



August 15, 2024

ZONING BOARD OF ADJUSTMENT

Notice is hereby given of a Regular Meeting of the Zoning Board of Adjustments to be held at 4:00 p.m., via videoconference, for the purpose of considering the following agenda items. All agenda items are subject to action.

Some Board Members may attend via videoconference but a quorum of the Board and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at <https://www.nactx.us/21>. There will be an opportunity for the public to comment on agenda items in person in Council Chambers.

**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 July 18, 2024, Zoning Board of Adjustment meeting.

4. **REGULAR AGENDA**

A. **Public Hearing:** Consider a request for an appeal of the City Planner's decision as it applies to the approval of a building permit and site plan for the construction of a duplex on Lot 2 of the Johnson's Martinsville Street Subdivision, as described in a plat filed April 10, 2023, recorded in Clerk's Document Number 2023-2530 of the Real Property Records of Nacogdoches County, Texas. The property is located on the south side of Martinsville Street approximately 220 feet from the intersection of Logansport Street and Martinsville Street. This request has been submitted by Phillip Blackburn. Case File ZBA2024-05.

5. ADJOURN.

Aimee Cloutier

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



Aimee Cloutier, Planning Coordinator

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.

This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact the Attorney General of Texas at 1-800-252-8011; the City Secretary at (936) 559-2506 or visit the City of Nacogdoches web site at www.nactx.us.

CERTIFICATION

I certify the notice of the meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on August 9, 2024, by 5:00 p.m. and remained posted until the meeting convened.

Aimee Cloutier, Planning Coordinator

**MINUTES TO THE
ZONING BOARD OF ADJUSTMENT
July 18, 2024, 4:00 p.m. Hybrid Meeting**

All Present: Mary Ann Bentley; Larry King; David Shofner; Rhonda Ward; Margaret Forbes; Charles “Ed” Pool; Sally Ann Swearingen (alternate)

Members Absent: Rhonda Ward; Jacqueline Pierre; John Sloane;

Staff Present: Planning Coordinator, Aimee Cloutier; Planning Consultant, Nathan Dietrich (virtual); City Attorney, Jerry Baker; Building Official, Don Shoemaker; Assistant City Engineer, Jason Vickery;

Guests: Richard Massey; Sammie Smith; Dan LaClair; Tom Belanger;

Call to Order: Acting Chairwoman Mary Ann Bentley called the meeting to order at 4:00 p.m.

Pledge of Allegiance: Acting Chairwoman Bentley led the pledge of allegiance.

Administer Statement of Officer and Oath of Office for newly appointed Zoning Board of Adjustment Members.

Planning Coordinator, Aimee Cloutier administered the Statement of Officer and Oath of Office to Board Members Margaret Forbes and Sally Ann Swearingen.

Appoint Chair and Vice Chair

Acting Chair Bentley explained to the Board that the chair would be appointed only as the vice chair is not in the rules and procedures.

Board Member King moved to nominate Rhonda Ward as Chair of the Zoning Board of Adjustment with Board Member Forbes seconding. The nomination was approved unanimously (5-0).

Consent Agenda: Approval of the Minutes: June 20, 2024, Regular Meeting.

Acting Chairwoman Bentley called for a motion to approve the minutes as written. Board Member King moved to approve the minutes as written with Board Member Pool seconding. The minutes were approved as presented with a 4-0-1 vote as follows:

Mary Ann Bentley- For
Larry King- For
David Shofner- For
Charles “Ed” Pool- For
Margaret Forbes- Abstain

Regular Agenda:

6. A Public Hearing: Consider a request for a variance to the Zoning Ordinance Section 118-427. (a), for a reduction in the minimum lot depth requirements in an R-2, Single-Family District for a proposed subdivision of Lot 12, City Block 41, located at 1102 Logansport Street. This request has been submitted by the owner, Rudy Bohac. Case File Number ZBA2024-04.

Planning Consultant, Nathan Dietrich addressed the Board by giving a timeline of events that led to the requested variance. PC Dietrich stated the request was for a lot depth variance for a proposed subdivision with the purpose being to construct two additional houses on each of their lots. PC Dietrich stated the variance would be for three lots with lot depth deficiencies of 12’ and 100’ being the requirement and the requested depth being 88’.

Acting Chairwoman Bentley opened the Public Hearing.

No one spoke under Public Comment and Acting Chairwoman Bentley closed the Public Hearing.

Vice Chairwoman closed the Public Hearing at 4:51 p.m.

Board Member King moved to approve the lot dimensional variances for the proposed subdivision with Board Member Shofner seconding.

Vice Chairwoman Bentley called for a final vote. The variance was approved unanimously (5-0) with the following votes:

Acting Chairwoman M. Bentley- In Favor
Board Member L. King- In Favor
Board Member- D. Shofner - In Favor
Board Member C. Pool- In Favor
Board Member M. Forbes- In Favor

6. B Discuss and determine whether to hear a proposed agenda item regarding lot width, previously addressed by the board under the zoning ordinance but now wanting to be heard based on an appeal from the subdivision ordinance for 720 Martinsville Road."

Board Member King moved to approve to hear the appeal at the next scheduled meeting with Margaret Forbes seconding.

Acting Chairwoman Bentley called for a final vote. The motion to hear the appeal at the next scheduled hearing was approved (4-1) with the following votes:

Acting Chairwoman M. Bentley- For
Board Member L. King- For
Board Member- D. Shofner - For
Board Member C. Pool- Against
Board Member M. Forbes- For

Adjourn: Acting Chairwoman Bentley adjourned the meeting at 4:32 p.m.

Vice Chairwoman, Mary Ann Bentley

Attest: Aimee Cloutier, Planning Coordinator

PRESENTER: Nathan Dietrich, Planning Consultant

ITEM/SUBJECT: Public Hearing: Consider a request for an appeal of the City Planner's decision as it applies to the approval of a building permit and site plan for the construction of a duplex on Lot 2 of the Johnson's Martinsville Street Subdivision, as described in a plat filed April 10, 2023, recorded in Clerk's Document Number 2023-2530 of the Real Property Records of Nacogdoches County, Texas. The property is located on the south side of Martinsville Street approximately 220 feet from the intersection of Logansport Street and Martinsville Street. This request has been submitted by Phillip Blackburn. Case File ZBA2024-05.

TYPE OF REQUEST: *Appeal to the city planner's decision.* This appeal states that there was an error in the determination or application of the requirements by the City Planner when reviewing the building permit. Chapter 118-100 gives **anyone aggrieved** the opportunity to appeal the **City Planner and/or the Chief Building Official's decision during any of their review processes. However, Chapter 118 is a zoning-related chapter, and the Board of Adjustment only hears zoning-related appeals.** As a reminder, the City Planner can have multiple review steps in the development process, starting with the land subdivision, land use, and then building construction. However, these processes could be months, maybe even years apart in the development process. This fact is important when discussing reasonable time frames for these appeals. This appeal is not a request for a variance.

The applicant claims the City Planner incorrectly applied Section 90-217(b). – Side lot lines, and 90-218 – Minimum lot sizes of the Nacogdoches Subdivision Ordinance, related to a building permit submitted for the construction of a duplex at 720 Martinsville Street. When an appeal is submitted, staff is instructed by ordinance to suspend construction and any further inspections of the development of the duplex by the City Building Official, until such time that a public hearing can be scheduled and the Appeal to be presented to the Board of Adjustment.

BACKGROUND INFORMATION:

On April 5, 2023, City Staff reviewed and approved the Johnson's Martinsville Street Subdivision Plat, and it was recorded at the County Clerk's office on April 10, 2023. On July 13, 2023, City Staff received an application to appeal of the decision of the City Planner from Philip Blackburn. This 1st appeal claimed that the City Staff incorrectly interpreted Section 118-427(a) of the zoning code in the approval of the above-mentioned plat claiming the lot did not meet the minimum lot width requirements. On July 27, 2023, the City Planner responded to the applicant stating the application was in excess of the 90-day time frame (93 days) to file an Appeal as outlined in Section 118-100(a) of the Nacogdoches Code of Ordinances. On April 1, 2024, City Staff approved the building and site plans for a duplex to be constructed on Lot 2 of Johnson's Martinsville Street Subdivision, located at 720 Martinsville Road.

City staff received an application for an 'Appeal of the decision of the City Planner' from Philip Blackburn on May 7, 2024. This 2nd Appeal regarding the same lot states there was an error in the determination or application of the requirements of the zoning regulations by the City

Planner during the permitting process. This Appeal claimed that the City Planner incorrectly applied Section 118-427(a) – District development chart of the Nacogdoches Zoning Ordinance to this building permit, claiming that the lot was approved in error and requires a variance for the parcel's lot width. The appeal was heard by this Board on June 20, 2024, and was denied. The votes were 2 to allow the appeal and 3 not to grant the appeal. The appeal failed due to a lack of a super majority approval, meaning 4 of the 5 members needed approval to continue with the appeal (Attachment 13).

On June 27, 2024, City staff received a 3rd appeal to this same property for 'Appeal of the decision of the City Planner' from Philip Blackburn (Attachment 12). This appeal claims that the City Planner now incorrectly applied Section 90-217(b) – Side lot lines of the City's Subdivision Ordinance, to the above-mentioned building permit, claiming that the Lot was again approved in error and requires a variance to this different chapter of the code, the Subdivision ordinance, stating that side lot lines are not perpendicular to the road and that lot size called out in Section 90-218 was also not being observed.

Staff responded to this 3rd appeal denying the request for the Board (Attachment) to hear the appeal request. Staff explained that any subdivision appeal is not timely (ref the letter) and we were not going to bring this appeal before the Board. The applicant, expressing discontent with a response letter back to City Staff, contacted the Board Chair and other members requesting the item be heard. The item was then placed as a discussion item at the last ZBA meeting, and it was decided this appeal should be heard approving the item.

ADJACENT LAND USE & ZONING

The subject property is zoned R-4, Multi-Family, and is undeveloped. The property is surrounded by R-4, Multi-Family. All the surrounding properties are single-family and duplex construction, but all are residential uses.

Physical Characteristics

The lot at 720 Martinsville Street is a pie-shaped lot with the back of the lot coming to a point. The depth of the western property line is 211.35 feet and the eastern property line is 236.53 feet. The front property line measures 85.89 feet and 77.4 at the front 20-foot building line.

R-4 Standards	Minimum Required	720 Martinsville St.
Lot Width (frontage)	50 ft.	85.89 ft.
Lot Width (Building Line)	50 ft	77.4 ft
Lot Depth	100 ft.	223 ft. avg.
Lot Area	5,000 sq. ft.	8,924 sq. ft.
Building Line	20 ft	20 ft

REVIEW CRITERIA & REQUIRED FINDINGS (STAFF COMMENTS UNDERLINED):

The Zoning Board of Adjustment Policies and Procedures states that staff needs to respond as to why the City Planner interpreted or approved the area of the ordinance that is being appealed.

Requested Appeal 1 –

Section 90-217(b). – Side lot lines

Referring to Section 90-217(b), it states that “Side lot lines shall be perpendicular or radial to street and the following may be in lieu of bearings: All side lot lines are either perpendicular or radial to street frontage unless otherwise noted.”:

The applicant claims that the side lot lines are not perpendicular or radial to the street frontage as stated in Section 90-217(b). Therefore, the lot is not valid and requires a variance from the Planning and Zoning Commission before a building permit can be issued for the construction of the duplex. As a reminder, a duplex is a land use allowed by right (without discussion or condition) on this lot in an R4 zoning district.

There are three side lot lines on this plat, two of which are original with the purchasing of the property. When the previous owner decided to subdivide the property into two lots, one line was drawn on the plat. This line would also be viewed as a side lot line and by ordinance should be drawn perpendicular to the street. This side lot line was the only line City Staff had oversight over and was drawn to subdivide the parent/original tract. Per Exhibit B, this line was drawn as close to perpendicular as possible. Again, the existing side lot lines on the west and east sides of the property, staff did not create or make flagrant mistakes. This scenario is the same as the Logansport plat where the interior side lot lines that were created by the plat needed to be perpendicular but the outer existing lot lines could not be changed since those lines are the property lines and were a part of the original lot.

Requested Appeal 2 –

Referring to Section 90-218 – Minimum lot sizes:

The applicant contests that Chapter 90 prevails over the Zoning ordinance requiring that the lot width for the property would be a minimum of 75’ in width. When there is a conflict in ordinances, usually the more stringent of the requirements would be enforced. However, when the zoning ordinance was adopted, Chapter 118-3 was added to ensure there is no misunderstanding of which chapter would prevail. To make a long story short, any subdivision/zoning conflict inside the city limits, Chapter 118 will prevail. Anything in the Extra Territorial Jurisdiction (ETJ) the subdivision ordinance prevails as well as all other County regulations.

The remainder of the letter discussed matters not applicable to the sections of the code being appealed. A reminder that there was the option to appeal the Board's decision on June 20th to the District Court. However, our understanding is that this appeal did not occur.

STAFF RECOMMENDATION:

Staff recommends not approving the appeal for the following reasons:

The only lot line drawn on the plat met the standard set in Chapter 90-217 (a) (Attachment 7).

This line was drawn to separate the parent tract into two lots. Also, remember the “why” these standards are placed in the ordinance. The main reasons are to create uniform and orderly development and to ensure that there is frontage onto public roads and access to utilities.

Additionally, to meet any property development standard as it did per the plot plan shown during the permit review (Attachment 8)

1. Lot Width is described in Chapter 90-218 (a) for lots in the ETJ and is superseded by the Zoning Ordinance. This appeal is not interpreted correctly. Sec 118-3 Effective date and applicability, designates that when the zoning code is adopted zoning requirements prevail over other developmental directions as stated in the Subdivision ordinance. This means Chapter 118-427 Property Development Standards would prevail. Staff followed

the procedure in Zoning Code 118-423 and approved the permit since there was a recorded plat on record and did not flagrantly ignore the City Ordinance.

2. The proposed structure being requested for construction meets all the setbacks, height limits, off-street parking, and all other property development standards required and also allows for a normal conventional development to be built on the property without any need for variance or exception (refer to plot plan) even though the property was not exactly like all other properties. This could be a common occurrence since property is continually subdivided by metes and bounds and property existed in its current configuration prior to subdivision rules.
3. Lastly, the **Zoning Board of Adjustment does not have the authority or jurisdiction to make decisions on items relating to the Subdivision Ordinance** (Chapter 90). BOA jurisdiction is limited to Chapter 118, Zoning, of the City Ordinance. It would not be appropriate for this Board to adjudicate on this matter.

Many areas of our ordinance need to be reviewed and amended. One of these areas is the appeals process for zoning and subdivision. What has become abundantly clear is that there are errors and missteps inside our current ordinances dictating this convoluted and frustrating process for not only the appeal requester but the landowner who followed all development process steps with appropriate approvals but now is delayed months by a process that was reviewed, approved and recorded more than a year ago and for something that this board does not have jurisdiction over.

Each of these Chapters should have clearly defined appeals processes and state **who** can appeal, **what** can be appealed, and **when** items can be appealed. Staff has already reached out to the Texas Municipal League for help and guidance and looked at the T.L.G.C. and how it has structured its appeal procedures. Staff have been discussing the “Why” and reasonable means and methods for appeals and making sure that the process gives a voice to all involved and their involvement makes sense while following applicable law. We have drafted language to make these necessary changes and look forward to having these presented to the public, P&Z, and City Council for consideration.

Outside this meeting, staff would like to offer options for discussion and collaboration with the applicant and others who have suggestions or concerns about how the current process works or if they are aware of deficiencies in our ordinance that may not be clear and that could be amended to improve the process. We all want to ensure the ordinances are followed and that there is consistency and clarity in the approvals and outcomes from this department. Staff wants the best for the City and works hard every day to make sure we protect the character and history that makes this City great.

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 in favor or in opposition of the request.

- ATTACHMENTS:**
1. Application & Statement of Facts
 2. Aerial Map
 3. Zoning Map
 4. Notification Map
 5. Location Map
 6. Johnson's Martinsville Street Subdivision
 7. Angles of Lot

8. Building Permit
9. Site Plan
10. Site Photos
11. Written Response to 1st Appeal from S. Bartlett
12. Resolution from ZBA denying 2nd Appeal
13. Written Response from Staff to 3rd appeal
14. Email from Board Member King
15. ZBA Rules & Procedures_Adopted 02.2024

APPLICATION FOR INTERPRETATION, VARIANCE, OR SPECIAL EXCEPTION

PROPERTY INFORMATION:

Physical Address: 720 Martinsville Road (Parcel ID 1000016799)
Lot 2 Johnson's Martinsville Street Subdivision
Legal Description: Lot(s) _____ in Block _____ of the _____ Subdivision in City Block _____

OWNER INFORMATION:

Owner(s) Name: Shane Adam Myatt Daytime Phone: _____
Mailing Address: PO Box 632595, Nacogdoches, TX , 75963-2595
Street or PO BOX City State Zip
Email Address: _____ Signature(s): _____

APPLICANT INFORMATION:

Applicant Name: Philip Blackburn Daytime Phone: 936-645-7743 Email: pblackburn@suddenlink.net
Mailing Address: 819 Logansport St. Nacogdoches, TX 75961
Street or PO BOX City State Zip
Signature: Philip Blackburn Date 6-27-26

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 the use or development of the 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 Section 4.4)

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

- ☒ a statement/letter by the applicant describing staff's interpretation of the meaning or intent of the code, and then the way you as the applicant believe the regulation should be interpreted.
☒ Site plan or other graphics, and illustrations explaining the applicant's interpretation (diagrams and charts illustrating the applicant's interpretation of the map or text provisions).

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

- ☐ A letter/statement of facts by the applicant as to why the special exception is being requested. This will be a summary of the request including the current requirement (Section of the Ordinance) and the context (reasoning) for the request. The request will include the required findings from the ordinance shown in the next page. **Each question shall be answered in sentence form or the application will be viewed as incomplete.**
☐ A site plan or other graphics and illustrations, drawn to scale (is preferred but not required), showing all lot dimensions, and the location and dimensions of all existing and proposed exceptions that are being requested.

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 letter/ statement of facts by the applicant as to why the variance is being requested. This will be a summary of the request including the current requirement (Section of the Ordinance) and the context (reasoning) for the request. The request will include the required findings from the ordinance shown in the next page. **Each question shall be answered in sentence form or the application will be viewed as incomplete.**
☐ a site plan or other graphics and illustrations, drawn to scale (is preferred but not required), showing all lot dimensions, and the location and dimensions of all existing and proposed lot improvements.

City of Nacogdoches Planning Department
202 E. Pilar St. Room 239 – P.O. Box 635030, Nacogdoches, TX 75963
Office: (936)559-2574 Email: pz@nactx.us

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

The Zoning 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 variances 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, and 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 ***not needed for a special exception**;

NOTE: This application **WILL NOT** be processed **UNLESS** it is filled out in its entirety and accompanied by the 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: 6/27/2024

Accepted By: Juan Pollette

Case Number: ZBA2024-04

Tentative ZBA Hearing Date: 8/15/2024

City of Nacogdoches Planning Department
202 E. Pilar St. Room 239 – P.O. Box 635030, Nacogdoches, TX 75963
Office: (936)559-2574 Email: pz@nactx.us

This is my notice of appeal from certain decisions of the City Planner regarding 720 Martinsville Road. The lot has insufficient width; moreover, the side lot lines are not perpendicular or radial to the street. A site plan and building permit was approved for the lot without the required variance from the Planning and Zoning Commission.

The lot is located in a subdivision, being Lot 2 of the Johnson's Martinsville Street Subdivision. Pursuant to Sec. 90-218(a): *No lot in a subdivision shall be less than 75 feet in width or less than 110 feet in depth, unless otherwise provided.*

The recent hearing before the Zoning Board of Adjustment on June 20th adjudicated the wrong ordinance. Furthermore, City Staff presented inapplicable evidence as to the required lot dimensions. The lot dimensions pursuant to Sec. 90-218 override the requirements of the R-4 Zoning District pursuant to Sec. 118-427(a).

The same term can have different definitions in the various chapters. A term defined in a given chapter defines the term for that chapter and has no implied application to a different chapter. Sec. 118-1(c): *Words and terms defined. The definitions in this subsection supplement, restrict, and define the meaning and intent of the use regulations as set forth in this chapter. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.*

Sec. 118-1 defines the term "lot width" as: *Lot width means the width of a lot at the required front yard line or at the building line if such is established at a greater distance from the street than the required front yard line.* Sec. 90-1 does not define the term "lot width." Further research has revealed that the definition of "lot width" in Sec. 118-1 was added to accommodate cul-de-sac lots. Since cul-de-sac lots are accommodated with Sec. 90-218(b), it was unnecessary to add that definition to Sec. 90-1. The definition of "lot width" in Sec. 118-1 only applies to Chapter 118 and does not apply to Chapter 90. Also, the "lot width" definition in Sec. 118-1 is a unique definition and is not the customary usage of the term in municipal planning and engineering practices. Therefore, pursuant to Sec. 90-218(a), the 75' lot width is required for the whole lot, not just at one point on the lot.

The City Planner reported the lot width to be 52' at the 100' depth mark. The lot width is less than 52' at 110', since the lot narrows to the rear of the lot. Since the minimum lot width is 75', the lot does not comply with the subdivision standard.

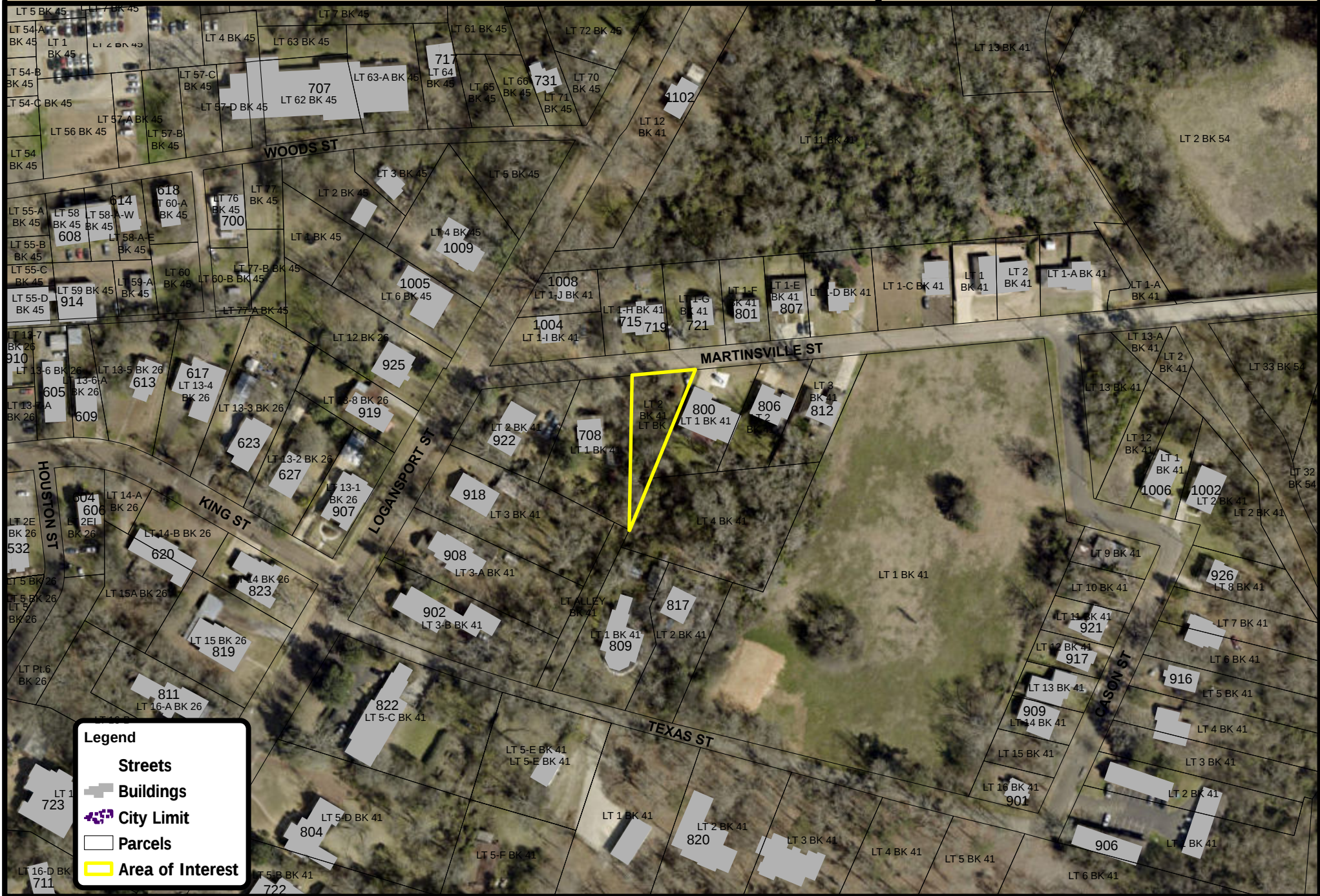
Pursuant to Sec. 90-217(b): *Side lot lines shall be perpendicular or radial to street frontage and the following may be in lieu of bearings: All side lot lines are either perpendicular or radial to street frontage unless otherwise noted.* Instead of being perpendicular or radial to street frontage, the side lot lines converge to a point at the rear of the lot. The side lot lines are not in compliance with Sec. 90-217(b); furthermore, that has nothing to do with anyone's definition of lot width.

These are flagrant violations of Chapter 90. Not only did the City Planner and City Engineer use a "lot width" definition from Chapter 118 that is not applicable to Chapter 90 but also turned it on its head. Cul-de-sac lots are narrow at the street and widen towards the rear of the lot. This lot is wide at the street and narrows to a point at the rear of the lot, the exact opposite of cul-de-sac lots.

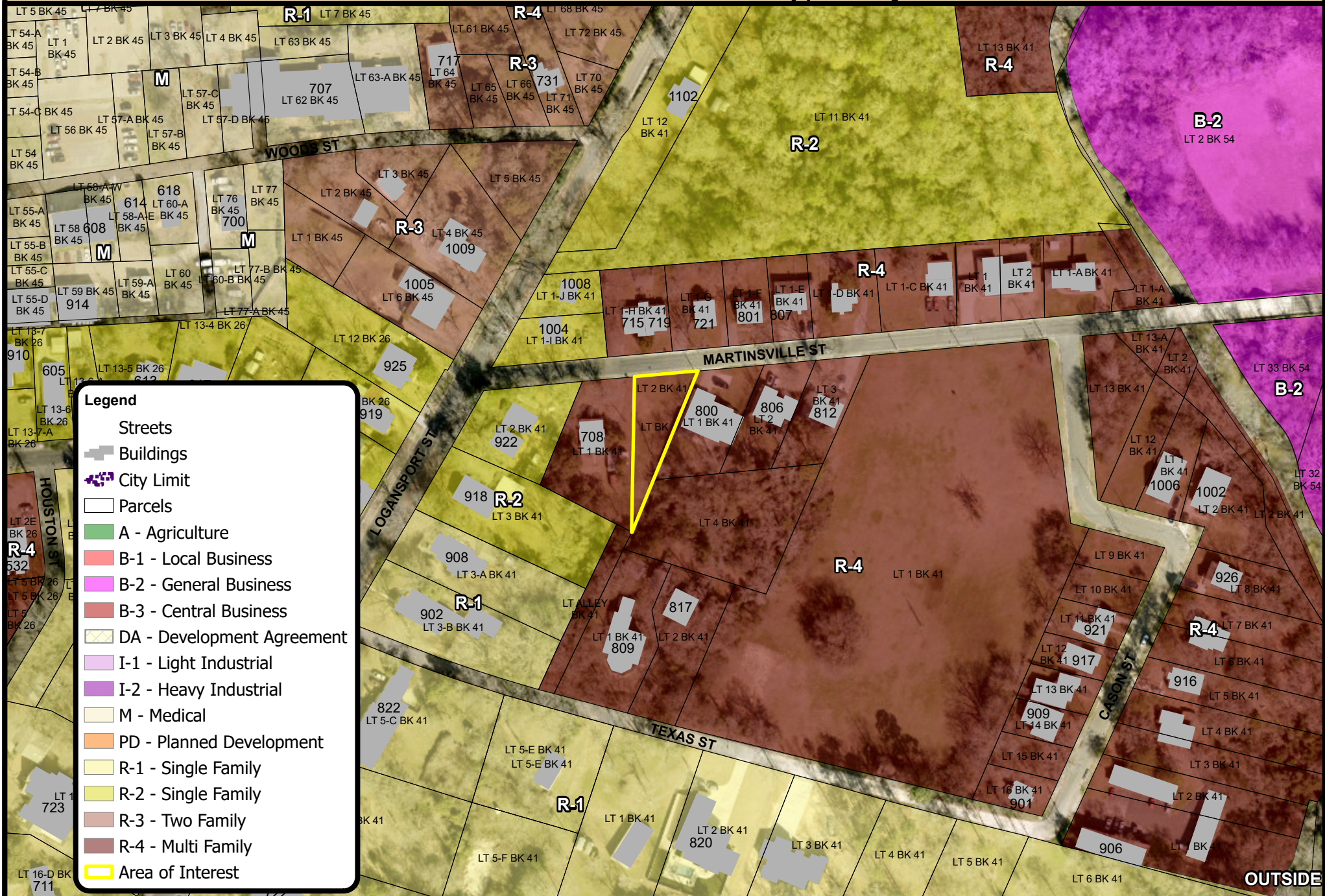
Please notify the City Planner's Office that this notice of appeal stays all proceedings in regards to 720 Martinsville Road until this appeal is resolved by the Zoning Board of Adjustment.

Also, pursuant to Sec. 90-64 please alert the City Council to begin the process of passing a resolution that will be filed with the deed records of this lot so that no building permits will be granted for this lot, until it is brought into compliance.

ZBA2024-05 Aerial Map



ZON2024-05 Zoning Map

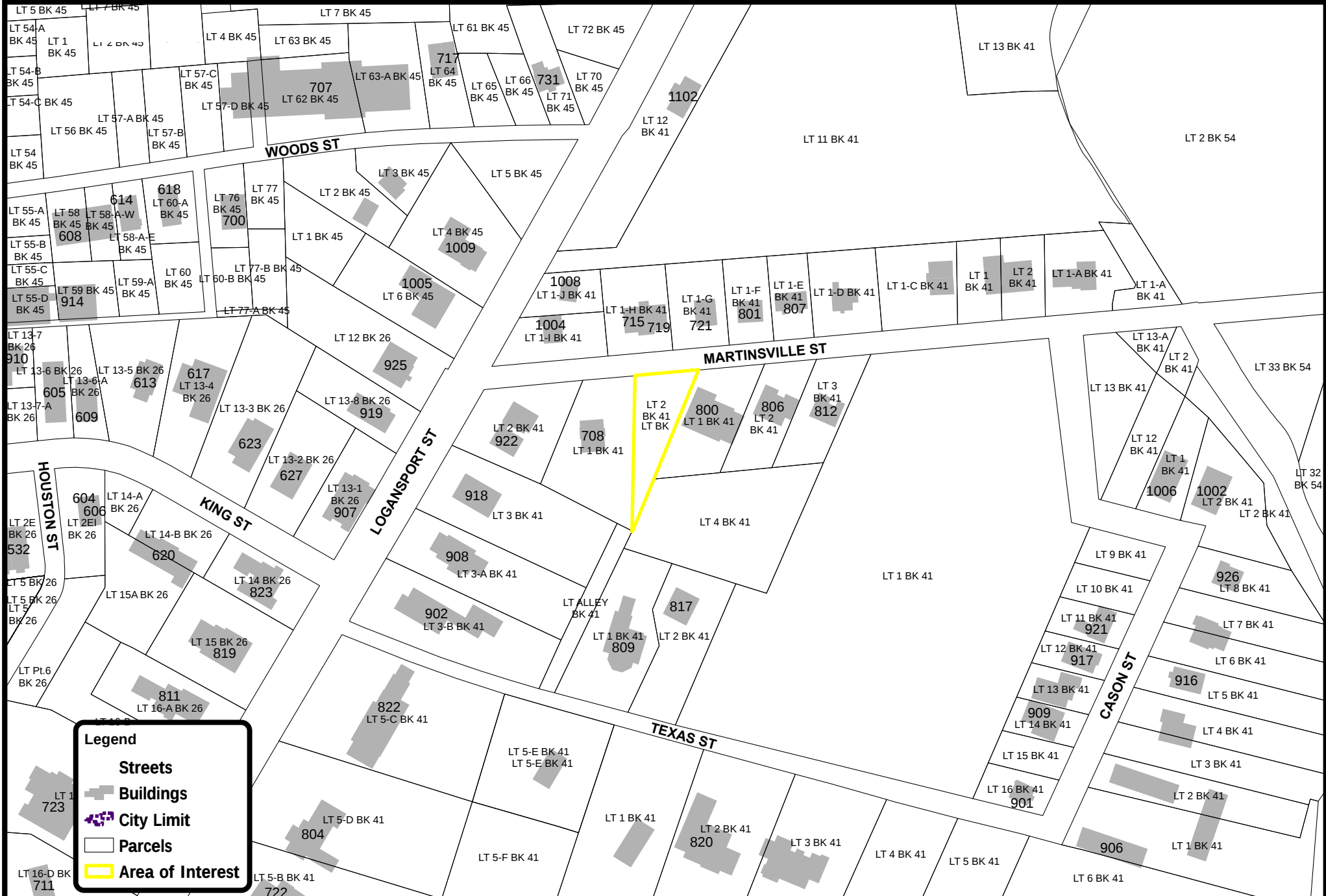


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ZBA2024-05 Location Map



Legend

Streets

Buildings

City Limit

Parcels

Area of Interest

8

0 70 140 210 280 Feet

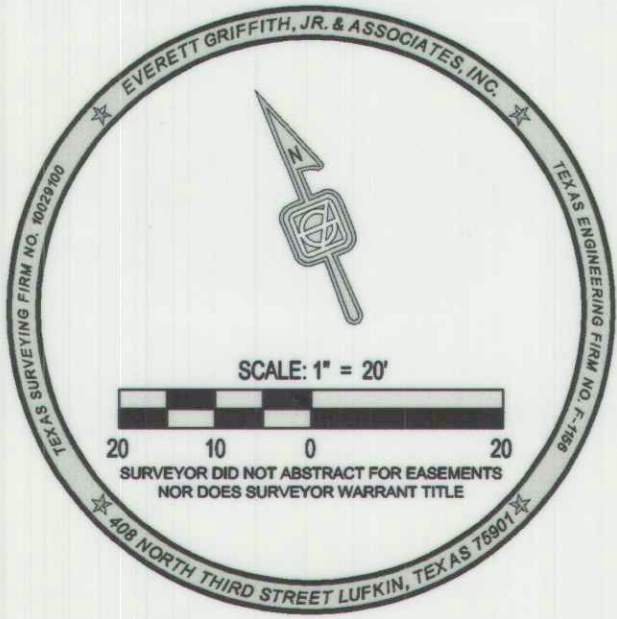
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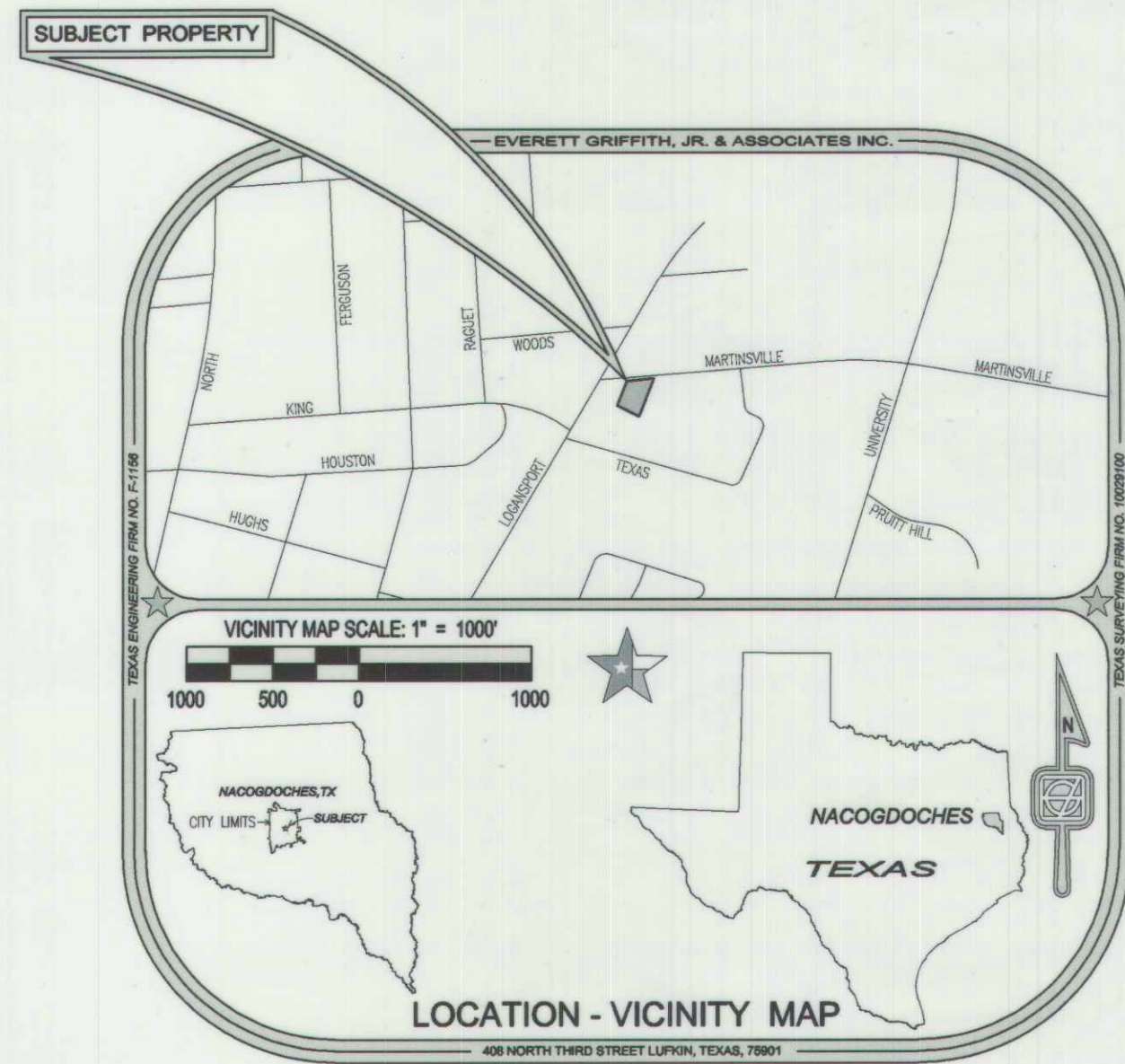
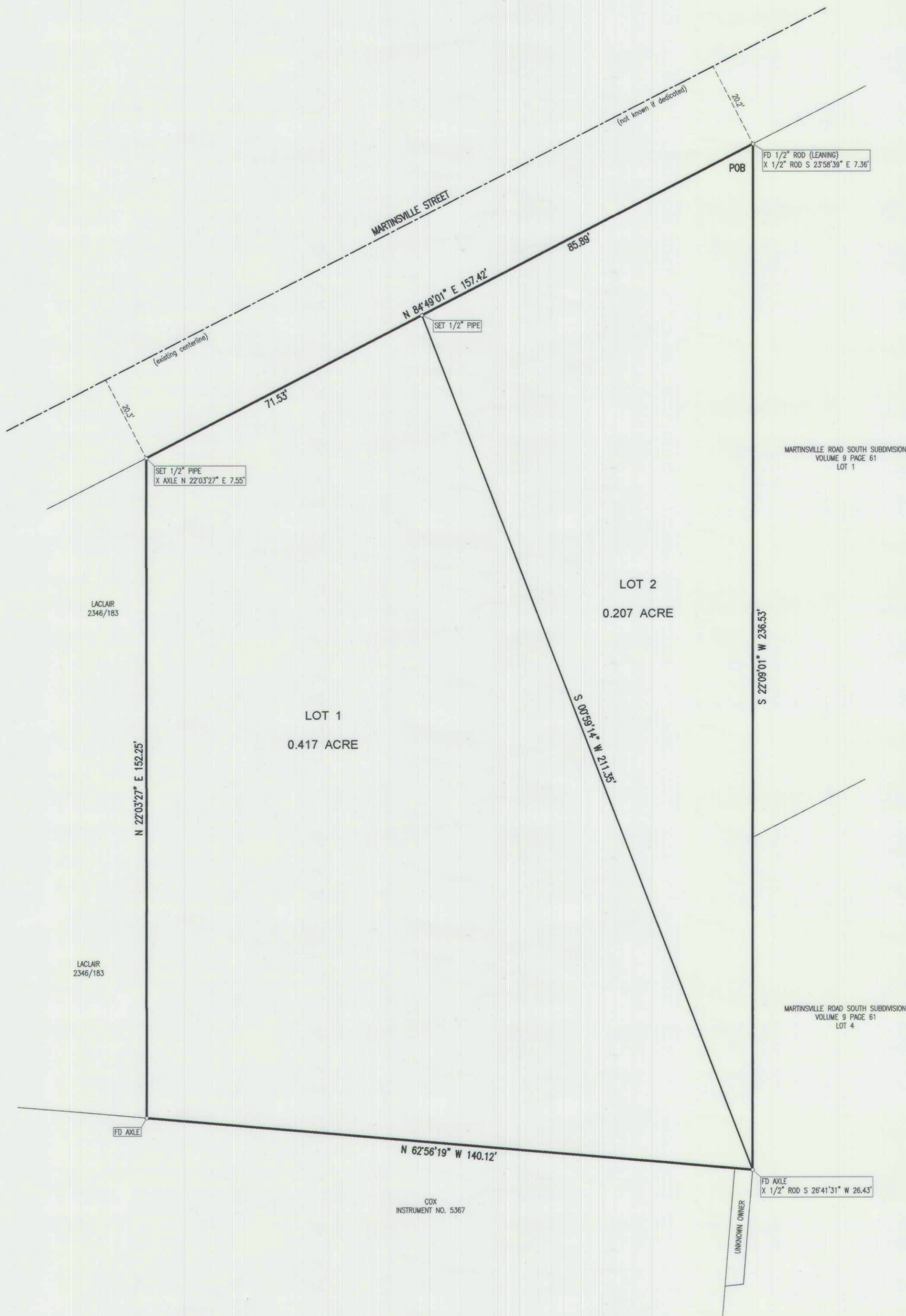
Nacogdoches
Engineering Department
GIS Division

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JOHNSON'S MARTINSVILLE STREET SUBDIVISION



2023 APR 10 PM 12: 23



OWNER'S CERTIFICATE
THE STATE OF TEXAS,
COUNTY OF NACOGDOCHES:
WHEREAS, Maury Ronald Johnson and Elizabeth Bomar Johnson are the owners of that certain tract or parcel of land lying and situated in Nacogdoches County, Texas, out of the S. HOUSTON SURVEY, ABSTRACT NO. 34 and being all of that certain tract described in a deed from Craig Rudolph, Co-Trustee of the Rudolph/Matos Revocable Trust et al to Maury Ronald Johnson et ux dated August 1, 2016 and recorded in Volume 4455 on Page 253 of the Deed Records of Nacogdoches County, Texas, to which reference is hereby made for any and all purposes and the said tract or parcel being described by metes and bounds as follows, to wit:

BEGINNING at the Northeast corner of the aforesaid referred to Johnson tract and the Northwest corner of the Martinsville Road South Subdivision, a subdivision of record in Volume 9 on Page 51 of the Map Records of Nacogdoches County, Texas in the South margin of Martinsville Street, a 1/2 inch rod (leaving) found for corner, said corner witnessed by a 1/2 inch rod bearing S 23° 58' 39" E 7.36 feet;

THENCE S 22° 09' 01" W with the East boundary line of the said Johnson tract and the West boundary line of the Martinsville Road South Subdivision, at 236.53 feet the Southeast corner of the said Johnson tract, on a line found for corner, said corner witnessed by a 1/2 inch rod found for the Southwest corner of the said Martinsville Street South Subdivision bearing S 26° 41' 31" W 26.43 feet;

THENCE N 62° 56' 19" W with the South boundary line of the said Johnson tract and in part with the North boundary line of that certain tract described in a deed from Peggy Green Cox to Navarro Campbell Cox II et al dated August 1, 2019 and recorded in Instrument No. 5367 of the Deed Records of Nacogdoches County, Texas, at 140.12 feet the Southwest corner of the said Johnson tract and the Southeast corner of that certain tract described in a deed from Jarrell Richman to Sharon Malone LaChoir dated December 15, 1999 and recorded in Volume 2346 on Page 183 of the Deed Records of Nacogdoches County, Texas, on a line found for corner;

THENCE N 22° 03' 27" E with the West boundary line of the said Johnson tract and the East boundary line of the said LaChoir tract, at 152.25 feet the Northwest corner of the said Johnson tract in the South margin of Martinsville Street, a 1/2 inch pipe set for corner, said corner witnessed by an axle bearing N 22° 03' 27" E 7.55 feet;

THENCE N 84° 49' 07" E with the North boundary line of the said Johnson tract and the South margin of Martinsville Street, at 157.42 feet the point and place of beginning and containing 0.624 acre of land, more or less.

Basis of Bearings: The Texas State Plane Coordinate System, Central Zone, NAD 83.

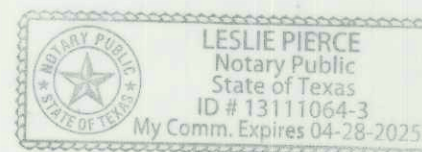
I, R.F. (Rick) Freeman, a Registered Professional Land Surveyor in the State of Texas, hereby certify that the above plat and field note description of JOHNSON'S MARTINSVILLE STREET SUBDIVISION in the S. HOUSTON SURVEY, ABSTRACT NO. 34, are true and correct, and were prepared from a survey made by me, on the ground, on the 28th day of September, 2022.



STATE OF TEXAS
COUNTY OF ANGELINA

BEFORE ME, the undersigned authority, on this day personally appeared R.F. (Rick) Freeman, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein set forth.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 4th day of April, 2023.



Certificate of Approval by the City Planner and City Engineer

This is to certify that the City Planner and City Engineer of the City of Nacogdoches, Texas, has approved this plat and subdivision of JOHNSON'S MARTINSVILLE STREET SUBDIVISION, as shown hereon.

IN TESTIMONY WHEREOF, witness the official signature of the City Planner and the City Engineer of the City of Nacogdoches, Texas, this 5th day of April, 2023.

City Planner City Engineer

Witness my hand in Nacogdoches, Nacogdoches County, Texas, this 3rd day of April, 2023.

Maury Ronald Johnson
Maury Ronald Johnson

STATE OF TEXAS
COUNTY OF NACOGDOCHES

BEFORE ME, the undersigned authority, on this day personally appeared Maury Ronald Johnson, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein set forth.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 3rd day of April, 2023.



Witness my hand in Nacogdoches, Nacogdoches County, Texas, this 3rd day of April, 2023.

Elizabeth Bomar Johnson
Elizabeth Bomar Johnson

STATE OF TEXAS
COUNTY OF NACOGDOCHES

BEFORE ME, the undersigned authority, on this day personally appeared Elizabeth Bomar Johnson, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and considerations therein set forth.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 3rd day of April, 2023.



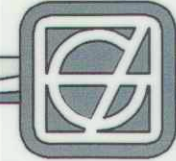
STATE OF TEXAS
KNOWN ALL MEN BY THESE PRESENTS
COUNTY OF NACOGDOCHES

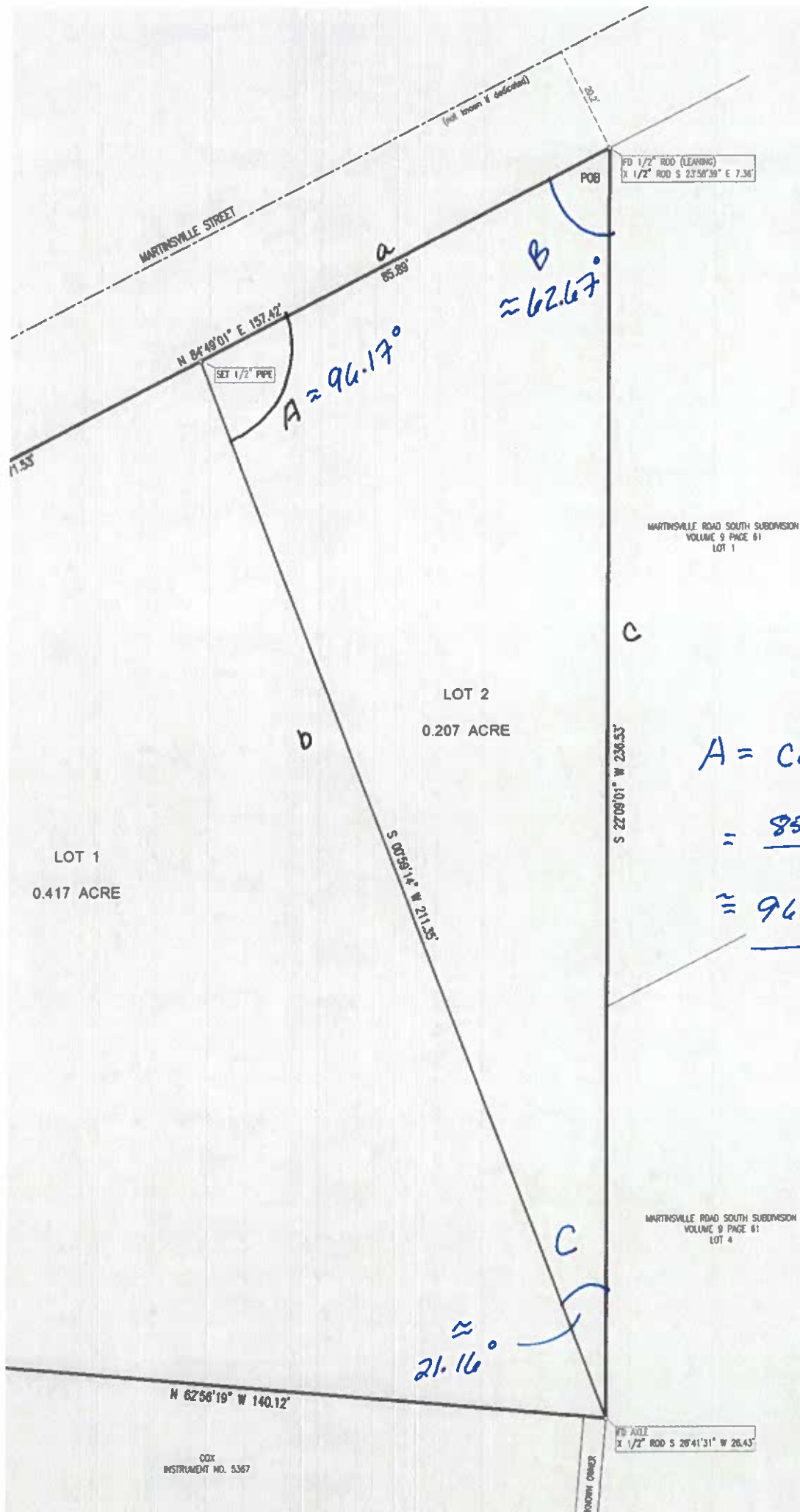
I, Sandra "Sandy" Yates, County Clerk of Nacogdoches County, Texas, do hereby certify that this foregoing instrument in writing, with its certificate of authentication, was filed and duly recorded in my office on this 10th day of April, 2023 A.D., at 12:23 o'clock P.M., in Clerks Document Number 2023-2530 of the Real Property Records for said County.

WITNESS my hand and seal of office, at Nacogdoches, Texas, the day and date last above written.

Sandra "Sandy" Yates, County Clerk,
Nacogdoches County, Texas

Deputy Clerk

 ENGINEERS - SURVEYORS Everett Griffith, Jr. & Associates Inc. 408 NORTH THIRD STREET LUFKIN, TEXAS, 75901 TEXAS ENGINEERING FIRM NO. F-1156 936-634-5528 TEXAS SURVEYING FIRM NO. 10029100	FINAL PLAT JOHNSON'S MARTINSVILLE STREET SUBDIVISION A SUBDIVISION OF 0.624 ACRE OWNERS: MAURY RONALD JOHNSON ELIZABETH BOMAR JOHNSON S. HOUSTON SURVEY, ABSTRACT NO. 34 NACOGDOCHES COUNTY, TEXAS	Sheet 1 of 1





Building Inspections
202 E. Pilar Room 239
P.O. Box 635030
Nacogdoches, TX 75963
Phone: (936) 559-2551

BUILDING PERMIT

Permit No. 24-243-BR

JOB ADDRESS:

720 MARTINSVILLE ST, NACOGDOCHES, TX 75964

LEGAL DESC.	LOT	BLK	SUBDIVISION	
OWNER M. WESLEY & ASSOCIATES		MAIL ADDRESS P.O. BOX 633369	ZIP 75963	PHONE Cell: 9365591120
CONTRACTOR(BUILDING) MARIO WESLEY		MAIL ADDRESS P.O. BOX 633369	PHONE Cell: 9365591120	REGISTRATION NO.
CONTRACTOR(PLUMBING)		MAIL ADDRESS P.O. BOX 633369	PHONE No Number Provided	REGISTRATION NO.
CONTRACTOR(MECHANICAL)		MAIL ADDRESS	PHONE No Number Provided	REGISTRATION NO.
CONTRACTOR(ELECTRICAL)		MAIL ADDRESS	PHONE No Number Provided	REGISTRATION NO.

Class of Work:

TAS Reg No:

Special Permit Conditions:**DESCRIPTION OF WORK:**

SIZE OF BLDG. TOTAL SQ.FT.
0.00

HEIGHT:

1st FLOOR		2nd FLOOR	
ZONING:	FOOD ZONE:		
MIN. BUILDING SETBACKS FROM PROPERTY LINE			
FRONT	LEFT SIDE	RT SIDE	REAR

FIREPLACES:	NUMBER OF STORIES:	NUMBER OF UNITS: 0
-------------	--------------------	-----------------------

VALUATION OF WORK: \$0.00

NO. OF OFF-STREET PARKINNG SPACES REQUIRED -

TYPE OF CONST.	OCCUPANCY GROUP
----------------	-----------------

NOTICE

THIS PERMIT BECOMES NULL AND VOID IF WORK OR CONSTRUCTION AUTHORIZED IS NOT COMMENCED WITHIN 180 DAYS, OR IF CONSTRUCTION OR WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF 180 DAYS AT ANY TIME AFTER WORK IS COMMENCED.

I HEREBY CERTIFY THAT I HAVE READ AND EXAMINED THIS APPLICATION AND KNOW THE SAME TO BE TRUE AND CORRECT. ALL PROVISIONS OF LAWS AND ORDINANCES GOVERNING THIS TYPE OF WORK WILL BE COMPLIED WITH WHETHER SPECIFIED HEREIN OR NOT. THE GRANTING OF A PERMIT DOES NOT PRESUME TO GIVE AUTHORITY TO VIOLATE OR CANCEL THE PROVISIONS OF ANY OTHER STATE OR LOCAL LAW REGULATING CONSTRUCTION OR THE PERFORMANCE OF CONSTRUCTION.

SIGNATURE OF OWNER OR AUTHORIZED AGENT (DATE)

PERSON TO CONTACT MARIO WESLEY		TELEPHONE NO. Cell: 9365591120
APPL ACCEPTED BY:	PLANS CHECKED BY	APPROVED FOR ISSUE NO
DATE 4/1/2024 9:41:42 AM	DATE 1/1/1900 12:00:00 AM	DATE 1/1/1900 12:00:00 AM
PERMIT ISSUED BY Cristina Trujillo	DATE 4/1/2024 9:42:31 AM	RECEIPT NO.

FEES

Residential New Permit Fee	\$692.48
Total	\$692.48

CITY OF NACOGDOCHES, TEXAS

Inspection Services Department

To be posted in front of Job site in a weather proof box.

NOTICE:

Final Inspection & Certificate of Occupancy

A new or existing building shall not be occupied, including furnishings, or a change be made in occupancy or the nature or the use of a building or part of a building until after the Building Official shall have issued a certificate of occupancy therefore.

IBC Section 110

Job Address 720 MARTINSVILLE ST, NACOGDOCHES, TX 75964

Building Permit No. 24-243-BR

Date 4/1/2024

Building or Apt. No.

General Contractor **MARIO WESLEY** Owner Name **M. WESLEY & ASSOCIATES**

Electrical

Plumbing

Mechanical

INSPECTIONS CALL 559-2558

DO NOT PROCEED WITH CONSTRUCTION UNTIL DATE PASSED IS SIGNED

Site		DATE PASSED				CORRECTION NOTICE CALL INSP. DEPT.	By
		Date	By	Date	By		
Site	Set Backs _____						
	Drainage Completion _____						
	Silt Fencing in Place _____						
Building	Footing or Foundation _____						
	Slab _____						
	Termite Treatment _____						
	Framing - Roughin _____						
	Fire Separation _____						
	Energy Conservation _____						
Electrical	Construction Service _____						
	Pre Slab/Underground _____						
	Wiring - Roughin _____						
	Final Building Service _____						
Plumbing	Pre Slab (Pressure Test) _____						
	Piping Roughin (Pressure Test) _____						
	Yard Line - Sewer _____						
	Water _____						
	Gas (Pressure Test) _____						
Mechanical	Final _____						

Additional Information or Corrections:

Contractors: Keep All Dirt, Mud, Debris Out of City Streets

KEEP CONSTRUCTION SITE CLEAR OF TRASH - NO BURNING OF DEBRIS

DISPOSE OF ALL BUILDING DEBRIS AT CITY LANDFILL OR APPROVED LOCATION

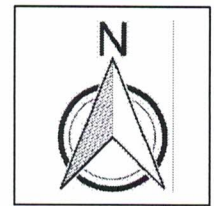
SITE PLAN

Martinsville Street

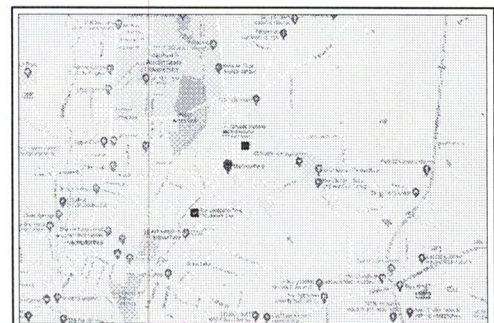
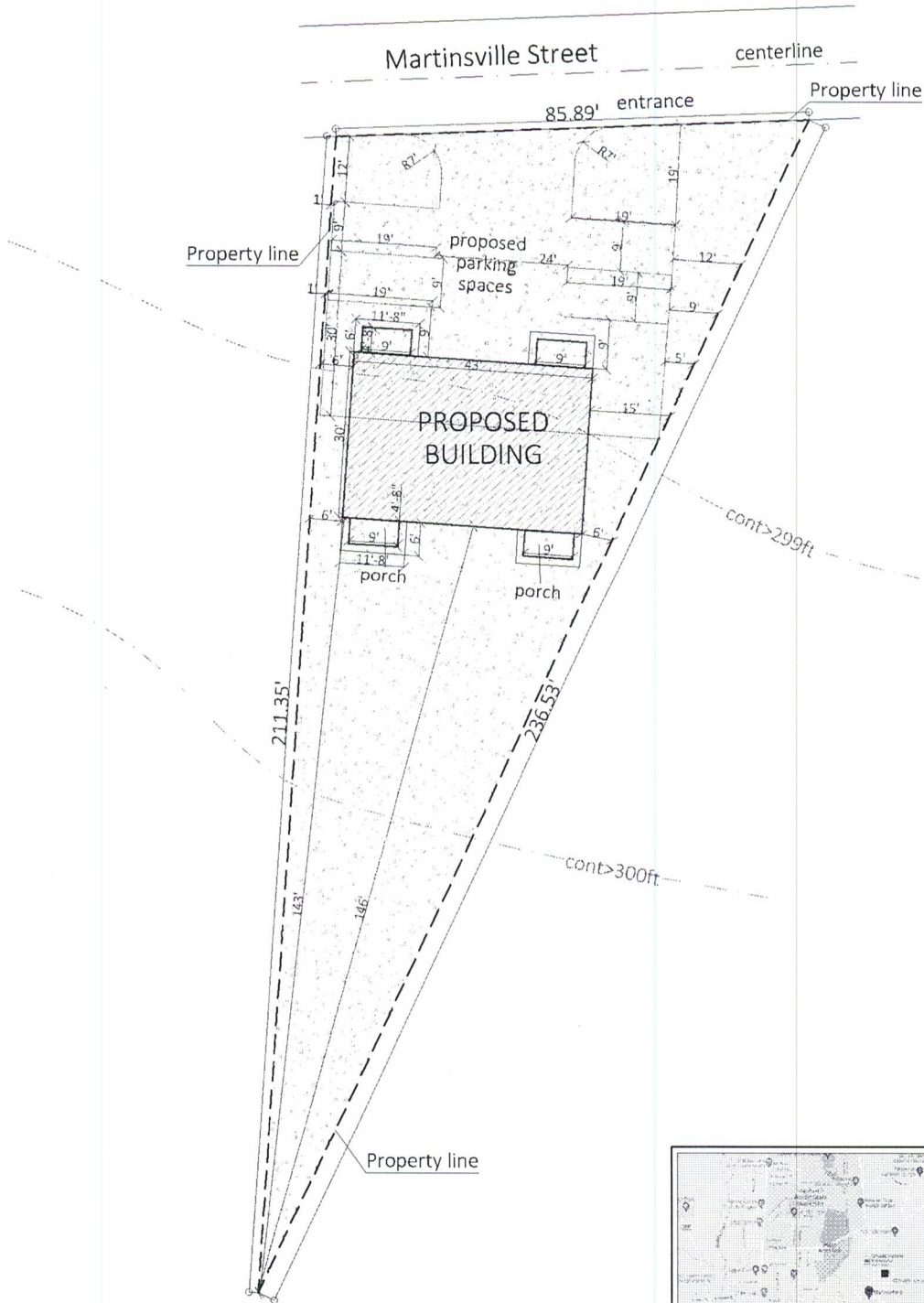
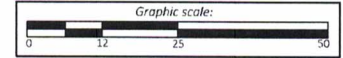
Nacogdoches, Texas 75961

Lot area: 0.207 Acres

Paper Size: 11"x17"



scale 1"=20'



VICINITY MAP

Site Photos: ZBA2024-05

Street view of the
subject property.



Adjacent house to the west

(On lot 1 of the Johnson's Martinsville Subdivision plat)



Subject Property

View along east property line



View along west property line



View of the back of the property





October 31, 2023

Mr. Philip Blackburn
819 Logansport Street
Nacogdoches, Texas 75961

Re: Zoning Board of Appeals Request for Determination of Planner's Opinion
Nacogdoches City Ordinance Sections 118-1 and 118-427(a)

Mr. Blackburn:

We have reviewed your request for an appeal of the City Planner's interpretation of Nacogdoches City Ordinance Sections 118-1 and 118-427(a).

In accordance with Section 118-100(a) of the Nacogdoches Code of Ordinances, the appeal must be filed within 90 days of the decision. Your request for an appeal was made in excess of the 90 day time frame and cannot be presented to the Zoning Board of Adjustments.

Enclosed is your original check for the application fee.

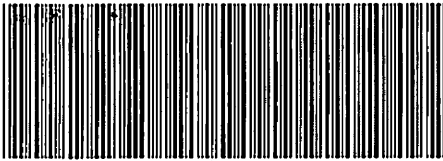
Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to be "Steve Bartlett", written over a light blue grid background.

Steve Bartlett, P.E.

Interim City Planner
Director of Public Works
City Engineer



VG-13-2024-4239

Nacogdoches County
Sandra "Sandy" Yates
Nacogdoches County Clerk

Instrument Number: 2024 - 4239

Real Property Recordings

Parties: NACOGDOCHES CITY
OF

Parties: PUBLIC

Recorded On: June 21, 2024 02:19 PM

Number of Pages: 2

" Examined and Charged as Follows: "

Total Recording: \$25.00

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:

Document Number: 2024-4239
Receipt Number: 20240621000036
Recorded Date/Time: June 21, 2024 02:19 PM
User: Marie B
Station: Marie Box

Record and Return To:

NACOGDOCHES CITY OF
202 E. PILAR

NACOGDOCHES TX 75961



STATE OF TEXAS
Nacogdoches County

I hereby certify that this Instrument was filed in the File Number sequence on the date/time
printed hereon, and was duly recorded in the Official Records of Nacogdoches County, Texas

Sandra "Sandy" Yates
Nacogdoches County Clerk
Nacogdoches County, TX

Sandra "Sandy" Yates

DECISION OF THE BOARD OF ADJUSTMENT

RE: Case No. ZBA No. 2024-03

Phillip Blackburn

720 Martinsville Street

SUBJECT: Consider a request for an appeal of the City Planner's interpretation and approval (per 118-100) considering the City of Nacogdoches Zoning Ordinance Section 118.427(a). - District Development Chart regarding how to measure width of recorded platted lot. This appeal is being considered based on the approval of a requested building and site plan for the construction of a duplex on Lot 2 of the recorded Johnson's Martinsville Street Subdivision clerk's document number 2023-2530 of the Real Property Records of Nacogdoches County, Texas. The property is located on the south side of Martinsville Street approximately 220 feet from the intersection of Logansport and Martinsville Streets.

On the 20th day of June, 2024, the above referenced appeal request was publically considered by the City of Nacogdoches Zoning Board of Adjustment in accordance with Chapter 118 of the Code of Ordinances of the City of Nacogdoches and Chapter 211 of the Texas Local Government Code. After consideration of the official record and all evidence presented publically at the hearing, the requested appeal was denied, by a vote of two (2) in favor of approval, three (3) in favor of denial, and zero (0) abstaining.

Any interested person wishing to appeal this decision is required to file a petition for Writ of Certiorari in a district court, county court, or county court at law within ten (10) days of the date this decision is filed in the Board's office in accordance with Section 211-011 of the Texas Local Government Code. This decision was filed in the Board's office on the 20th day of June, 2024.

Date: 21 June 2024

Mary Ann Bentley

Mary Ann Bentley

Vice Chairperson, Board of Adjustment

ATTEST:

Juan Pollette

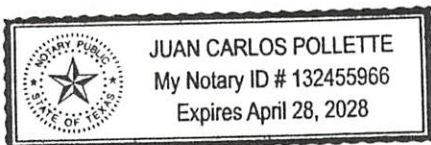
Juan Pollette

Interim City Planner, City of Nacogdoches

STATE OF TEXAS X

COUNTY OF NACOGDOCHES X

This instrument was acknowledged before me on the 21 day of JUNE 2024, by Mary Ann Bentley, as Vice Chairperson of the Zoning Board of Adjustment, for the City of Nacogdoches.



Juan Pollette
NOTARY PUBLIC, STATE OF TEXAS



Phillip Blackburn
819 Logansport Street
Nacogdoches, Texas 75963-2595
pblackburn@suddenlink.net

July 3, 2024

Dear Mr. Blackburn,

Thank you for submitting your latest appeal regarding the decisions of the City Planner for 720 Martinsville Road.

This is the third appeal filed concerning interpretation of this parcel. As you will recall, the initial appeal was filed after expiration for an appeal to the decision to approve the subdivision plat. The second appeal concerned the decision of the city planner to approve the site plan and building permit asserting that the lot did not “maintain 50’ of lot width, as required by Sec. 118.427(a).” This appeal was heard by the Zoning Board of Adjustment (“ZBA”) on June 20, 2024. While the appeal was considered fairly, it did not receive enough votes to be approved due to the lack of a supermajority vote.

This third appeal again asserts that “the lot has insufficient width...” However, the assertion is now being made that the ZBA “adjudicated the wrong ordinance”, and that Sec. 90-218 supersedes Sec. 118-427(a) and should apply. In response to your comment that the ZBA adjudicated the wrong ordinance, please note the agenda item that was addressed for appeal was submitted by you and in turn was the only item being requested for interpretation at the hearing. City staff was not appealing the ordinance, but responding to your request for interpretation nothing more.

Your new appeal for subdivision interpretation is not timely. The decision to approve the Johnson’s Martinsville Steet Subdivision Plat was made on April 5, 2023. Therefore, any appeal of this decision must have been made “within a reasonable time, not to exceed 90 days (Sec. 118-100 of the Code of Ordinances). Your arguments related to Chapter 90, and specifically Sections 90-218(a) and 90-217(b), should have been raised within that time period. It has now been more than a year since that decision, and, as such, any appeal asserting “violations of Chapter 90” is untimely. This approval took place based off of the authority provided to the City

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

planner through ordinance 90-122(m), Planning and Zoning, and ultimately Council for approval of the ordinance.

Even so, Section 90-218(a) states that “no lot in a subdivision shall be less than 75 feet in width or 110 feet in depth, **unless otherwise provided.**” The “otherwise provided” clause is addressed in Chapter 118-3 – Effective Date and Applicability, which provides under subsection (b):

“The sections of this chapter **supersede all other development regulations** governing the development of land within the city. These regulations shall apply to all land, property and development in the city, except as expressly and specifically provided otherwise in this chapter. No development shall be undertaken without prior authorization pursuant to this chapter.”

Rather than the lot requirements of Sec. 90.218(a) overriding Sec. 118-427(a), the converse is actually true.

As stated, your appeal concerning the City Planner’s interpretation of lot width has been heard by the ZBA and was not successful. Pursuant to Sec. 118-101 and Tex. Local Gov’t Code §211.011, any appeal of the ZBA’s denial of your application should have been made to the district court or county court at law within ten (10) days of the filing of the decision.

As no judicial review was sought during the 10-day time period, all appeal proceedings for the plat and building permit regarding lot width have been exhausted, and this matter is concluded.

As such, the City will not be presenting this appeal to the ZBA. Enclosed, please find your application and a refund of any fees you may have paid for this process.

Respectfully,



Juan Pollette
Interim City Planner
(936)559-2559
pollettep@nactx.us



Cloutier, Aimee <cloutiera@nactx.us>

FW: August 15th Hearing

Larry King <lking@sfasu.edu>
To: "Cloutier, Aimee" <cloutiera@nactx.us>

Fri, Jul 12, 2024 at 3:53 PM

Aimee:

Can this be added for discussion to the July 18th meeting?

Larry J. King

From: Philip Blackburn <pblackburn@suddenlink.net>
Sent: Tuesday, July 9, 2024 12:58 PM
To: Larry King <lking@sfasu.edu>
Subject: August 15th Hearing

This Message Is From an External Sender

This message came from outside your organization.

Dear Zoning Board of Adjustment Board Member,

The Zoning Board of Adjustment should be aware of what the Planning Department is attempting to do behind the scenes. On June 27th, I filed an application for appeal of the City Planner's decisions regarding 720 Martinsville Road. This appeal concerns noncompliance with the subdivision standards regarding the side lot lines. See my attached application. The application was complete and was received by the Planning Department. The

hearing date was set for August 15th.

On July 3rd, I received an email from the Planning Department, with a letter attached, declaring that they were going to cancel the hearing. In this letter, the Planning Department misrepresented my application for appeal and claimed it was just another appeal about the lot width. See the attached letter from the Planning Department to me.

On July 5th, I responded to the Planning Department and restated the basis of my appeal which has absolutely nothing to do with lot width. To be clear, this new appeal has to do with the City Planner's approval of a site plan and a building permit for a lot whose side lot lines are not in compliance with the subdivision standards and this new appeal was made within the 90-day window. The application was duly submitted under our Code of Ordinances. See the attached letter from me to the Planning Department.

I reminded the Planning Department that the Zoning Board of Adjustment is an independent quasi-judicial body and that neither the City Planner nor the City Attorney have the authority to cancel the hearing. Furthermore, only the Zoning Board of Adjustment can make any decision about the merits of the appeal or whether it was filed properly. The City Planner and the City Attorney can only advise the Zoning Board of Adjustment.

I look forward to presenting my case to the Zoning Board of Adjustment at the hearing on August 15th.

Best regards,

Philip

Philip Blackburn

[819 Logansport Street](#)

[Nacogdoches, TX 75961](#)

936-560-3360

936-645-7743 (CELL)

pblackburn@suddenlink.net

3 attachments



Application for Appeal - ZBA Board.pdf
919K



ZBA2024-05_Response to Appeal (P.Blackburn).pdf
216K



Response to Juan's Letter.pdf
1863K



ZONING BOARD OF ADJUSTMENT RULES & PROCEDURES

February 15, 2024

**CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES AND PROCEDURES**

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**CITY OF NACOGDOCHES
ZONING BOARD OF ADJUSTMENT
RULES AND PROCEDURES**

1. ORGANIZATION, OFFICERS, AND STAFF

1.1. Organization

The Board of Adjustment (“Board”) shall consist of members appointed by the City Council and organized under the laws of the State of Texas and Zoning Ordinance Sec. 118-96, as may be amended (“Zoning Ordinance”), of the City of Nacogdoches (“City”).

1.2. Officers

A Chair shall be appointed in accordance with the Zoning Ordinance Sec. 118-97, as may be amended. The City Manager shall designate a member of City staff to serve the Board as Secretary.

1.3. Duties

- a. The Chair, shall preside at all meetings, shall decide all points of order or procedure and shall swear in witnesses and, when necessary, compel their attendance.
- b. In the absence of the Chair, the Acting Chair shall preside. The Acting Chair shall be a regular member (or if no regular member is present then an alternate member) whose last name is closest to the beginning of the alphabet.
- c. The Secretary shall be the custodian of the minutes and other official records, shall attend to the correspondence of the Board, and shall cause notices to be given as are required and in the manner prescribed by law.

1.4. Rules of Order

Robert’s Rules of Order, Newly Revised, shall be the Board’s final authority on all questions of procedures and parliamentary law not covered by these Rules of Procedure. A failure to strictly adhere to the procedures set forth in Robert’s Rules of Order shall not constitute grounds for the invalidation of any motion or order made by the Board.

1.5. City Planner

The City Planner, or his/her designee, shall perform the duties authorized under the Zoning Ordinance of the City of Nacogdoches and shall provide assistance to the Board as directed by the City Manager. The City Planner shall make interpretations of

the provisions of the Comprehensive Zoning Ordinance, Chapter 118 of the Ordinances of the City of Nacogdoches, as may be amended, and shall present to the City Council any revisions to the Zoning Ordinance recommended by the Board.

1.6. Secretary

The Secretary shall keep an accurate record of all the meetings of the Board, shall file the final actions of the Board with the Office of the Board within twenty-four (24) hours of the Board's meeting, shall prepare and submit minutes of all meetings of the Board in a timely manner, and shall support the Board in the manner directed by the City Manager or designee.

1.7. City Attorney

The City Attorney may provide to the Board an oral or written opinion regarding any question of law, interpretation or application of these rules of procedure, or parliamentary rules, and shall review as to law any amendment to these rules of procedure prior to the amendment becoming effective.

2. MEETINGS

2.1. Quorum

A quorum of the board members shall be required to conduct a meeting of the board. A quorum shall consist of four (4) Members present. No proxies shall be allowed to establish a quorum or to transact business of the Board. In the absence of a quorum, the following persons (in the noted order) shall call the meeting to order. The Chair, the Acting Chair, or (if no Member is present) a staff member may call the meeting to order, announce the absence of a quorum, and announce the adjournment of the meeting until a specific date, time, and place when the scheduled agenda items/public hearings would be resumed. Should the absence of a quorum be known in advance of a scheduled meeting, the Chair authorizes the City Planner, or other staff member, to preside at the meeting by rescheduling the hearing to a date certain.

2.2. Agenda

An agenda shall be prepared by the 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 action by the Board. The agenda shall be posted on the official bulletin boards at Nacogdoches City Hall, 202 East Pilar, 1st Floor, Nacogdoches, Texas, 75961, pursuant to the Texas Government Code, Chapter 551.

2.3. Board Meetings

- a. Regular Meetings - Regular meetings shall be held on the third (3rd) Thursday of each month at 4:00 p.m. in the City Council Chambers at City Hall unless otherwise posted. Should no matters be scheduled for consideration by the Board, no meeting shall be held except as directed by the Chair of the Board.
- b. Special Meetings - Special meetings may be called at any time by the Chair or the City Planner and shall be subject to the Open Meetings Act. The City Planner shall cause notice of the special meeting to be sent to each Board Member and shall provide any information necessary for consideration by the Board. Any case requiring a public hearing and being considered in a special meeting shall meet the notice requirements set forth in the state statutes and in the Zoning Ordinance of the City of Nacogdoches.
- c. Work Sessions - The Board may schedule work sessions to address administrative matters or proposed ordinance revisions. These sessions are for discussion purposes only. No decisions on case-related matters shall be made.
- d. Executive Sessions (Closed Meetings) - The Board may convene into executive session, pursuant to section 551.071 of the Texas Open Meetings Act, to seek the advice of the City Attorney about pending or contemplated litigation or to seek or receive the attorney's advice with regard to legal issues relative to a case pending the Board's consideration. Proper notice under the Texas Open Meetings Act is required in order for the Board to participate in executive session.

2.4. Meetings

All meetings of the board shall be open to the public. Meetings shall be held in full compliance with the provisions of the Texas Open Meetings Act, the City's Zoning Ordinances, and these Rules of Procedure

3. OFFICIAL RECORDS

3.1. Definition

The official records shall include these Rules of Procedures, and the minutes of the Board together with all findings, decisions, and other official actions. Stenographic notes of the Secretary and tape recordings of proceedings and discussions shall not constitute the official record of the Board.

3.2. Recording of Vote

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.

3.3. Public Records

All requests and other matters coming before the Board shall be filed in the City's records and be available for public inspection during normal business hours. Original papers of all appeals shall be retained along with other special matters as the Secretary deems essential for permanent record.

3.4. Board Office

The Office of the Planning and Zoning Department shall be designated as the Board's office.

3.5. Written Decision

All decisions of the Board shall be in writing, shall indicate the decision of the Board and shall be filed in the Board's Office no later than the following business day after such decision has been made. However, the failure to timely file the decision in the Board's Office shall not have any effect on the validity of the decision.

4. APPLICATION PROCEDURES

4.1. Types of Appeals

The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as may be amended, and under the Zoning Ordinance, as follows:

- a. to hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of any order or ordinance pertaining to zoning (Exhibit "A");
- b. to hear and decide special exceptions to the terms of the zoning ordinance when the ordinance requires the board to do so (Exhibit "B");
- c. to authorize in specific cases a variance from the terms of the zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done (Exhibit "C"); and
- d. to hear and decide other matters authorized by the zoning ordinance.

4.2. Application Required

Every request for action of the Board shall be filed in the Board's Office on the 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 of the property which is the subject of the request or shall be accompanied by a letter of authorization from such owner. 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.

4.3. Deadline for Filing Application

Every application for an appeal of a decision of the City Planner must be filed in accordance with these rules within a reasonable time, not to exceed 90 days, from the date the decision was made.

4.4. Guidelines for Application and Decision

Every application shall include a letter and site plan or other graphics and illustrations explaining the applicant's request, along with the required non-refundable application fee. Where two or more different types of requests are included in the same application, each set of regulations established by the Zoning Ordinance shall apply to the consideration of the requests.

4.5. 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, before the fifteenth (15th) day 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 a Zoning Ordinance which would apply throughout the City, shall be given by means of a legal advertisement appearing in the official newspaper of the city, before the fifteenth (15th) day 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.

4.6. Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member's own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the meeting through the public hearing process and the background information presented by City staff through the information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board's consideration.

4.7. Withdrawal of Request

Any request may be withdrawn by an applicant upon written notice to the City Planner, but no request shall be withdrawn after public notice has been given without formal consent of the Board.

5. **HEARINGS AND DECISIONS**

5.1. 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(s) may appear on their own behalf or be represented by the applicant's own counsel or agent.

5.2. Order of Business

The Chair shall call the meeting to order, and the Secretary shall record the members present and absent. The Chair shall publicly advise those present of the procedures followed in the hearing 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 City Planner or designee 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.

5.3. Procedures for Hearing

- a. After opening the public hearing, the Chair shall first call upon the applicant, if present, to present the applicant's case and all evidence supporting the applicant's request. A true and correct copy of all written evidence, documents, photographs, and audio or videographic evidence presented at the hearing shall be included in the record of the case.
- b. The Chair shall then call upon those members of the public who wish to express support for the granting of the applicant's request. The Chair shall next call on those members of the public who wish to express opposition to the granting of the applicant's request. Each person who wishes to speak shall state their name and address for the record. The Chair may establish reasonable time-limits for the members of the public as deemed necessary by the Chair.
- c. The applicant shall then be given the opportunity to rebut the arguments presented by those in opposition.

- d. Each person speaking shall proceed without interruption by any other person, and all arguments and pleadings shall be addressed to the Board. It shall be the responsibility of the Chair to maintain order and proper decorum during the hearing. No questioning or arguments between individual witnesses will be permitted. During the hearing, no member shall argue an issue with the applicant, nor indicate the member's final vote on the applicant's request until such time as the vote is called. Nothing herein shall be construed to prohibit a member from expressing his or her opinion as to the merits of the applicant's request or as to the existence of any hardship.
- e. Following the applicant's rebuttal, the Chair shall order the public hearing closed. After the hearing is closed, the members may deliberate regarding the merits of the applicant's request and may vote on a motion made and seconded with respect to the disposition of the request.
- f. The Board may act on any request for which the applicant fails to appear after conducting the pre-scheduled public hearing.

5.4. Board Review

The Chair may direct any question to the applicant or any persons speaking in order to bring out all relevant facts, circumstances, and conditions affecting the request, and may call for questions from other members of the Board and from the City staff. At any time prior to the time a vote is called for, the Board may call back any applicant or speaker or staff member for clarification of fact presented in the hearing or to answer one or more questions of the members of the Board.

5.5. Suspension of Rules

Any provision of these rules not governed by other law may be temporarily suspended by the affirmative votes of four (4) members or by unanimous consent.

5.6. Disposition of Cases

- a. The Board may unconditionally grant, conditionally grant, or deny an applicant's request.
- b. The Board may, in conformity with the provisions of state law, reverse or affirm, wholly or partly, or may modify an 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 an appeal is taken.
- c. The Board may also defer action on any request in response to the applicant's request for deferral of the action or whenever it concludes that additional evidence is needed or that alternate solutions need further study.

- d. An applicant's request may be dismissed when the Board finds that the request has been improperly filed or, upon notification by the City, that permits have been issued for a conforming use or development of the property.

5.7. Participation in Deliberations and Voting

All members present may participate in the deliberations of each case and may directly question the applicant/agent or staff members.

Only the five (5) regular members shall vote on the case unless absence or conflict of interest prevents their participation. Should any regular member be unable to vote, the alternate members shall be selected by the Chair, in numerical order beginning with Alternate Member #1 and ending with Alternate Member #4, to vote in the regular members' absence.

Should any member be unable to vote on any matter before the Board, he or she shall clearly acknowledge this for the record prior to the vote, and the Presiding Officer shall clearly designate, for the record and for the audience, which of the alternate members will be voting.

5.8. Vote Required

The concurring vote of four (4) members of the five (5) members shall be necessary to grant, or to grant conditionally, any request made to the Board. When a motion to approve a request fails to receive four (4) affirmative votes, the request is denied. A motion to deny a request shall pass on the vote of a simple majority of the members. Should a motion to deny fail to receive a majority vote, another motion must be made (e.g., "motion to approve", "motion to postpone", etc.) to dispose of the case. Additionally, A simple majority vote of the members shall be required to approve an alternative motion. All motions must receive a second to be considered by the Board.

6. REAPPLICATION

6.1. Reapplication for Denied Request

No application for a request that has been denied shall be again filed earlier than one (1) year from the date of original denial unless other property in the immediate vicinity has, within the one-year period, been changed or acted on by the Board or City Council so as to alter the facts and conditions on which the previous Board action was based. Such change of circumstances shall permit the rehearing of a request by the Board prior to the expiration of one (1) year period, but such conditions shall in no way have any force in law to compel the Board, after a hearing, to grant an applicant's subsequent request. Such subsequent request shall be

considered entirely on its merits and the peculiar and specific conditions related to the property on which the request is brought.

7. EXPIRATION OF GRANTED REQUEST

7.1. Expiration of Granted Request

Any special exception or variance granted by the Board shall authorize the issuance of a building permit and/or a Certificate of Occupancy, as the case may be, for a period of ninety (90) days from the date of the favorable action of the Board unless said Board shall have in its action approved a different period of time and has so shown such specific period of time in the minutes of its action. In no event, however, shall such additional time granted exceed two (2) years. If the building permit and/or Certificate of Occupancy shall not have been applied for within said ninety (90) days, or such extended period as the Board may have specifically granted, then the special exception or variance shall be deemed to have been waived and all rights thereunder terminated. All applications for a request that have been denied shall be deemed to be denied with prejudice unless stated otherwise in the Board's written decision.

8. CERTIFICATION AND AMENDMENTS

8.1. Certified Copy

A certified copy of these Rules of Procedure and of any amendments thereto will be placed on record in the office of the City Secretary within ten (10) days following their date of adoption.

8.2. Repealing Clause

All previously adopted Rules of Procedure of the Board shall be and the same are hereby expressly repealed.

8.3. Amendment Procedure

Amendments to these Rules of Procedure may be made by the Board at any meeting upon the affirmative vote of four (4) members, provided any such amendment is proposed at a preceding meeting and recorded on the minutes of such meeting. By unanimous consent of five (5) members present, amendments may be adopted at the meeting at which they are introduced but such amendments shall not become effective until the next regular meeting. It is recommended that the Board review these rules and procedures at least once every year.

8.4. Informal Advice

The Board or its individual members shall not consider a request (formal or informal) for advice on theoretical or actual situations that potentially may come before the Board in the future as an appeal or application.

EXHIBIT “A” INTERPRETATIONS

APPLICATION PROCEDURES

Types of Requests

The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as may be amended, and under the Zoning Ordinance, as follows:

“to hear and decide an appeal that alleges an error in an order, requirement, decision, or determination made by an administrative official in the enforcement of any order or ordinance pertaining to zoning”

Application Required

Every request for an interpretation of the Board shall be filed at the City. The application forms shall be completed in full, which will include the section of the ordinance needing interpretation, what staff’s stance on the topic, then why that does not meet the ordinance, and the prescribed fee. The application shall bear the signature of the owner of the property which is the subject of the request or shall be accompanied by a letter of authorization from such owner. 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.

Deadline for Filing Application

Every application for an appeal of a decision of the City Planner must be filed in accordance with these rules within a reasonable time, not to exceed 90 days, from the date the decision was made.

Guidelines for Application and Decision

Every application shall include a letter and site plan or other graphics and illustrations explaining the applicant’s request, along with the required non-refundable application fee. Where two or more different types of requests are included in the same application, each set of regulations established by the Zoning Ordinance shall apply to the consideration of the requests.

Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member’s own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the

meeting through the public hearing process and the background information presented by City staff through the information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board's consideration.

EXHIBIT "B" SPECIAL EXCEPTIONS

APPLICATION PROCEDURES

Types of Requests

The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as may be amended, and under the Zoning Ordinance, as follows:

"to hear and decide special exceptions to the terms of the zoning ordinance when the ordinance requires the board to do so"

Application Required

Every request for a special exception of the Board shall be filed at the City. The application forms shall be completed in full which will include the section of the ordinance needing interpretation, what staff's stance on the topic, then why that does not meet the ordinance, and the prescribed fee. . It is noteworthy that the special exception request does not need to argue a self-created hardship in which this differs from a variance. The application shall bear the signature of the owner of the property which is the subject of the request or shall be accompanied by a letter of authorization from such owner. 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.

Guidelines for Application and Decision

Every application shall include a letter and site plan or other graphics and illustrations explaining the applicant's request, along with the required non-refundable application fee. Where two or more different types of requests are included in the same application, each set of regulations established by the Zoning Ordinance shall apply to the consideration of the requests.

Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member's own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the meeting through the public hearing process and the background information presented by City staff through the information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board's consideration.

EXHIBIT “C” VARIANCES

APPLICATION PROCEDURES

Types of Requests

The Board shall only consider requests authorized under section 211.009 of the Texas Local Government Code, as may be amended, and under the Zoning Ordinance, as follows:

“to authorize in specific cases a variance from the terms of the zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done”

Application Required

Every request for a variance of the Board shall be filed at the City. The application forms shall be completed in full providing the reason for the request, the applicant's responses to the findings of the appeal (Sec 118-99), and the prescribed fee. The application shall bear the signature of the owner of the property which is the subject of the request or shall be accompanied by a letter of authorization from such owner. 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.

Guidelines for Application and Decision

Every application shall include a letter and site plan or other graphics and illustrations explaining the applicant's request, along with the required non-refundable application fee. Where two or more different types of requests are included in the same application, each set of regulations established by the Zoning Ordinance shall apply to the consideration of the requests.

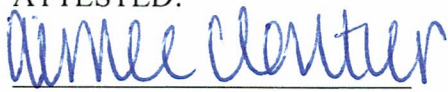
Consideration of Evidence

Decisions of the Board may be based on any credible evidence, including a member's own familiarity with a site. However, members of the Board should refrain from conducting independent investigations into any application and should consider only the evidence and testimony introduced at the meeting through the public hearing process and the background information presented by City staff through the information packet. Where deemed necessary, the Board may request City staff to obtain any additional relevant information for the Board's consideration.

ADOPTED this 15 day of February, 2024.


Chair, Zoning Board of Adjustment

ATTESTED:


Aimee Cloutier, Board Secretary

Filed in the Office of the City Secretary this 27th day of March, 2024.

 Rhonda Lewis, ~~Deputy~~ City Secretary, City of Nacogdoches, Texas