any appeal shall expire 90 days after the board's decision unless authorized construction or occupancy permits have been obtained, or unless a greater time is requested in the application and is authorized by the board. Any approval may be granted one extension of an additional 90 days on written request filed with the board before expiration of the original approval.

V. HEARINGS AND DECISIONS

501. PUBLIC HEARINGS

Hearings on all matters on which a decision of the board is required by law shall be open to the public. The applicant may appear on his own behalf or be represented by counsel or agent.

502. ORDER OF BUSINESS

The chairperson shall call the board to order and the executive secretary shall record the members present and absent. The chairperson shall publicly advise those present of the procedures followed in the hearings and disposition of appeals; he/she shall call each appeal in the order filed and shall announce the name of the applicant, the location of the property involved, and the nature of the request. The executive secretary shall publicly advise the board of any communications received. Supporting evidence for and against each case shall be presented to the board. Each case may be taken under advisement until all have been heard.

503. PROCEDURES FOR HEARING

- (a) The chairperson shall first call upon the applicant to present his case and all evidence supporting his plea. The chairperson shall then inquire of the applicant if there are others who support the appeal.
- (b) The chairperson shall next call on those opposed to the granting of the appeal to present their arguments. The applicant shall then have the right of rebuttal to arguments presented by the opposition. Following the rebuttal the chairperson shall order the hearing closed.
- (c) Each side shall proceed without interruption by the other, and all arguments and pleadings shall be addressed to the board. No questioning or arguments between individuals will be permitted. During the hearing no member shall discuss, debate or argue an issue with the applicant, nor indicate his probable vote on the appeal.

- (d) The board may not continue hearing on any appeal for which the applicant fails to appear unless the applicant has requested that the board act without his being present at the hearing; provided however, the board shall hear those persons appearing in response to the notice of hearing.

504. BOARD'S QUESTIONS

The chairperson may direct any question to the applicant or any persons speaking in order to bring out all relevant facts, circumstances and conditions affecting the appeal, and shall call for questions from other members of the board and from the staff before closing the hearing on each appeal.

505. DECISION

After all appeals have been heard each appeal shall be reviewed and acted upon. During its review the board may call back any applicant for clarification of facts presented by him in the hearing.

506. DISPOSITION OF APPEALS

The board may grant, may grant with modifications, or may deny an appeal. The board may also defer action on any appeal whenever it concludes that additional evidence is needed or that alternate solutions need further study. An appeal may be dismissed when the board finds that the appeal has been improperly filed, or upon notification by the enforcing officer that permits have been issued for a conforming use or development of the property.

507. VOTE REQUIRED

The concurring vote of four members shall be necessary to grant, or to grant conditionally, any matter appealed to the board. When a motion in favor of an applicant fails to receive four affirmative votes, the executive secretary shall record that fact and he/she shall spread on the minutes an entry stating that the board has denied the appeal.

VI. INTERPRETATIONS

601. INTERPRETATION: BASIS FOR FILING

Whenever it is alleged that there is an error in any determination or application of the requirements of the zoning regulations an appeal for the interpretation of the regulations or map designations may be filed with the board.

602. INTERPRETATION: PAPERS REQUIRED

An appeal shall include:

- (a) a statement by the applicant describing the way it is alleged the regulation should be interpreted, together with diagrams and charts illustrating the erroneous and the proper application of the map or text provisions.
- (b) a statement by the enforcing officer giving his reasons for his interpretation of the zoning regulations.

603. INTERPRETATION: BASIS FOR ACTION

- (1) Before acting on an appeal for interpretation the board shall consider:
 - (a) facts and statements filed in the application,
 - (b) testimony presented at the public hearing,
 - (c) the city staff's technical report on the appeal, and
 - (d) the board's independent investigation of the language of the ordinance and of related ordinances bearing thereon.
- (2) The board will make such interpretation as ought to be made provided the applicant has demonstrated to the satisfaction of the board that one or more of the following conditions exist and that the decision of the board would be in the interest of the community and would carry out the spirit and intent of the zoning regulations.
 - (a) that there is reasonable doubt or difference of interpretation as to the specific intent of the regulations or map;
 - (b) that an appeal of use provisions would clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question; and
 - (c) that the resulting interpretations will not grant a special privilege to one property inconsistent with other properties or similarly situated.

VII. SPECIAL EXCEPTIONS

701. SPECIAL EXCEPTION: BASIS FOR FILING

Whenever zoning regulations require specific approval by the board for that development or use of property, an applicant for a special exception shall be approved by the board before the enforcing officer shall issue a permit for the proposed construction or use.

702. SPECIAL EXCEPTION: PAPERS REQUIRED

An application for a special exception shall include:

- (a) A site plan, drawn to scale, showing all lot dimensions, and the location and dimensions of all existing and proposed lot improvements;
- (b) a statement by the enforcing officer citing the reason for referral of the proposal to the board; and
- (c) a statement by the applicant describing the way in which all conditions prescribed by zoning regulations and by these rules will be or have met.

703. SPECIAL EXCEPTION: BASIS FOR ACTION

- (1) Before acting on the application the board shall consider:

- (a) the facts filed with the application,
 - (b) the testimony presented at the public hearing,
 - (c) the city staff's technical report on the application,
 - (d) the board's filings in its field inspection of the property.
- (2) The board will grant the application, subject to such special terms and conditions as it deems necessary to insure compatibility of the proposed use or development with adjacent properties, provided the applicant has demonstrated to the satisfaction of the board:
- (a) that all conditions enumerated in the regulations for the special exception use or development will be complied with;
 - (b) that the proposed use will not be obnoxious, dangerous or unnecessarily hazardous to persons or property at or near such location;
 - (c) that, where the board finds it necessary, provision will be made for the installation and maintenance of the best practical means known for the abatement of obnoxious or offensive fumes, gas, dust, smoke, odor, water carried waste, noise, vibration or similar nuisance; and
 - (d) that the granting of the exception will further the objectives, spirit and intent of the zoning regulations.

VIII. VARIANCES

801. VARIANCES: BASIS FOR FILING

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, an appeal for a variance may be filed with the board of adjustment.

802. VARIANCE: PAPERS REQUIRED

An appeal for variance, shall include:

- (a) a site plan, drawn to scale, showing the location and dimension of the lot and all existing and proposed improvements;
- (b) a 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; and
- (c) a statement by the enforcing officer citing the reasons for refusing to issue a permit under the plans submitted.

803. VARIANCE: BASIS FOR ACTION

- (1) Before acting on an appeal for variance the board shall consider:

- (a) facts filed with the application,
 - (b) testimony presented at the public hearing on the appeal,
 - (c) the city staff's technical report on the appeal, and
 - (d) the board's findings in its field inspection of the property.
- (2) The board shall grant the appeal, subject to such terms and conditions as it may fix, provided the applicant has demonstrated to the satisfaction of the board that the decisions of the board would be in the interest of the community and would carry out the spirit and intent of the zoning regulations.

804. VARIANCE: SPECIAL INFORMATION REQUIRED

- (1) When an appeal is based upon hardship resulting from sharp changes in topography or unusual terrain features, the site plan shall include topographic information related to known base points or surveys, and profiles of the particular problem involved, including relationship to topographic features of adjoining properties.
- (2) When an appeal is submitted for variance of side or rear yard requirements, the applicant shall provide the same information for the properties adjoining the common lot line as may be applicable to the appealed requirements.

IX. CERTIFICATION AND AMENDMENTS

901. CERTIFIED COPY

A certified copy of these rules and regulations and of any amendments thereto will be placed on record in the office of the city secretary within ten days following their date of adoption.

902. REPEALING CLAUSE

All previous adopted rules and regulations of the board shall be and the same are hereby expressly repealed.

903. AMENDMENT PROCEDURE

Amendments to these rules and regulations may be made by the board at any meeting, upon the affirmative vote of four members, provided any such amendment is proposed at a preceding meeting and spread on the minutes of such meeting. By unanimously consent of five members present amendments may be adopted at the meeting at which introduced, but shall not become effective until the next regular meeting.

Adopted this _____ day of _____ 2006.

Paul Smith, Chairperson

ATTEST:

Renee Young, Board Secretary

Filed in the office of the City Secretary this _____day of _____2006.

Lila Fuller, City Secretary
City of Nacogdoches, Texas

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider an Appeal of the decision of the City Planner in interpreting the Zoning Ordinance, *Section 118-202. – Continuing nonconforming use*, and *Section 118-466. – Off-street parking requirements*, as it applies to a building permit submitted for the construction of duplexes at 1102 Logansport Street. This request has been submitted by Pat Castella. Case File ZBA2023-03.

TYPE OF REQUEST: *Appeal of city planner's decision.* This Appeal is an allegation that there was an error in the determination or application of the requirements of the zoning regulations by the City Planner. That is, whether the decision of the City Planner that the building permit for 1102 Logansport Street is compliant with the Zoning Ordinance. This Appeal is not a request for a variance.

The Appellant/applicant claims that the City Planner incorrectly applied Section 118-202. – Continuing nonconforming use, and Section 118-466. – Off-street parking requirements of the Nacogdoches Zoning Ordinance to a building permit submitted for the construction of three duplexes at 1102 Logansport Street. The receipt of the Appeal suspends the review of these building plans by the City permitting office, until such time that a public hearing can be scheduled for the Appeal to be presented to the Board of Adjustment.

Pursuant to ZBA Rules & Procedures 6.03(2) The Board will make such interpretation as ought to be made provided the applicant has demonstrated to the satisfaction of the board that one or more of the following conditions exist and that the decision of the board would be in the interest of the community and would carry out the spirit and intent of the zoning regulations.

1. That there is reasonable doubt or difference of interpretation as to the specific intent of the regulations or map;
2. That an appeal of use provisions would clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question; and
3. That the resulting interpretations will not grant a special privilege to one property inconsistent with other properties or similarly situated.

BACKGROUND INFORMATION:

On January 25, 2023, Bohac Contractors, applied for a building permit to construct three (3) duplexes at 1102 Logansport Street. The building plans include the preservation of an existing single family residence on the property. The duplex buildings have two (2) dwelling units in each building, each dwelling unit having three (3) bedrooms.

The permit was subsequently reviewed by the City Planner and determined to be in compliance with the Zoning Ordinance. Prior to issuance of the building permit, City staff received two

applications for ‘Appeal of the decision of the City Planner’ from Philip Blackburn (2/16/23) and Pat Castella (2/21/23).

ZONING & PHYSICAL CHARACTERISTICS

The subject property is zoned R-4, Multi Family and is developed with a single family residence. The lot depth of approximately 90 feet. The lot was created prior to 1963, per the Nacogdoches Central Appraisal District; which means it was created in its current form prior to any City zoning ordinances (ordinance dated 9/8/1970). The standards in the current ordinance adopted in 1970 are:

R-4 Standards	Minimum Required	1102 Logansport St.
Lot Width (frontage)	50 ft.	495 ft.
Lot Depth	100 ft.	90 ft.
Lot Area	5,000 sq.ft.	43,560 sq.ft. (1 acre)

REVIEW CRITERIA & REQUIRED FINDINGS (STAFF COMMENTS UNDERLINED): **ANALYSIS:**

The applicant claims that because the lot located at 1102 Logansport Street is ‘legal nonconforming’ due to the lot depth, that the existing single family residence is a ‘legal nonconforming use’, and that building three (3) duplexes as proposed by the owner would be an expansion of a existing ‘nonconforming use’.

The sections of the ordinance that City staff uses to determine the “grandfathering” of legal nonconforming uses of structures and land are: (Division 5. - Nonconforming Structures And Uses) Section 118-201. - Applicability., and Section 118-202. - Continuing nonconforming use. (3) Nonconforming use of lands. Section 118-201(a) states:

If the city or other governmental agency takes an act or action which transforms a previously conforming structure or lot of record in terms of the city's previous ordinance, or the minimum requirements in this division or in division 1 of article VI of this chapter, such structure or lot shall be deemed to be in conformance with this division and article VI of this chapter.

Based on staff’s review, the lot in question was created prior to 1963, per the Nacogdoches Central Appraisal District. Therefore, it predates any City zoning ordinance, which was adopted in September 1970. Pursuant to 118-201(a), the lot is deemed ‘conforming’ due to the time it was created, which predates the city's action of adopting the Zoning Ordinance. Furthermore, the existing single family residence is a permitted land use in the R-4 zoning district, per (Article III. - District Regulations) Section 118-273. - Land use schedule, and is a legal use of the property, and is therefore **not** a nonconforming use.

In addition, (Article VI. - Development Standards) Section 118-423. - General requirements, outlines the requirements for issuing a building permit, and states that:

- a. Requirements for a building permit. No permit for the construction of a building upon any tract or plot shall be issued until a building site, building tract or building lot has been created by compliance with one of the following conditions:
 1. Subdivided. The lot or tract is part of a plat of record, properly approved by the city, and filed in the plat records of the county.
 2. Planned development (PD) district. The site, plot or tract is all or part of a site plan officially approved by the city planning and zoning commission, in accordance with subdivision II of division 4 or article II and article V of this

chapter pertaining to zoning-related applications, which site plan shows all utility and drainage easements, alleys, streets and other public improvements necessary to meet the normal requirements for platting including the designation of building areas and such easements, alleys, and streets as are required and have been properly dedicated, and the necessary public improvements which have been provided.

3. Unplatted prior to ordinance or annexation. The plot, tract, or lot faces upon a dedicated street and was separately owned prior to the effective date of the ordinance from which this chapter derives or prior to annexation to the city, whichever is applicable.

This is the manner in which City staff have operated for years on multiple permit reviews of lots all over the City because of the age of when these lots were created prior to zoning being established.

Section 118-466. – Off-street parking requirements

The applicant also claims that the City Planner did not enforce the applicable off-street parking requirements to the building plans for 1102 Logansport Street. The applicant has stated that because the property is zoned R-4 Multi Family, and allows for the construction of ‘Multifamily – Apartments’, that the parking requirements for Multifamily – Apartments (Section 118-466) should be applied to the development; which requires one (1) parking spaces per bedroom plus 5% for additional visitor parking. Based on this interpretation, the applicant contends that because the proposed duplex buildings include 18 bedrooms, the property owner should provide 19 paved parking spaces (18 + 1 for visitors) for the new duplexes.

Parking minimums are based on the specific building, improvement, or use of land being constructed. Ex: Clothing stores and restaurants are both permitted land uses in the B-2, General Business zoning district, but each have different minimum parking requirements. The R-4, Multi Family zoning district allows for a mixture of residential uses, including single-family, two-family (duplex), and multiple-family dwellings. In Section 118-466. the Schedule of Off-street Parking Requirements lists the minimum parking requirements for each permitted land use. This section identifies the parking ratio for ‘Two Family Dwellings’ (duplex) as two (2) parking spaces for each dwelling unit (2 units per duplex building = 4 spaces total per building).

FIGURE 3 - SCHEDULE OF OFF-STREET PARKING REQUIREMENTS

<u>Permitted Use</u>	<u>Parking Requirement</u>
<u>Multifamily - Apartments</u>	<u>1 per bedroom + 5% for visitors</u>
<u>Single Family Attached</u>	<u>2 per dwelling unit</u>
<u>Single Family Detached</u>	<u>2 per dwelling unit</u>
<u>Single Family Zero Lot Line</u>	<u>2 per dwelling unit</u>
<u>Two Family Dwelling</u>	<u>2 per dwelling unit</u>

This requirement is not relative to the number of bedrooms, and a duplex is defined as a single family home per the City-adopted residential building code. The building plans show 3 duplexes

(6 dwelling units) which require 12 hard surface parking areas. The property owner is proposing 12 paved parking spaces for the new duplex buildings, plus a few additional overflow spaces on a gravel surface. Again, this is the manner in which City staff has operated for years on multiple permit reviews of lots all over the City.

REVIEW CRITERIA & REQUIRED FINDINGS

As stated previously, this Appeal is an allegation that there was an error in the determination or application of the requirements of the zoning regulations by the City Planner. That is, whether the decision of the City Planner that the building permit for 1102 Logansport Street is compliant with the Zoning Ordinance. This Appeal is not a request for a variance.

Pursuant to ZBA Rules & Procedures 6.03(2), the board will make such interpretation as ought to be made provided the applicant has demonstrated to the satisfaction of the board that one or more of the following conditions exist and that the decision of the board would be in the interest of the community and would carry out the spirit and intent of the zoning regulations.

- a. That there is reasonable doubt or difference of interpretation as to the specific intent of the regulations or map;
- b. That an appeal of use provisions would clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question;
and
- c. That the resulting interpretations will not grant a special privilege to one property inconsistent with other properties or similarly situated.

STAFF RECOMMENDATION:

Staff recommends affirming the Staff interpretation of the ordinance.

NOTICES:

Staff mailed 15 notices to property owners within the 200-foot notification area. At the time of this report Staff has not received any responses.

- ATTACHMENTS:**
1. Appeal Application
 2. Building Plans - 1102 Logansport Street
 3. Aerial Map
 4. Zoning Map
 5. Notification Map
 6. Site Photos
 7. Relevant Sections of Zoning Ordinance
 8. ZBA Rules & Procedures

APPLICATION FOR VARIANCE OR SPECIAL EXCEPTION

PROPERTY INFORMATION:

Address: 1102 Logansport St.

Legal Description: Lot(s) 12 in Block 41 of the _____ Subdivision in City Block _____

Property ID: 23383

OWNER INFORMATION:

Owner Name _____ Daytime Phone _____ Signature _____

Mailing Address _____ City _____ State _____ Zip Code _____

APPLICANT INFORMATION:

Pat Castella 214-676-6433 lvbechaypat@gmail.com Patricia Castella
Applicant Name Daytime Phone Email Address Signature

1009 Logansport St. Nacogdoches TX 75961
Mailing Address City State Zip Code

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

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

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

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;

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

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

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

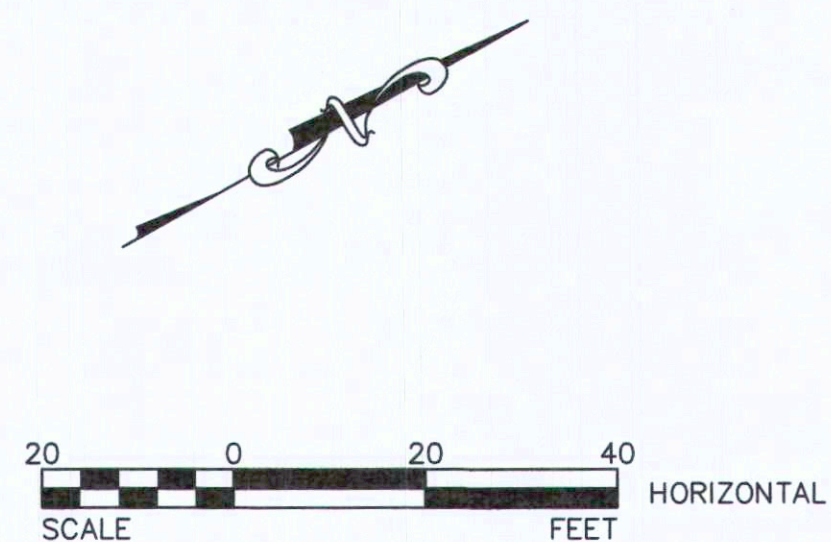
☐ Required Attachments

☐ Application Fee

☐ Copy of current deed

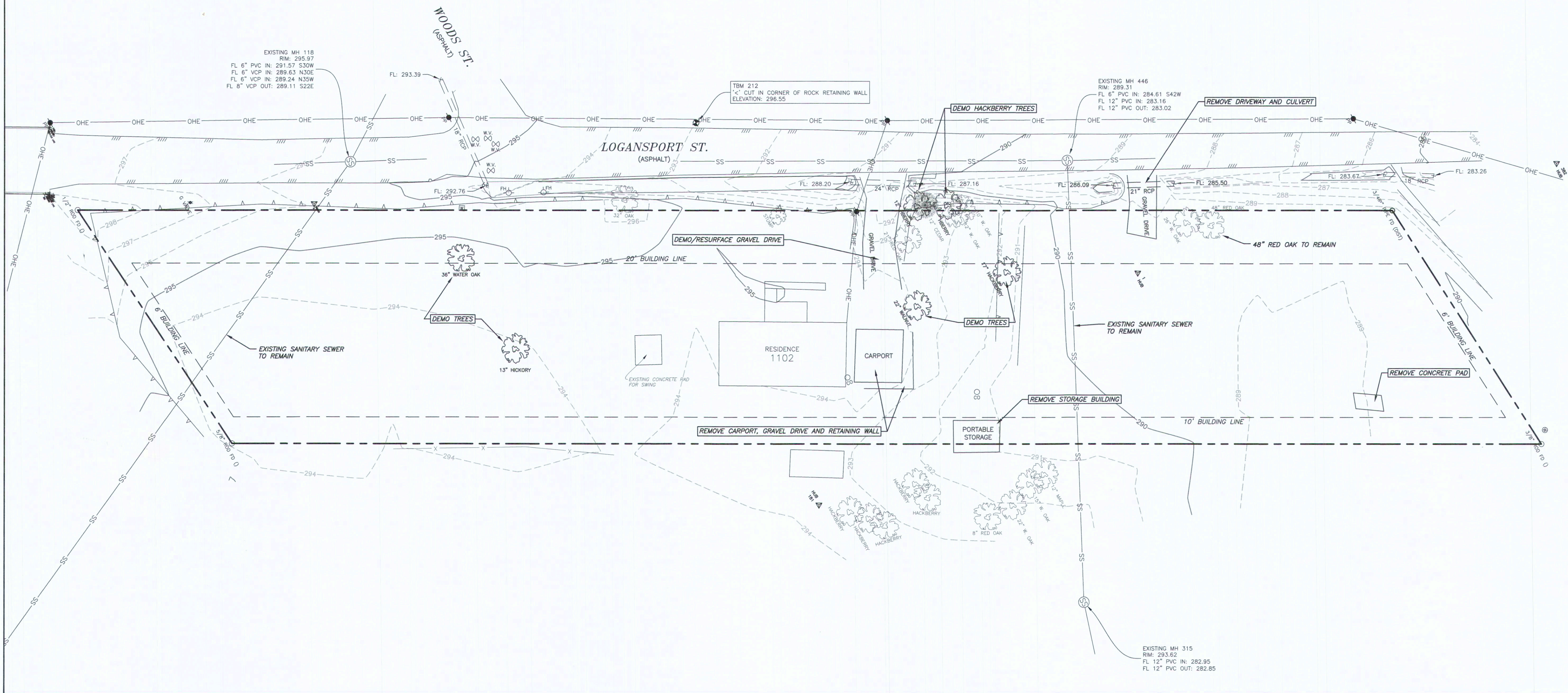
FOR OFFICE USE ONLY

Date Filed: 2/22/23 Case Number: ZBA2023-03 Accepted By: a. chittur Tentative ZBA Date: April 20, 2023



DEMOLITION NOTES:

1. WHEN REMOVING OBJECTS/STUMPS/ROOTBALLS REQUIRING EXCAVATION BACKFILL HOLES WITH SELECT FILL (AS SPECIFIED) COMPACTED IN 8" LIFTS.
 2. DRIVEWAY DEMOLITION SHALL BE COORDINATED WITH OWNER. ALL PAVEMENT REMOVAL NEXT TO PAVEMENTS THAT WILL REMAIN MUST BE SAW-CUT NEATLY.
 3. TEMPORARY SEDIMENT CONTROL FENCING AROUND THE SITE AND THE STORM INLETS, AND CONSTRUCTION EXITS, SHALL BE INSTALLED PRIOR TO DEMOLITION ACTIVITIES AND MAINTAINED THROUGHOUT THE ENTIRE PROJECT.
 4. TREES TO REMAIN THAT ARE WITHIN, OR WITHIN 20' OF, THE DEMOLITION AND CONSTRUCTION AREAS SHALL BE PROTECTED BY INSTALLING ORANGE CONSTRUCTION FENCE AROUND THE ENTIRE TREE OUTSIDE OF THE DRIP LINE OF THE TREE CANOPY. DO NOT PARK OR OPERATE EQUIPMENT UNDER THE CANOPY OF ANY TREE TO REMAIN WITHOUT CONSENT FROM OWNER.
 5. SEQUENCING OF DEMOLITION ACTIVITIES SHALL BE COORDINATED BY G.C. DEMOLITION ACTIVITIES SHALL BE SCHEDULED TO COINCIDE WITH PROPOSED IMPROVEMENTS. DEMOLITION ACTIVITIES MAY REQUIRE MULTIPLE MOBILIZATION EFFORTS THROUGHOUT CONSTRUCTION.
- INDICATES ITEM TO BE DEMOLISHED OR REMOVED



General Notes

1. EXISTING UTILITY LOCATIONS AND/OR MATERIALS SHOWN ON THE PLANS ARE APPROXIMATE. THE CONTRACTOR IS HEREBY NOTIFIED THAT ALL EXISTING UTILITIES, WHETHER BURIED OR OVERHEAD, MAY OR MAY NOT BE SHOWN AND THAT THE CONTRACTOR IS RESPONSIBLE FOR LOCATING AND PROTECTING ALL UTILITIES WITHIN THE PROJECT AREA. THE CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR REPAIRING AND/OR REPLACING ANY AND ALL UTILITIES DAMAGED BY THE CONTRACTOR'S OPERATIONS AND THE COST(S) FOR WHICH SHALL BE BORNE BY THE CONTRACTOR.
2. THE CONTRACTOR IS HEREBY NOTIFIED THAT DANGEROUS UTILITIES MAY EXIST IN THE PROJECT AREA. THESE MAY INCLUDE BUT ARE NOT LIMITED TO: OVERHEAD OR UNDERGROUND ELECTRIC LINES, TELEPHONE LINES, FIBER-OPTIC LINES, AND GAS LINES.
3. THE CONTRACTOR SHALL NOTIFY THE CITY ENGINEERING DEPT. FOR INSPECTION PRIOR TO COVERING UNDERGROUND IMPROVEMENTS, BEFORE POURING BUILDING SLABS, OR MAKING ANY UTILITY TAPS OR CURB CUTS.
4. THIS IS NOT A BOUNDARY SURVEY.
5. THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING EROSION CONTROL (SILT FENCING) ON ALL DOWNHILL SLOPE AREAS OF THIS SITE.

1	ISSUED FOR PERMIT AND CONSTRUCTION	11/09/22
No.	Revision/Issue	Date

**TWO FIFTEEN
CONSULTING**
ENGINEERS + SURVEYORS

412 North St.
Nacogdoches, TX 75961
p: 936-569-0505

TBPE F-17461
TBPLS 10184339

Engineer Seal:

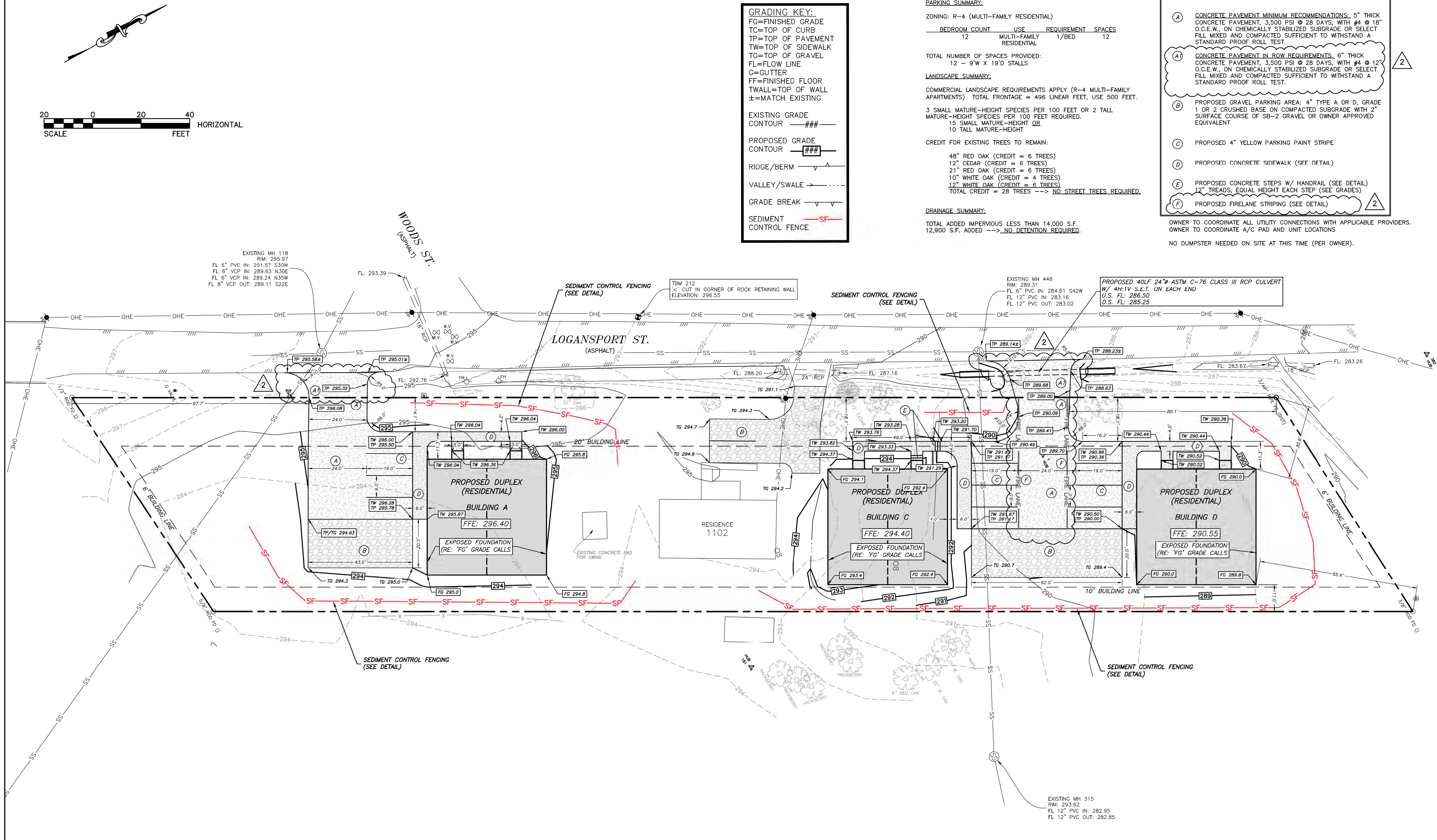


**EXISTING SITE AND DEMO
PLAN
RJ BOHAC
DUPLEX DEVELOPMENT**

**1102 LOGANSPORT ST.
NACOGDOCHES, TEXAS**

Scale: SEE PLAN	Issue Date: 11/09/2022
Drawn By: MPD	Checked By: MPD
File: 22034_110.dwg	Drawing No. C-110

THIS DRAWING AND OTHER RELATED DOCUMENTS, INCLUDING DOCUMENTS ON ELECTRONIC MEDIA, WERE PREPARED BY TWO FIFTEEN CONSULTING AND SHALL REMAIN THE PROPERTY OF TWO FIFTEEN CONSULTING. ALL INFORMATION SHALL BE USED ONLY FOR DESCRIBING, CONSTRUCTING, OR INSTALLING THE WORK SHOWN AT THE SITE OF THE WORK SPECIFIED HEREON. ANY OTHER USE OF THIS DRAWING, INCLUDING WITHOUT LIMITATION, ANY REPRODUCTION OR ALTERATION IS STRICTLY PROHIBITED, AND TWO FIFTEEN CONSULTING SHALL BE INDEMNIFIED FROM LIABILITY ARISING FROM THE CONSTRUCTION, USE, OR RESULT OF SUCH UNAUTHORIZED USE OR CHANGES.



GRADING KEY:
FG=FINISHED GRADE
TC=TOP OF CURB
TP=TOP OF PAVEMENT
TW=TOP OF SIDEWALK
TG=TOP OF GRAVEL
FL=FLOW LINE
G=GUTTER
FF=FINISHED FLOOR
TWALL=TOP OF WALL
±=MATCH EXISTING

EXISTING GRADE
CONTOUR ###
PROPOSED GRADE
CONTOUR ###
RIDGE/BERM
VALLEY/SWALE
GRADE BREAK
SEDIMENT
CONTROL FENCE

PARKING SUMMARY:

ZONING:	R-4 (MULTI-FAMILY RESIDENTIAL)
BEDROOM COUNT	12
USE	MULTI-FAMILY RESIDENTIAL
REQUIREMENT	1/BED
SPACES	12

TOTAL NUMBER OF SPACES PROVIDED:
12 - 9'W X 19'D STALLS

LANDSCAPE SUMMARY:

COMMERCIAL LANDSCAPE REQUIREMENTS APPLY (R-4 MULTI-FAMILY APARTMENTS) TOTAL FRONTAGE = 496 LINEAR FEET, USE 500 FEET.

3 SMALL MATURE-HIGHT SPECIES PER 100 FEET OR 2 TALL MATURE-HIGHT SPECIES PER 100 FEET REQUIRED.
15 SMALL MATURE-HIGHT OR
10 TALL MATURE-HIGHT

CREDIT FOR EXISTING TREES TO REMAIN:

48" RED OAK (CREDIT = 6 TREES)
12" CEDAR (CREDIT = 6 TREES)
21" RED OAK (CREDIT = 6 TREES)
10" WHITE OAK (CREDIT = 4 TREES)
12" WHITE OAK (CREDIT = 6 TREES)
TOTAL CREDIT = 28 TREES --> NO STREET TREES REQUIRED.

DRAINAGE SUMMARY:

TOTAL ADDED IMPERVIOUS LESS THAN 14,000 S.F.
12,900 S.F. ADDED --> NO DETENTION REQUIRED.

CONCRETE PAVEMENT MINIMUM RECOMMENDATIONS: 6" THICK CONCRETE PAVEMENT, 3,500 PSI @ 28 DAYS, WITH #4 @ 18" O.C.E.W., ON CHEMICALLY STABILIZED SUBGRADE OR SELECT FILL MIXED AND COMPACTED SUFFICIENT TO WITHSTAND A STANDARD PROOF ROLL TEST.

CONCRETE PAVEMENT IN ROW REQUIREMENTS: 6" THICK CONCRETE PAVEMENT, 3,500 PSI @ 28 DAYS, WITH #4 @ 12" O.C.E.W., ON CHEMICALLY STABILIZED SUBGRADE OR SELECT FILL MIXED AND COMPACTED SUFFICIENT TO WITHSTAND A STANDARD PROOF ROLL TEST.

PROPOSED GRAVEL PARKING AREA: 4" TYPE A OR D, GRADE 1 OR 2 CRUSHED BASE ON COMPACTED SUBGRADE WITH 2" SURFACE COURSE OF SB-2 GRAVEL OR OWNER APPROVED EQUIVALENT

PROPOSED 4" YELLOW PARKING PAINT STRIPE

PROPOSED CONCRETE SIDEWALK (SEE DETAIL)

PROPOSED CONCRETE STEPS W/ HANDRAIL (SEE DETAIL)
12" TREADS, EQUAL HEIGHT EACH STEP (SEE GRADES)

PROPOSED FIRELANE STRIPING (SEE DETAIL)

OWNER TO COORDINATE ALL UTILITY CONNECTIONS WITH APPLICABLE PROVIDERS.
OWNER TO COORDINATE A/C PAD AND UNIT LOCATIONS

NO DUMPSTER NEEDED ON SITE AT THIS TIME (PER OWNER).

General Notes

- EXISTING UTILITY LOCATIONS AND/OR MATERIALS SHOWN ON THE PLANS ARE APPROXIMATE. THE CONTRACTOR IS HEREBY NOTIFIED THAT ALL EXISTING UTILITIES, WHETHER BURIED OR OVERHEAD, MAY OR MAY NOT BE SHOWN AND THAT THE CONTRACTOR IS RESPONSIBLE FOR LOCATING AND PROTECTING ALL UTILITIES WITHIN THE PROJECT AREA. THE CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR REPAIRING AND/OR REPLACING ANY AND ALL UTILITIES DAMAGED BY THE CONTRACTOR'S OPERATIONS AND THE COST(S) FOR WHICH SHALL BE BORNE BY THE CONTRACTOR.
- THE CONTRACTOR IS HEREBY NOTIFIED THAT DANGEROUS UTILITIES MAY EXIST IN THE PROJECT AREA. THESE MAY INCLUDE BUT ARE NOT LIMITED TO: OVERHEAD OR UNDERGROUND ELECTRIC LINES, TELEPHONE LINES, FIBER-OPTIC LINES, AND GAS LINES.
- THE CONTRACTOR SHALL NOTIFY THE CITY ENGINEERING DEPT. FOR INSPECTION PRIOR TO COVERING UNDERGROUND IMPROVEMENTS, BEFORE POURING BUILDING SLABS, OR MAKING ANY UTILITY TAPS OR CURB CUTS.
- THIS IS NOT A BOUNDARY SURVEY.
- THE CONTRACTOR IS RESPONSIBLE FOR PROVIDING EROSION CONTROL (SILT FENCING) ON ALL DOWNHILL SLOPE AREAS OF THIS SITE.

No.	Revision/Issue	Date
2	REVISED PER CITY REVIEW COMMENTS	2/20/23
1	ISSUED FOR PERMIT AND CONSTRUCTION	11/09/22

TWO FIFTEEN CONSULTING
ENGINEERS + SURVEYORS

412 North St.
Nacogdoches, TX 75961
p: 936-569-0505

TBPE F-17461
TBPLS 10194339

Engineer Seal:



PROPOSED SITE PLAN

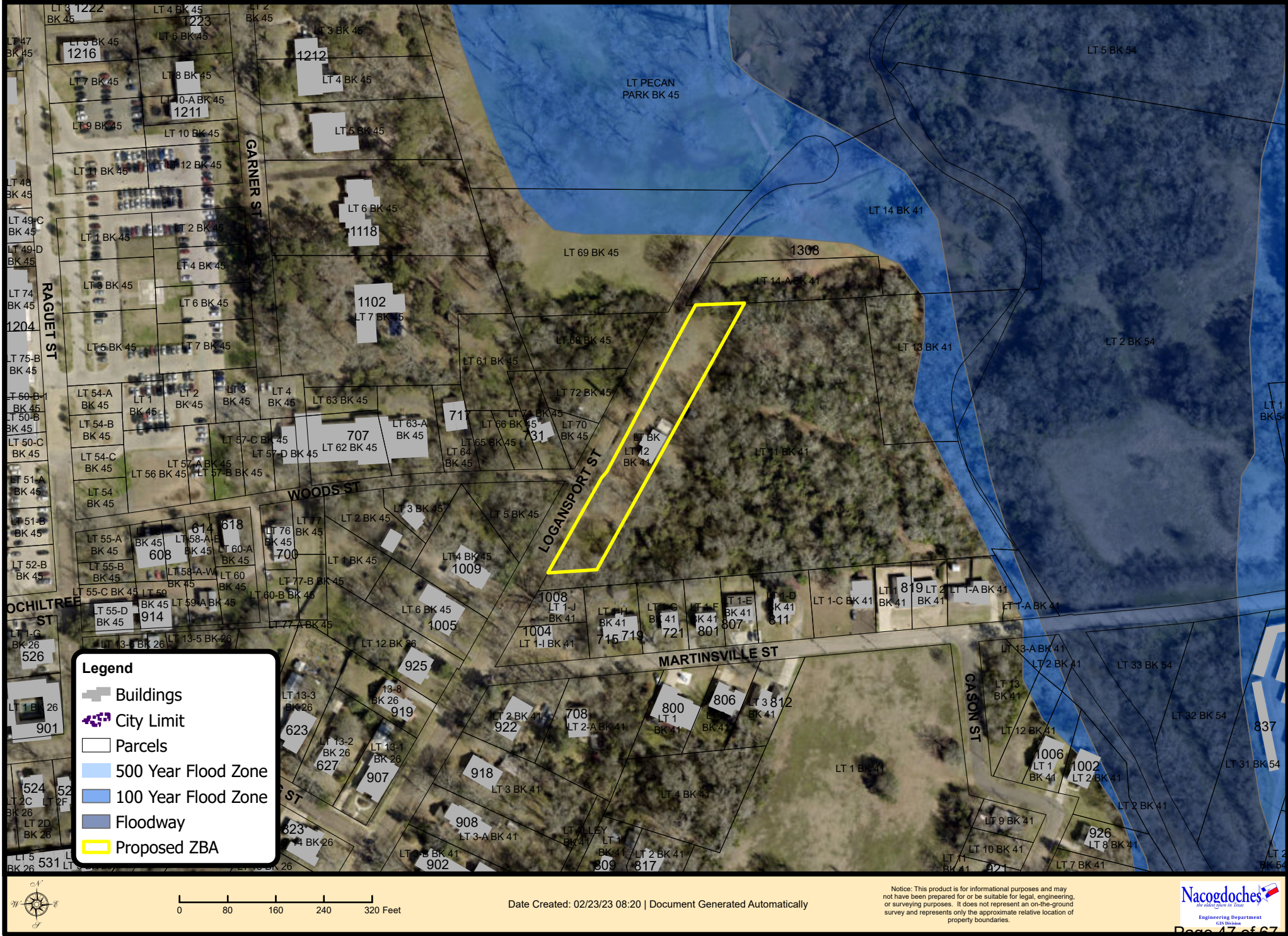
DUPLEX DEVELOPMENT

**1102 LOGANSPORT ST.
NACOGDOCHES, TEXAS**

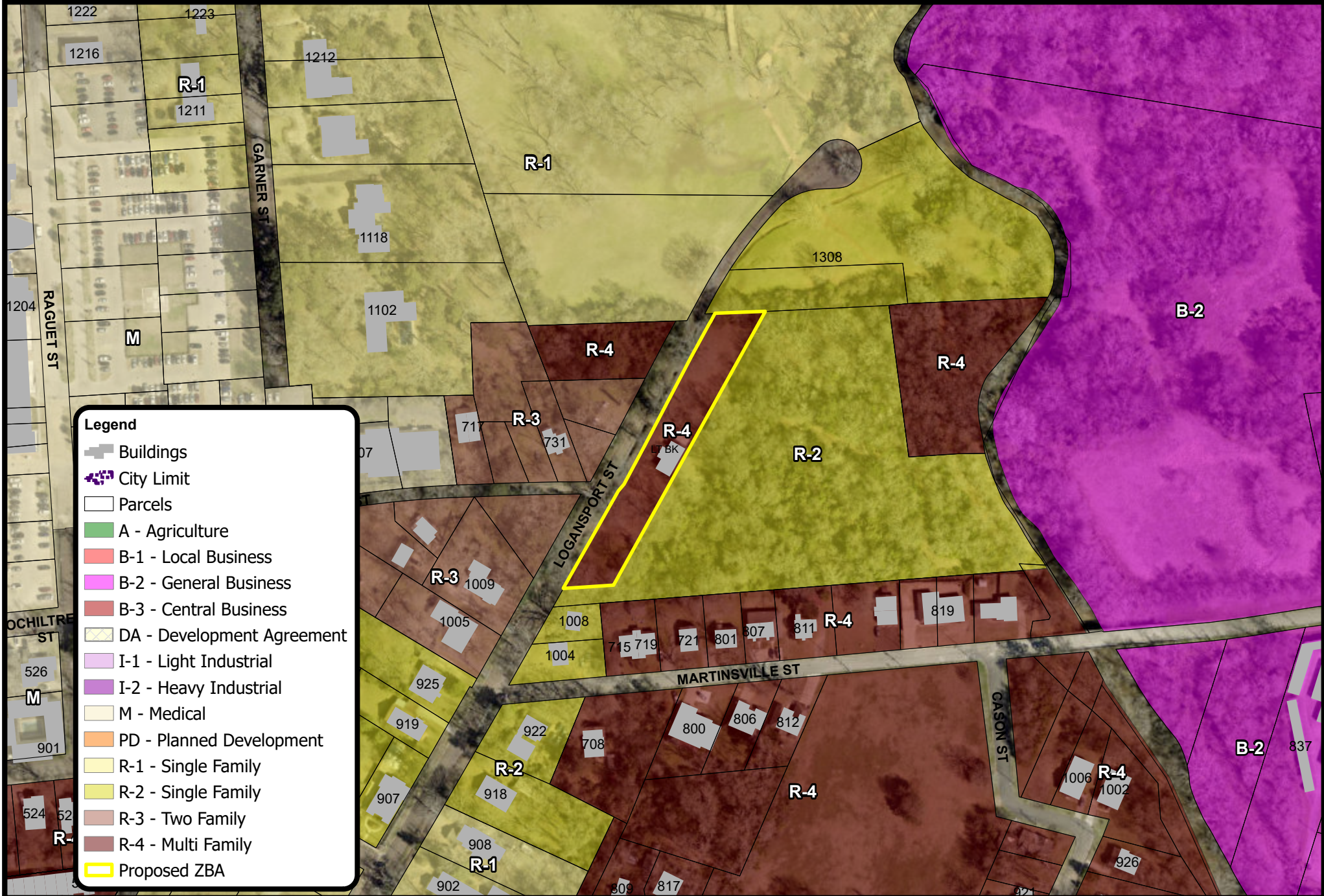
Scale:	SEE PLAN	Issue Date:	11/09/2022
Drawn By:	MPD	Checked By:	MPD
File:	22034_700.dwg	Drawing No.	C-200

THIS DRAWING AND OTHER RELATED DOCUMENTS, INCLUDING DOCUMENTS ON ELECTRONIC MEDIA, WERE PREPARED BY TWO FIFTEEN CONSULTING AND SHALL REMAIN THE PROPERTY OF TWO FIFTEEN CONSULTING. ALL INFORMATION SHALL BE USED ONLY FOR DESCRIBING, CONSTRUCTING, OR INSTALLING THE WORK SHOWN AT THE SITE OF THE WORK SPECIFIED HEREON. ANY OTHER USE OF THIS DRAWING, INCLUDING WITHOUT LIMITATION, ANY REPRODUCTION OR ALTERATION IS STRICTLY PROHIBITED, AND TWO FIFTEEN CONSULTING SHALL BE INDEMNIFIED FROM LIABILITY ARISING FROM THE CONSTRUCTION, USE, OR RESULT OF SUCH UNAUTHORIZED USE OR CHANGES.

Floodway Map ZBA 2023-02



Zoning Map ZBA 2023-02

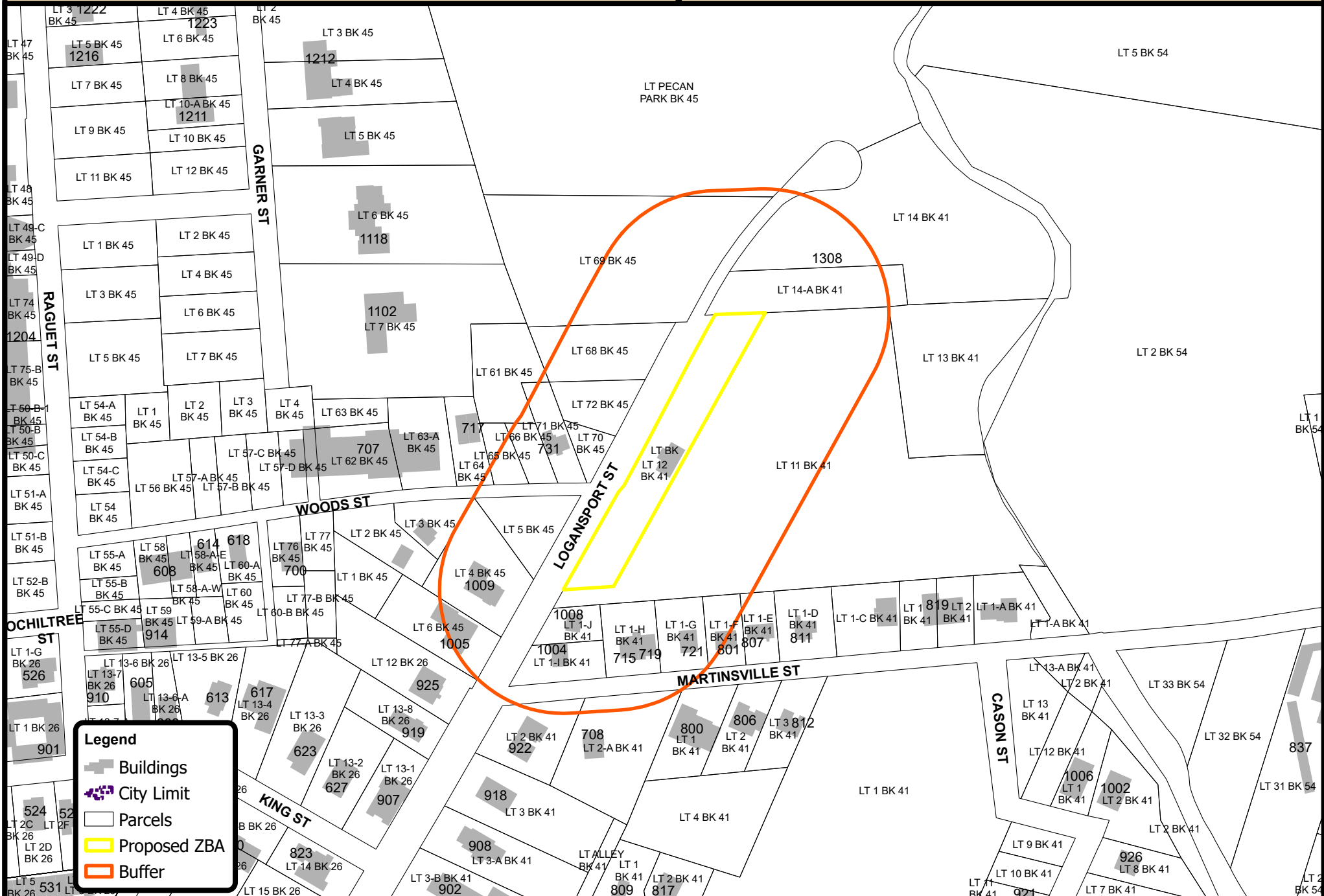


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Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location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

Notification Map ZBA 2023-02



Site Photos: ZBA2023-03

Street view looking north
(subject property located on left)



Street view looking south
(subject property located on left)



RELEVANT SECTIONS OF ZONING ORDINANCE

ARTICLE II. - ADMINISTRATION

DIVISION 3. - BOARD OF ADJUSTMENT

Sec. 118-100. Appeal of decisions made by city officers.

- (a) *Appeal of city planner's decision.* 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 decision of the city planner. Such appeal shall be taken within a reasonable time, not to exceed 90 days, by filing with the city planner and with the board of adjustment a notice of appeal, which shall specify the grounds thereof. The city planner shall forthwith transmit to the board all of the papers constituting the record upon which the action appealed was taken.
- (b) *Appeal stays city planner and building official action.* An appeal from the action of the city planner shall stay all proceedings in furtherance of such action unless the city planner certifies to the board that a stay would, in his opinion, cause imminent peril to life or property. If the city planner shall make and file such certificate, that action shall not be stayed unless by a restraining order which may be granted by the board, or by a court of record, upon application of the party aggrieved by the action of the city planner, and after notice to the city planner.
- (c) *Hearing.* The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and may authorize city staff to do such. The board of adjustment shall decide such appeal within a reasonable time. Upon hearing of such appeal, any interested party may appear in person or by an agent or attorney.
- (d) *Powers.* In exercising the powers set out in this section, the board of adjustment may, in conformity with the provisions of state law, 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 city planner from whose action the appeal is taken.
- (e) *Decision.* Decisions of the board of adjustment shall be as follows:
 - (1) *Required vote.* A reversal by the board of any order, requirement, decision, or determination of the city planner against the applicant, and a finding in favor of the applicant by the board, shall require the concurring vote of four members of the board of adjustment.
 - (2) *Lapse of order.* Any reversal by the board of adjustment shall lapse after the expiration of 90 days where action by the appellant is not taken pursuant thereto within such period. This subsection shall not apply when the applicant has presented to the board of adjustment a development plan which requires a length of time greater than 90 days, in which event the board of adjustment may grant a greater length of time. In no event, however, shall such time granted exceed two years.

DIVISION 5. - NONCONFORMING STRUCTURES AND USES

Sec. 118-201. Applicability.

- (a) *Nonconformity.* If the city or other governmental agency takes an act or action which transforms a previously conforming structure or lot of record in terms of the city's previous ordinance, or the minimum requirements in this division or in division 1 of article VI of this chapter, such structure or lot shall be deemed to be in conformance with this division and article VI of this chapter.
- (b) *Creation of nonconformity.* No lot or structure existing on the effective date of the ordinance from which this chapter derives shall be reduced below the minimum requirements set forth in this chapter, except as otherwise provided.
- (c) *Change in district boundaries.* Whenever a nonconformity is created by changing the boundaries of a zoning district and transferring an area from one district to another district, or when the boundaries of districts are changed as the result of annexation of new territory, or changes in the regulations or restrictions of this chapter, this division shall apply.

Sec. 118-202. Continuing nonconforming use.

The lawful use of any building, structure or land existing on the effective date of the ordinance from which this chapter derives may be continued, even though such use does not conform to the sections of this chapter; provided, however, the right to continue such nonconforming use shall be subject to the following:

- (1) *Nonconforming buildings.* A nonconforming building or structure may be occupied as follows:
 - a. *Repairs and alterations.* Repairs and alterations may be made to a nonconforming building or structure, provided that no structural alterations shall be made except those required by law or ordinance, or those necessary for installing or enclosing required sanitary facilities, such as toilets and bathrooms.
 - b. *Enlargement.* Unless otherwise provided, a nonconforming building or structure shall not be added to or enlarged in any manner unless such additions and enlargements are made to conform to all of the requirements of the district in which such building structure is located.
 - c. *Relocating a nonconforming structure.* A nonconforming building or structure shall not be moved in whole or in part, unless every portion of such building or structure is made to conform to all regulations of the district in which it is to be located.
 - d. *Reconstruction of damaged building.* If a nonconforming building or structure is damaged or destroyed to an extent less than 60 percent of its fair market value by fire, explosion, act of God, or the public enemy, restoration or new construction shall be permitted. If destruction is greater than 60 percent of its fair market value, such building or structure and its use, if repaired or replaced, shall conform to all regulations of the district in which it is located, and it shall be treated as a new building.
 - e. *Unoccupied nonconforming structures.* A nonconforming building or structure lawfully constructed may be occupied by a use for which the building or structure was designed

or intended, if so occupied within a period 180 days after the effective date of the ordinance from which this chapter derives. The use of a nonconforming building or structure lawfully constructed, which becomes unoccupied after the effective date of the ordinance from which this chapter derives, may also be occupied by the use for which the building or structure was designed or intended, if so occupied within a period of 180 days after the building or structure becomes vacant.

- f. *Manufactured home.* A manufactured home on an existing lot lawfully in place at the time of the adoption of this section may remain in use, provided that it does not remain vacant for more than 180 days. Once a manufactured home is removed from a lot, another manufactured home may be placed on the lot, if placed no more than 180 days from the date of the removal of the original manufactured home, provided it meets the applicable requirements of the underlying zoning district.
- (2) *Nonconforming use of building.* The nonconforming use of a building or structure may be continued as follows:
- a. *Changing use of nonconforming structure.* The nonconforming use of a building or structure may be changed to a use of the same or more restrictive classification. Where the nonconforming use of a building or structure is changed to a use of a more restrictive classification, it shall not thereafter be changed to a use of less restrictive classification.
 - b. *Changing or expanding nonconforming use.* A nonconforming use of a conforming building or structure shall not be extended or expanded into any other portion of such conforming building or structure, nor changed except to a conforming use. If such nonconforming use or portion thereof is voluntarily discontinued or changed to a conforming use, any future use of such building, structure or portion thereof shall be in conformity with the regulations of the district in which such building or structure is located.
- (3) *Nonconforming use of lands.* The nonconforming use of land existing at the time of the effective date of the ordinance from which this chapter derives may continue as follows:
- a. *Expansion of nonconforming use of land.* A nonconforming use of land shall not be expanded or extended.
 - b. *Discontinuance of nonconforming use of land.* If a nonconforming use of land, or any portion thereof, is voluntarily discontinued for a period of 180 days, any future use of such land or portion thereof shall be in conformity with the regulations of the district in which such land or portion thereof is located.
- (4) *Single-family residential.* Any legal nonconforming single-family residential structure damaged or destroyed by fire, explosion, act of God, or the public enemy, or is the subject of a city-approved housing rehabilitation or reconstruction program may be reconstructed or repaired, with the following conditions:
- a. A building permit is issued for the reconstruction or repair within 180 days of the occurrence of the damage or destruction.

- b. The repairs or replacement structure shall not increase the extent of the nonconformity or the nature of the nonconforming activity.
- c. The replacement structure shall meet the minimum required building setbacks of the zoning district.

ARTICLE II. - ADMINISTRATION

Sec. 118-273. Land use schedule.

- (a) *Use of land and buildings.* Buildings, structures and land shall be used only in accordance with the uses permitted in the following land use schedule, subject to all other applicable requirements of this chapter. The following symbols are used in the land use schedule:
- (1) The symbol "P" shall mean that the use is permitted as a principal use in that zoning district by right.
 - (2) The symbol "S" shall mean that the principal use is permitted in that zoning district only after first obtaining a specific use permit.
 - (3) The symbol "A" shall mean that this use is specifically permitted as an accessory use to a principal use in the district. This does not exclude other land uses which are generally considered ancillary to the primary use.
 - (4) An asterisk (*) indicates that the use has special standards or requirements listed in this section, which it must meet in order to be allowed.
 - (5) A blank square shall mean that the use is not allowed in that zoning district.
 - (6) Italicized words are defined in article IV of this chapter or under section 118-1 containing definitions.
- (b) *Organization of land use schedule; category grouping.* Uses are grouped into general categories such as "agriculture" and "residential," and then further organized into subcategories. This organization of land uses is for ease of reference only.

LAND USE SCHEDULE											
(*) Signifies Uses with Special Guidelines (<i>Italic</i>) Signifies a Defined Term											
Residential					Permitted Use P=Permitted, A=Accessory Use, S=SUP	Commercial				Industrial	
AG	R-1	R-2	R-3	R-4		B-1	B-2	B-3	MD	I-1	I-2
					AGRICULTURAL USES						
P	P	P	P	P	Farm, Ranch, Garden or Orchard		S			P	P
P	P	P	P	P	Farm or Ranch for live stock and Animal Specialties		S			P	P
P					Feed Store and Tack for live Stock - No Mill		P			P	P
S					Livestock Auction Pens or Sheds						P
S					Poultry Hatchery						P

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S					Stables (Commercial)						P
					RESIDENTIAL USES						
					Household Units						
P	P	P	P	P	Home Occupation	P	P	P	P		
				P	Multifamily - Apartments	S	P	P	P		
			P	P	Single Family Attached						
P	P	P	P	P	Single Family Detached						
			P	P	Single Family Zero Lot Line						
			P	P	Two Family Dwelling						
A	A	A	P	P	Pool House (Detached)*	P	P	P	P		

ARTICLE VI. – DEVELOPMENT STANDARDS

DIVISION 1. - GENERALLY

Sec. 118-423. General requirements.

- (a) *Requirements for a building permit.* No permit for the construction of a building upon any tract or plot shall be issued until a building site, building tract or building lot has been created by compliance with one of the following conditions:
- (1) *Subdivided.* The lot or tract is part of a plat of record, properly approved by the city, and filed in the plat records of the county.
 - (2) *Planned development (PD) district.* The site, plot or tract is all or part of a site plan officially approved by the city planning and zoning commission, in accordance with subdivision II of division 4 or article II and article V of this chapter pertaining to zoning-related applications, which site plan shows all utility and drainage easements, alleys, streets and other public improvements necessary to meet the normal requirements for platting including the designation of building areas and such easements, alleys, and streets as are required and have been properly dedicated, and the necessary public improvements which have been provided.
 - (3) *Unplatted prior to ordinance or annexation.* The plot, tract, or lot faces upon a dedicated street and was separately owned prior to the effective date of the ordinance from which this chapter derives or prior to annexation to the city, whichever is applicable.

DIVISION 1. – OFF-STREET PARKING STANDARDS

Sec. 118-466. Off-street parking requirements.

FIGURE 3 SCHEDULE OF OFF-STREET PARKING REQUIREMENTS

Permitted Use	Parking Requirement
AGRICULTURAL USES	
Farm, Ranch, Garden or Orchard	No Requirement
Farm or Ranch for live stock and Animal Specialties	No Requirement
Feed Store and Tack for live Stock - No Mill	1 for each 1,000 sf
Livestock Auction Pens or Sheds	1 for each 1,000 sf of auction area
Poultry Hatchery	1 for each 300 sf of office space
Stables (Commercial)	1 per each 2 stalls
RESIDENTIAL USES	
Household Units	
Home Occupation	N/A
Multifamily - Apartments	1 for each bedroom + 5% additional for visitors
Single Family Attached	2 for each dwelling unit
Single Family Detached	2 for each dwelling unit
Single Family Zero Lot Line	2 for each dwelling unit
Two Family Dwelling	2 for each dwelling unit
Special Unit Types	
Industrialized Housing*	2 for each dwelling unit
Manufactured Home	2 for each dwelling unit
Mobile Home (House Trailer, Camp)	N/A
Manufactured Home Park	2 for each lot, plot, or stand
Mobile Home Park	N/A
Travel Trailer/RV Park	1 for each lot, plot, or stand
Lodging/Group Quarters	
Bed and Breakfast* - 4 or Less Patrons	1 for each guest room or residence unit
Bed and Breakfast* - 5—8 Patrons	1 for each guest room or residence unit
Boarding or Rooming House	1 for each guest room or residence unit
Accessory Apartment*	1 for each bedroom
Convent or Monastery	1 for each 3 residents, minimum 2
Family Group Home	2 spaces, and 0.3 for each client
Family Home	2 for each dwelling unit
Foster Home	2 for each dwelling unit
Guest House (Detached)	1 for each bedroom

Half-way House - Criminal	1 for each bedroom
Hotel or Motel	1 for each guest room + 5% additional for visitors
Orphanage	1 for each employee on largest shift
Retirement Home	1 for each bedroom
Pool House	N/A

CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES AND PROCEEDURES

I. ZONING BOARD OF ADJUSTMENTS

101. ORGANIZATION

The Board of Adjustment shall consist of those members appointed by the City Commission and shall be organized under the laws of the State of Texas and the ordinances of the City of Nacogdoches.

102. OFFICERS

A chairperson and vice-chairperson shall be elected from among the board's membership at the annual meeting of the board and at such other times as these offices may become vacant. The city's chief executive officer shall designate an employee of the city to serve the board as executive secretary.

103. DUTIES

- (a) The chairperson, or in his/her absence the vice-chairperson, shall preside at all meetings, shall decide all points of order or procedure, and as necessary shall swear in witnesses or compel their attendance.
- (b) The executive secretary shall be custodian of the minutes of other official records, shall attend to the correspondence of the board, and shall cause to be given such notices as are requested in the manner prescribed by law.

104. RULES OF ORDER

Roberts Rules of Order, latest revision, shall be the board's final authority on all questions of procedure and parliamentary law not covered by these rules of procedure.

II. MEETINGS

201. QUORUM

A quorum shall consist of four members.

202. AGENDA

An agenda shall be prepared by the executive secretary for each meeting of the board. The agenda shall include appeals and other matters scheduled for consideration by the board. There shall be attached to the agenda a list of matters pending further action by the board and pending report of disposition by the executive secretary. A copy of the agenda shall be posted in the City Hall as required by law.

203. SPECIAL MEETINGS

Special meetings for any purpose may be held (1) on the call of the chair, or (2) as may be scheduled by a majority of the board.

204. PUBLIC MEETINGS

All meetings shall be held in full compliance with the provisions of state law, the zoning ordinance of the city and these rules of procedure. Any party interested may appear on his own behalf or be represented by counsel or agent.

III. OFFICIAL RECORDS

301. DEFINITION

The official records shall include these rules and regulations, and the minutes of the board together with all findings, decisions, and other official actions. Stenographic notes of the recording secretary and tape recordings of the proceedings and discussions shall not constitute the official record of the board.

302. RECORD OF VOTES

The minutes of the board's proceedings shall show the vote of each member on each decision of the board, or if absent or failing to vote shall indicate that fact.

303. FILES – RETENTION

All appeals and other matters coming before the board shall be filed in the city's records. Original papers of all appeals shall be retained along with other special matter as the executive secretary deems essential for permanent record.

304. PUBLIC RECORD

The official record, appeals accepted for filing, and other matters presented to the board in regular or special meeting shall be on the file in the City Hall and shall be open to public inspection during working hours.

305. THE FILING OF BOARD ACTION

All actions taken by the board shall be filed with the office of the County Clerk.

IV. APPEAL AND PROCEDURES

401. TYPES OF APPEAL

The board shall consider only four types of appeals as are authorized under Texas Local Government Code § 211.

- (a) for interpretation of the meaning or intent of the zoning ordinance,
- (b) for special exception for use or development of property on which the board is required to act, or
- (c) for a variance from the literal enforcement of the zoning ordinance in order to achieve a reasonable development of property.
- (d) hear and decide other matters authorized by ordinance

402. REFUSAL REQUIRED

No appeals shall be taken to the board until and unless the enforcing officer has first refused a permit for plans submitted or has rendered an interpretation of the zoning ordinance.

403. APPLICATION REQUIRED

Every appeal shall be filed on application forms provided by the city, shall be accompanied by the prescribed fee, and shall be complete in all respects before being accepted for filing. The application shall bear the signature of the owner acknowledging taking of the appeal. An incomplete application or a communication purporting to be an application and not made in the form prescribed shall be regarded only as a notice of intent to appeal and shall not be considered or acted upon by the board.

404. GUIDELINES FOR APPLICATION AND DECISION

Every appeal shall be prepared by the applicant and shall be considered by the board according to the guidelines established by the board for the type of appeal under consideration. Where two or more different types of appeals are included in the same application, each set of guidelines shall apply to the consideration of the appeals.

405. FILING DEADLINE

An appeal shall be filed with the board within 10 days after the date of decision of the enforcing officer. Every appeal shall be filed with the executive secretary of the board not later than 15 days prior to the regular meeting date of the board. Appeals filed after the deadline shall be scheduled for the next regular meeting.

406. NOTICE

- (a) Public notice of any appeal affecting a specific property shall be given as prescribed in the zoning ordinance by means of a written notice deposited in the United States mail, postage prepaid, not less than 10 days prior to the date of hearing. The notice shall identify the applicant, the location of the property in question, the nature of the request, and the applicable zoning requirements.
- (b) Public notice of any appeal seeking an interpretation of zoning ordinance regulations which would apply throughout the city, shall be given by means of a legal advertisement appearing in the official newspaper of the city not less than 10 days prior to the date of the hearing. Written notice shall also be given to the applicant and his agent provided in paragraph (a), above. The notices shall identify the applicant, the nature of the question involved, and the affected provisions of the zoning ordinance.

407. SUBMISSION OF EVIDENCE

Evidence supporting the grant or denial of an appeal shall be submitted only through the executive secretary or to the board in public meeting.

408. WITHDRAWAL OF APPEAL

Any appeal may be withdrawn upon written notice to the executive secretary; but no appeal shall be withdrawn after giving of public notice and prior to board action thereon without formal consent of the board.

409. APPEAL AFTER BOARD DENIAL

No appeal that has been denied shall be further considered in a new appeal resulting from the filing of new plans and the obtaining of a new decision from the enforcing officer, unless the new plans materially change the nature of the case.

410. EXPIRATION OF GRANTED APPEAL

Approval of any appeal shall expire 90 days after the board's decision unless authorized construction or occupancy permits have been obtained, or unless a greater time is requested in the application and is authorized by the board. Any approval may be granted one extension of an additional 90 days on written request filed with the board before expiration of the original approval.

V. HEARINGS AND DECISIONS

501. PUBLIC HEARINGS

Hearings on all matters on which a decision of the board is required by law shall be open to the public. The applicant may appear on his own behalf or be represented by counsel or agent.

502. ORDER OF BUSINESS

The chairperson shall call the board to order and the executive secretary shall record the members present and absent. The chairperson shall publicly advise those present of the procedures followed in the hearings and disposition of appeals; he/she shall call each appeal in the order filed and shall announce the name of the applicant, the location of the property involved, and the nature of the request. The executive secretary shall publicly advise the board of any communications received. Supporting evidence for and against each case shall be presented to the board. Each case may be taken under advisement until all have been heard.

503. PROCEDURES FOR HEARING

- (a) The chairperson shall first call upon the applicant to present his case and all evidence supporting his plea. The chairperson shall then inquire of the applicant if there are others who support the appeal.
- (b) The chairperson shall next call on those opposed to the granting of the appeal to present their arguments. The applicant shall then have the right of rebuttal to arguments presented by the opposition. Following the rebuttal the chairperson shall order the hearing closed.
- (c) Each side shall proceed without interruption by the other, and all arguments and pleadings shall be addressed to the board. No questioning or arguments between individuals will be permitted. During the hearing no member shall discuss, debate or argue an issue with the applicant, nor indicate his probable vote on the appeal.

- (d) The board may not continue hearing on any appeal for which the applicant fails to appear unless the applicant has requested that the board act without his being present at the hearing; provided however, the board shall hear those persons appearing in response to the notice of hearing.

504. BOARD'S QUESTIONS

The chairperson may direct any question to the applicant or any persons speaking in order to bring out all relevant facts, circumstances and conditions affecting the appeal, and shall call for questions from other members of the board and from the staff before closing the hearing on each appeal.

505. DECISION

After all appeals have been heard each appeal shall be reviewed and acted upon. During its review the board may call back any applicant for clarification of facts presented by him in the hearing.

506. DISPOSITION OF APPEALS

The board may grant, may grant with modifications, or may deny an appeal. The board may also defer action on any appeal whenever it concludes that additional evidence is needed or that alternate solutions need further study. An appeal may be dismissed when the board finds that the appeal has been improperly filed, or upon notification by the enforcing officer that permits have been issued for a conforming use or development of the property.

507. VOTE REQUIRED

The concurring vote of four members shall be necessary to grant, or to grant conditionally, any matter appealed to the board. When a motion in favor of an applicant fails to receive four affirmative votes, the executive secretary shall record that fact and he/she shall spread on the minutes an entry stating that the board has denied the appeal.

VI. INTERPRETATIONS

601. INTERPRETATION: BASIS FOR FILING

Whenever it is alleged that there is an error in any determination or application of the requirements of the zoning regulations an appeal for the interpretation of the regulations or map designations may be filed with the board.

602. INTERPRETATION: PAPERS REQUIRED

An appeal shall include:

- (a) a statement by the applicant describing the way it is alleged the regulation should be interpreted, together with diagrams and charts illustrating the erroneous and the proper application of the map or text provisions.
- (b) a statement by the enforcing officer giving his reasons for his interpretation of the zoning regulations.

603. INTERPRETATION: BASIS FOR ACTION

- (1) Before acting on an appeal for interpretation the board shall consider:
 - (a) facts and statements filed in the application,
 - (b) testimony presented at the public hearing,
 - (c) the city staff's technical report on the appeal, and
 - (d) the board's independent investigation of the language of the ordinance and of related ordinances bearing thereon.
- (2) The board will make such interpretation as ought to be made provided the applicant has demonstrated to the satisfaction of the board that one or more of the following conditions exist and that the decision of the board would be in the interest of the community and would carry out the spirit and intent of the zoning regulations.
 - (a) that there is reasonable doubt or difference of interpretation as to the specific intent of the regulations or map;
 - (b) that an appeal of use provisions would clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question; and
 - (c) that the resulting interpretations will not grant a special privilege to one property inconsistent with other properties or similarly situated.

VII. SPECIAL EXCEPTIONS

701. SPECIAL EXCEPTION: BASIS FOR FILING

Whenever zoning regulations require specific approval by the board for that development or use of property, an applicant for a special exception shall be approved by the board before the enforcing officer shall issue a permit for the proposed construction or use.

702. SPECIAL EXCEPTION: PAPERS REQUIRED

An application for a special exception shall include:

- (a) A site plan, drawn to scale, showing all lot dimensions, and the location and dimensions of all existing and proposed lot improvements;
- (b) a statement by the enforcing officer citing the reason for referral of the proposal to the board; and
- (c) a statement by the applicant describing the way in which all conditions prescribed by zoning regulations and by these rules will be or have met.

703. SPECIAL EXCEPTION: BASIS FOR ACTION

- (1) Before acting on the application the board shall consider:

- (a) the facts filed with the application,
 - (b) the testimony presented at the public hearing,
 - (c) the city staff's technical report on the application,
 - (d) the board's filings in its field inspection of the property.
- (2) The board will grant the application, subject to such special terms and conditions as it deems necessary to insure compatibility of the proposed use or development with adjacent properties, provided the applicant has demonstrated to the satisfaction of the board:
- (a) that all conditions enumerated in the regulations for the special exception use or development will be complied with;
 - (b) that the proposed use will not be obnoxious, dangerous or unnecessarily hazardous to persons or property at or near such location;
 - (c) that, where the board finds it necessary, provision will be made for the installation and maintenance of the best practical means known for the abatement of obnoxious or offensive fumes, gas, dust, smoke, odor, water carried waste, noise, vibration or similar nuisance; and
 - (d) that the granting of the exception will further the objectives, spirit and intent of the zoning regulations.

VIII. VARIANCES

801. VARIANCES: BASIS FOR FILING

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, an appeal for a variance may be filed with the board of adjustment.

802. VARIANCE: PAPERS REQUIRED

An appeal for variance, shall include:

- (a) a site plan, drawn to scale, showing the location and dimension of the lot and all existing and proposed improvements;
- (b) a 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; and
- (c) a statement by the enforcing officer citing the reasons for refusing to issue a permit under the plans submitted.

803. VARIANCE: BASIS FOR ACTION

- (1) Before acting on an appeal for variance the board shall consider:

- (a) facts filed with the application,
 - (b) testimony presented at the public hearing on the appeal,
 - (c) the city staff's technical report on the appeal, and
 - (d) the board's findings in its field inspection of the property.
- (2) The board shall grant the appeal, subject to such terms and conditions as it may fix, provided the applicant has demonstrated to the satisfaction of the board that the decisions of the board would be in the interest of the community and would carry out the spirit and intent of the zoning regulations.

804. VARIANCE: SPECIAL INFORMATION REQUIRED

- (1) When an appeal is based upon hardship resulting from sharp changes in topography or unusual terrain features, the site plan shall include topographic information related to known base points or surveys, and profiles of the particular problem involved, including relationship to topographic features of adjoining properties.
- (2) When an appeal is submitted for variance of side or rear yard requirements, the applicant shall provide the same information for the properties adjoining the common lot line as may be applicable to the appealed requirements.

IX. CERTIFICATION AND AMENDMENTS

901. CERTIFIED COPY

A certified copy of these rules and regulations and of any amendments thereto will be placed on record in the office of the city secretary within ten days following their date of adoption.

902. REPEALING CLAUSE

All previous adopted rules and regulations of the board shall be and the same are hereby expressly repealed.

903. AMENDMENT PROCEDURE

Amendments to these rules and regulations may be made by the board at any meeting, upon the affirmative vote of four members, provided any such amendment is proposed at a preceding meeting and spread on the minutes of such meeting. By unanimously consent of five members present amendments may be adopted at the meeting at which introduced, but shall not become effective until the next regular meeting.

Adopted this _____ day of _____ 2006.

Paul Smith, Chairperson

ATTEST:

Renee Young, Board Secretary

Filed in the office of the City Secretary this _____day of _____2006.

Lila Fuller, City Secretary
City of Nacogdoches, Texas