

CITY OF AUSTIN
Board of Adjustment/Sign Review Board
Decision Sheet

DATE: Monday, April 14, 2014

CASE NUMBER: C15-2014-0055

☐ Y ☐ Jeff Jack
☐ Y ☐ Stuart Hampton
☐ Y ☐ Ricardo De Camps
☐ Y ☐ Bryan King 2nd the Motion
☐ Y ☐ Fred McGhee Motion to PP to May 12, 2014
☐ Y ☐ Melissa Hawthorne
☐ Y ☐ Sallie Burchett

APPLICANT: Richard, Kooris

OWNER: Richard, Kooris

ADDRESS: 902 LIVE OAK ST

VARIANCE REQUESTED: The applicant has requested a variance from Section 25-2-492 (D) of the Site Development Standards to decrease the side yard setback requirement from 5 feet to 3 feet; and to increase the maximum impervious coverage limit from 45% to 49.7%; and to increase the maximum building coverage limit from 40% to 41%; and to decrease the minimum lot width from 50 feet to 41 feet; and to decrease the minimum lot size from 5,750 square feet to 5,179 square feet in order to address an anticipated property line dispute with a neighboring property owner and complete construction of a single family residence in an "SF-3", Family Residence zoning district.

BOARD'S DECISION: The public hearing was closed on Board Member Fred McGhee motion to Postpone to May 12, 2014, Board Member Bryan King second on a 7-0 vote; POSTPONED TO MAY 12, 2014.

FINDING:

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:
(b) The hardship is not general to the area in which the property is located because:
3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:


Leane Heldenfels
Executive Liaison


Jeff Jack
Chairman

Heldenfels, Leane

C15-2014-0055

From: Doug Young [REDACTED]
Sent: Wednesday, April 23, 2014 4:04 PM
To: Heldenfels, Leane
Cc: Richard I Kooris
Subject: C15-2014-0055 902 West Live Oak St
Attachments: doc02232220140423151001.pdf

Ms. Heldenfels

I represent Bouldin Green, LC and Richard Kooris in connection with the variance request referred above.

Please find attached (below) two documents that I believe have already been provided to you. One is a survey of the foundation of the home that is substantially completed, showing it's location 8.5' from the platted lot line on the west side. The other was prepared by the project architect showing the dimensions and location of all improvements to be completed in conformance with the building permit issued for this project and consistent with the survey. The rendering prepared by the architect was for the purpose of showing conditions relevant to the additional requested variances pertaining to total impervious cover and building coverage.

I'm provided these documents again for this purpose: As you know, the owner of the lot to the west of this property has filed suit claiming adverse possession of a strip of a little less than 5' on the western side of the property. That claim is being disputed. Because the adjacent owner may not prevail in his claim, I wanted to make clear that the variances being requested will not be used to gain additional development rights if the adjacent owner's adverse possession claim is defeated.

I intend to request that the Board of Adjustment approve the requested variances only to allow for improvements in the locations and dimensions as depicted in these two drawings. That way, if the adjacent owner's claim is defeated, an owner of this property would not be allowed to later construct improvements closer to the lot line or to a greater extent of impervious cover or building coverage in reliance on a variance granting privileges by reference to distance from lot lines or percentage of lot area.

Please let me know if I should present this in any particular form or format for the Board's review. Also, please let me know if you would like me to provide a proposed order or other instrument approving the variances in the manner I propose. If you would like me to do so, I would appreciate your providing me a sample order or customary form used by the Board to evidence its action.

Finally, please confirm that facilities will be available for public use at the 5/12 Board meeting - I'll bring a memory stick to project these drawings (and any other documents submitted by applicant if the Board wishes) for reference at the meeting.

Thanks very much.

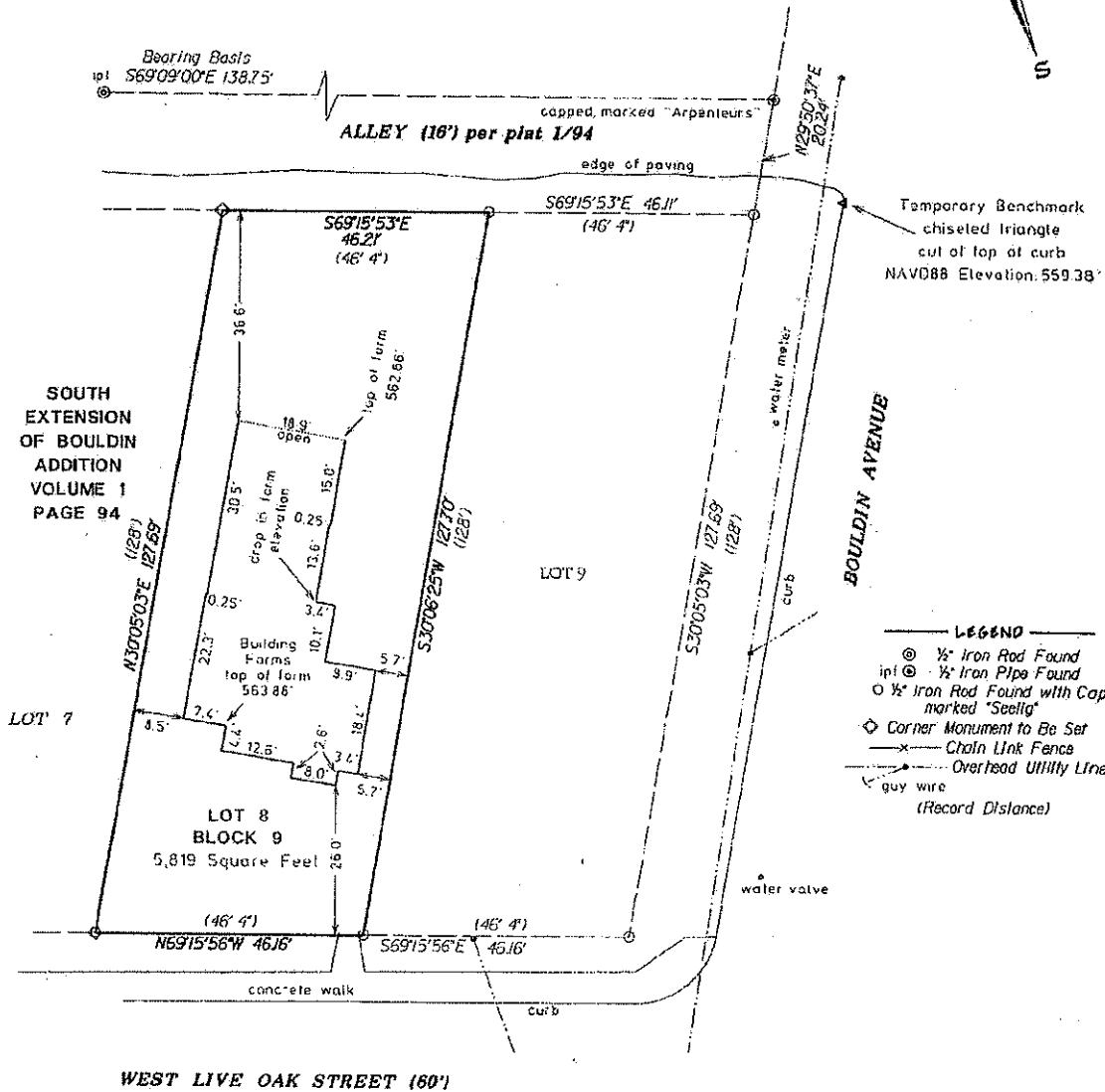
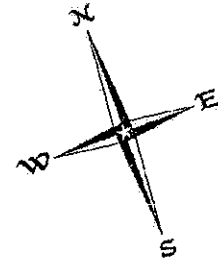
Doug Young

Doug Young
Scanlan, Buckle & Young, P.C.
602 West 11th St.
Austin, Texas 78701
Phone: 512-478-4651
Fax: 512-478-7750
dyoung@sbylaw.com

NOTES:

1. This map was prepared without the benefit of a current title commitment, and therefore these lots may be subject to easements and/or restrictions in addition to the ones shown hereon.
2. NAVD 1988 Elevations shown hereon are based upon post processed static GPS observations.

SCALE: 1" = 20'



MAP OF BUILDING FORMS AS SITUATED UPON:

LOT 8, BLOCK 9, SOUTH EXTENSION OF BOULDIN ADDITION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 1, PAGE 94 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

LOCATED ON WEST LIVE OAK STREET.

PREPARED: NOVEMBER 7, 2013.

BY

Holt Carson



Holt Carson
Registered Professional Land Surveyor No. 5166

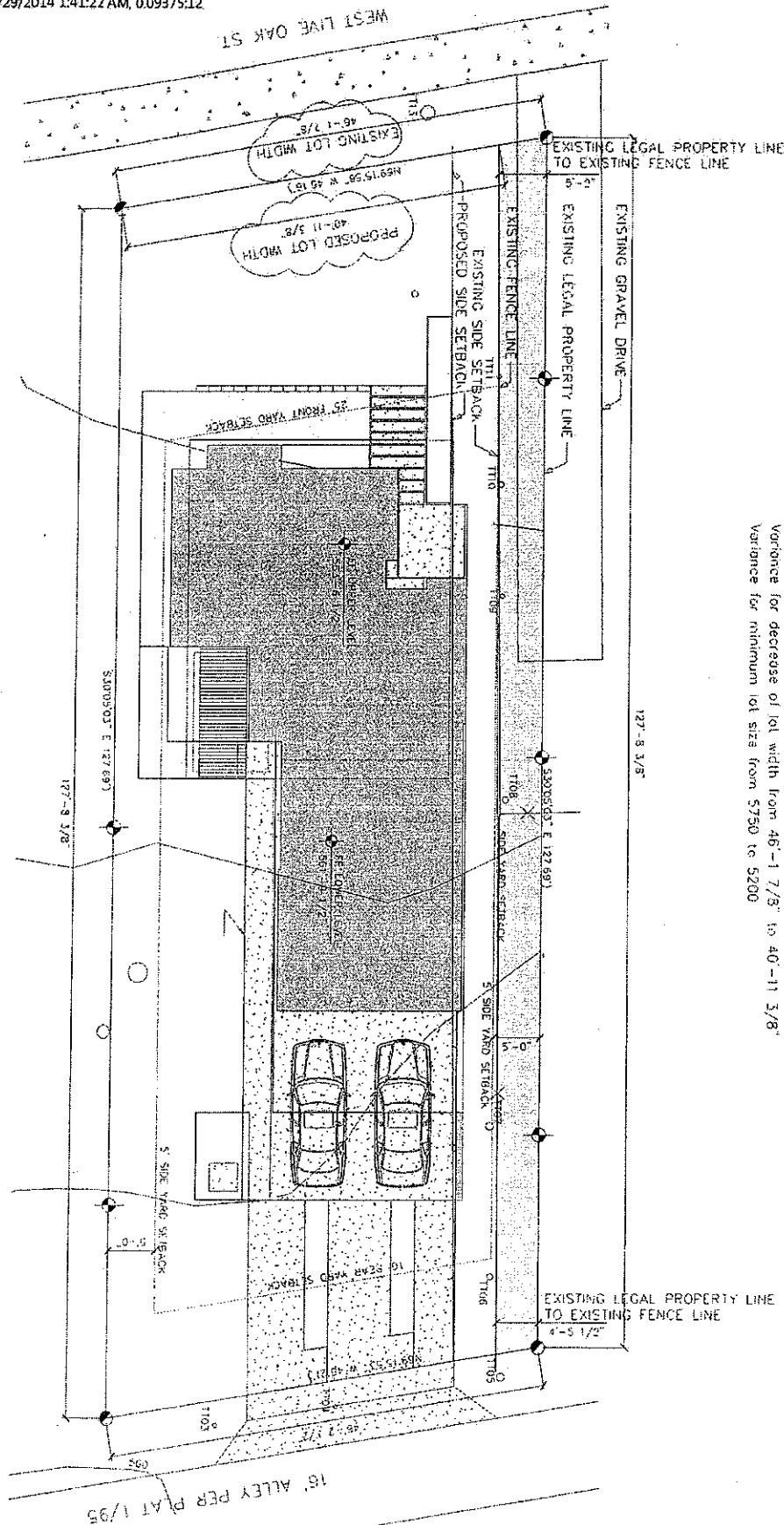
HOLT CARSON, INCORPORATED
PROFESSIONAL LAND SURVEYORS
1904 FORTVIEW ROAD
AUSTIN, TX 78704
(512) 442-0990

Reference Page 152

© copyright 2013

A 888054

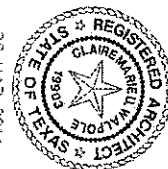
3/29/2014 1:41:22 AM, 0.09375:12



SITE DEVELOPMENT INFORMATION - EXISTING LEGAL PROPERTY LINES	
BUILDING COVERING INFORMATION	5819
EXISTING BUILDING COVERAGE	6.02%
PROPOSED BUILDING COVERAGE	21.13%
	36.32%
BUILDING IMPERVIOUS INFORMATION	5619
EXISTING IMPERVIOUS COVER	6
PROPOSED IMPERVIOUS COVER	2392
	41.12%

SITE DEVELOPMENT INFORMATION - MODIFIED PROPERTY LINES		
BUILDING FOOTAGE INFORMATION	5211	= OF LOT
EXISTING BUILDING FOOTAGE	0	0.00
PROPOSED BUILDING FOOTAGE	2113	40.54
BUILDING INFORMATION	5211	= OF LOT
EXISTING BUILDING CODES	0	0.02
PROPOSED BUILDING CODES	2392	45.39

Variance for increase in building coverage from 40% to 41%
 Variance for increase in impervious cover from 45% to 49%
 Variance for decrease of lot width from 46'-1 7/8" to 40'-11 5/8"
 Variance for minimum lot size from 5750 to 5200



40 MAR 2014

SITE

902 W. LIVE OAK STREET
SINGLE-FAMILY RESIDENCE

EXHIBIT A. AREA STUDY

SCALE: 1"=10'

Ramirez, Diana

C15-2014-0055

From: Kevin Lewis <[REDACTED]>
Sent: Monday, April 14, 2014 2:19 PM
To: Ramirez, Diana
Cc: 'Chad Kimbell'; 'Catherine Mohin'; 'Vicki'; [REDACTED]
Subject: BOA case C15-2014-0055 902 W. Live Oak postponement request

Hi Diana. Regarding BOA case # C15-2014-0055 at 902 West Live Oak St., Bouldin Creek Neighborhood Association would like to request postponement until the next BOA meeting.

Although we did receive an inquiry from the applicant, we have received no follow-up communication from the applicant to be able to set a meeting with the applicant. BCNA has formed no position on the case. The BCNA Zoning Committee would like to meet with the applicant to understand the case. We're requesting postponement to allow time for that to happen.

Best,
Kevin Lewis
President
Bouldin Creek Neighborhood Association

If you need assistance completing this application (general inquiries only) please contact Susan Walker, 974-2202; 505 Barton Springs Road, 2nd Floor (One Texas Center).

ROW

Revised

CASE #
#

C15-2014-0055

**CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
GENERAL VARIANCE/PARKING VARIANCE**

WARNING: Filing of this appeal stops all affected construction activity.

**PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED
INFORMATION COMPLETED.**

STREET ADDRESS: 902 West Live Oak Austin, Texas 78704

LEGAL DESCRIPTION: Subdivision – Bouldin

Lot(s) 8 Block 9 Outlot _____ Division Travis County

I/We Bouldin Green, LLC on behalf of myself/ourselves as authorized agent for

_____ affirm that on _____, _____,

hereby apply for a hearing before the Board of Adjustment for consideration to:

(check appropriate items below)

___ ERECT ___ ATTACH x COMPLETE ___ REMODEL ___ MAINTAIN

The applicant is requesting the following variances to Section 25-2-492 (D) to:
decrease the minimum side yard setback requirement from 5 feet to 3 feet;
and increase the maximum impervious coverage limit from 45% to 49.7%; and
increase the maximum building coverage limit from 40% to 41% ; and
decrease the minimum lot width from 50 feet to 41 feet; and
decrease the minimum lot size from 5,750 square feet to 5,179 square feet

in a SF-3 district.
(zoning district)

NOTE: The Board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

VARIANCE APPLICATION NARRATIVE

[illegible]

The undeveloped lot, which was platted more than 75 years ago, was purchased by applicant in July, 2013. A survey of the lot was prepared confirming the lot lines and a building permit was obtained for construction of a single family residence. After the work on the foundation commenced, the owner of the adjoining lot, Zoned SF-3 but containing two dwelling units joined by a common carport, claimed ownership of an approximate five foot strip on the side of

Applicant's lot by adverse possession (the "Disputed Area"). The new foundation was formed to be located partially in the Disputed Area.

Having just purchased the lot, Applicant had no knowledge of any claim to adverse possession or of historical facts that might support a claim of adverse possession. Applicant requested that the adjoining owner provide evidence of a right to ownership of the Disputed Area by adverse possession but no response was provided. No exception regarding adverse possession was made in the conveyance of the lot to Applicant. Applicant has no knowledge that the Central Appraisal District has ever excluded for tax purposes the Disputed Area from Applicant's lot. Rather, TCAD's description of both Applicant's property and the adjoining owner's property is by reference to the existing platted lots. Both the Seller of the lot to Applicant and Applicant have paid property taxes when due. Nor do the plat records reveal any effort by the adjoining owner to re-subdivide his lot to include the Disputed Area. Applicant has not investigated whether the improvements on the adjoining property, which extend much further toward both the street in front and alley in the back than the improvements being constructed by Applicant, are in compliance with current front and rear setback requirements and applicable use restrictions. It is believed to be likely that not only the existing plat of the adjoining property but also the improvements located thereon pre-date current regulations by many years.

Decrepit fencing had been cleared from the lot in connection with construction activities. Applicant now understands that the Disputed Area is claimed to extend to the location of that fencing. In order not to further delay the construction of the home, for which financing had already been obtained, Applicant adjusted the design of the proposed home so that the structure was not in the Disputed Area. The completed foundation now extends to within 3.5 feet of the Disputed Area (see drawing). No structures are located in either the Disputed Area or in the setback area of the adjoining property measured from the actual lot line.

After the foundation was completed, the adjoining owner filed suit against Applicant, in which the adjoining owner not only claims the Disputed Area, but further claims to have a right to enforce building setback lines against Applicant, measured from what the adjoining owner contends is the new boundary as a result of his claim for adverse possession of the Disputed Area.

Applicant is proceeding with the construction of the home under the terms of the building permit issued to Applicant. The adjoining owner apparently desires to interfere with any construction on Applicant's lot, seeking a judgment that Applicant must tear down the partially completed home because it is in what the adjoining owner claims is a new setback. Applicant cannot timely obtain relief in the litigation to ensure that Applicant can proceed with the use of Applicant's property.

The variances requested are contingent because the adjoining owner's claim to adverse possession has not been established, and may not ever be established. Applicant requests the following variances in the event that the adjoining owner establishes a right to ownership of the Disputed Area to allow continued construction of the home for which a building permit has already been issued: Variances to Section 25-2-492 (D) to:

- decrease the minimum side yard setback requirement from 5 feet to 3 feet; and

- increase the maximum impervious coverage limit from 45% to 49.7%; and

- increase the maximum building coverage limit from 40% to 41%; and

- decrease the minimum lot width from 50 feet to 41 feet; and

- decrease the minimum lot size from 5,750 square feet to 5,179 square feet

Applicant requests a right to build within what would constitute a greater setback from the lot line than would otherwise be required. Because setbacks of existing

improvements were established according to the actual lot lines, there would be no crowding of improvements.

Applicant requests a reasonable use of its property: To continue with the construction of the home for which a building permit was obtained in good faith, modified to be even further away from the adjoining property than provided in the pending permit.

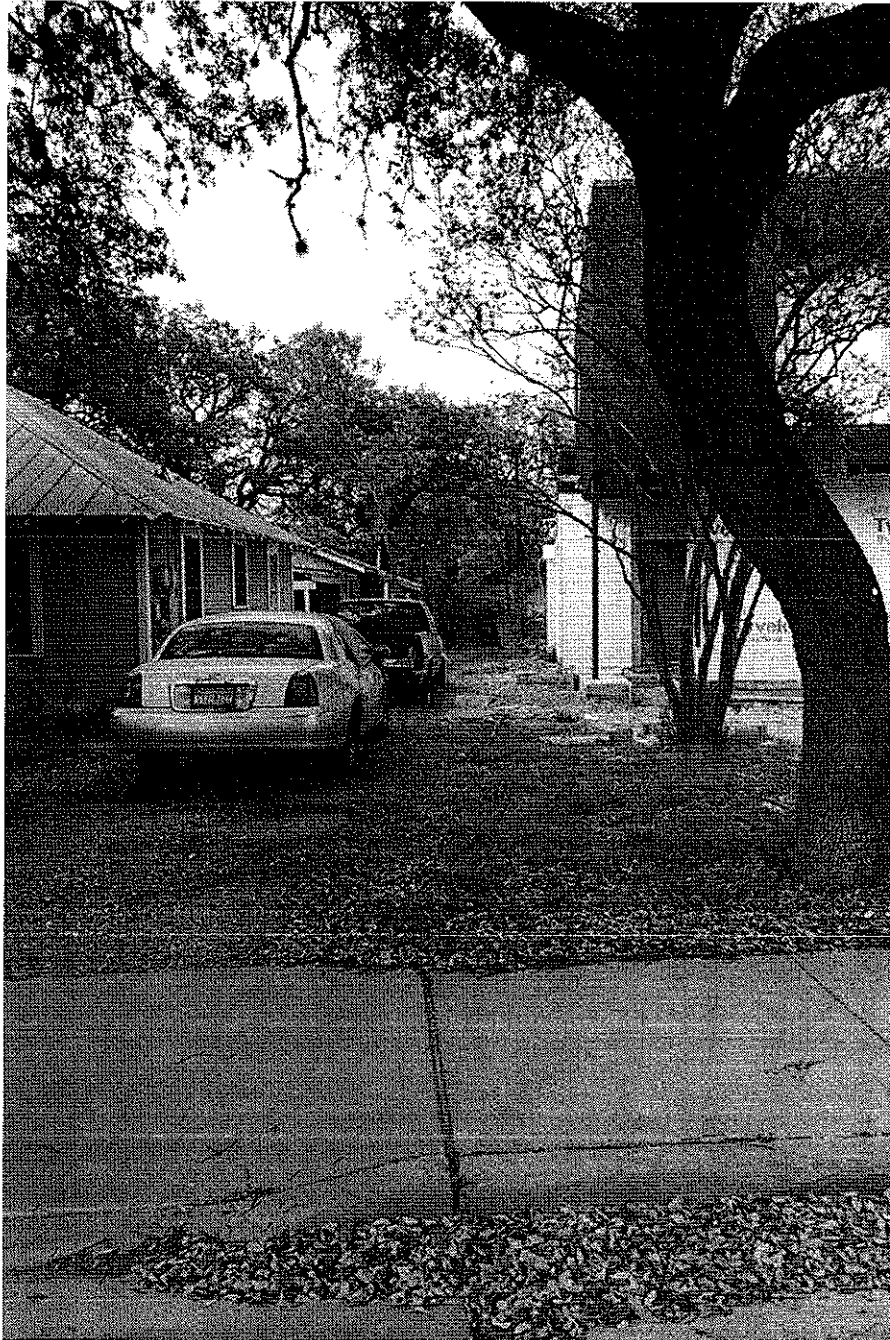
The character of the area will not be affected, as the area was developed in accordance with the lot lines. The adjoining property owner will not be impaired - there is a greater distance between improvements than would be required pursuant to regularly applicable setback regulations.

The hardship experience by Applicant is unique - it is caused by the adjoining property owner's aggressive and unreasonable effort to require the destruction of improvements already built, and possibly to prevent any development on Applicant's lot.

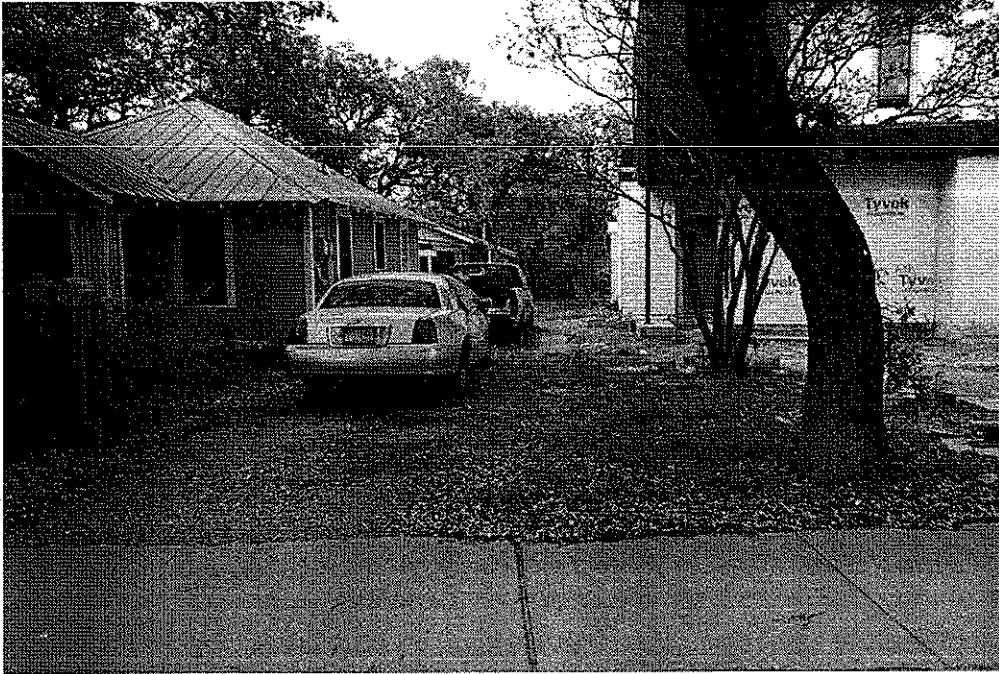
The purposes of the setback regulations will not be impaired - existing improvements were located in accordance with the original lot lines, so that the relief requested will result in a greater distance between improvements that otherwise required.

902 LIVEOAK ST. – CURRENT CONDITIONS

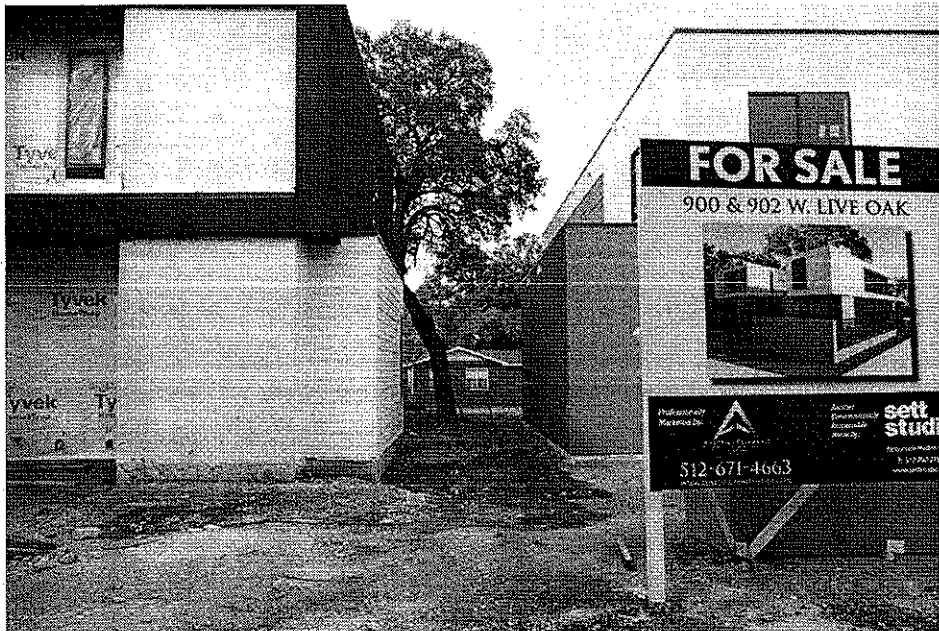
**LOOKING NORTH – AREA BETWEEN 904 (ON LEFT)
AND 902 (APPLICANT - ON RIGHT)**



902 LIVEOAK ST. – CURRENT CONDITIONS



LOOKING NORTH – CLOSER VIEW



LOOKING NORTH – SETBACKS BETWEEN 900 AND 902; DIRECTLY TO THE EAST

March 27, 2014

To Whom It May Concern at the City of Austin,

As a neighbor in close proximity to the newly constructed home at 902 W. Live Oak,

I **SUPPORT** or **Do not Oppose** the request by the owner for variances to the setback and other requirements to allow the completion of construction of the home on this property to within 8 feet from the existing platted lot line on the west side of the property.

Thank you for your time.

mathew murphy
Name

915 W Live Oak St
Address

+1 512 522 9746
Phone number

Mathew

March 27, 2014

To Whom It May Concern at the City of Austin,

As a neighbor in close proximity to the newly constructed home at 902 W. Live Oak,

I **SUPPORT** or **Do not Oppose** the request by the owner for variances to the setback and other requirements to allow the completion of construction of the home on this property to within 8 feet from the existing platted lot line on the west side of the property.

Thank you for your time.

CHRISTINE TREVINO
Name

909 W. LIVE OAK
Address

AUSTIN, TEXAS 78704

512. 447. 3748
Phone number

**SUPPLEMENT TO APPLICATION
TO BOARD OF ADJUSTMENT FOR VARIANCES**

This Supplement to Application supplements the Application submitted by Bouldin Green, LLC for a variance for completion of construction of a single family residence at 902 West Live Oak, Austin, Tx 78704 (the "**Application**").

The Application requests a variance from the side setback requirement to allow completion of construction of a single family residence. A building permit was issued for such construction and the construction commenced before the owner of an adjacent lot filed suit asserting a claim of adverse possession of an approximate five foot strip of land on one side of Applicant's lot, and asserting an additional claim to enforce an alleged resulting new setback to be measured from the interior of the strip of land claimed by adverse possession. Such a new setback would encroach on the foundation of the partially completed home. **No part of the partially constructed home lies within an area claimed by the adjoining owner by adverse possession.**

Applicant is a recent purchaser of the subject lot unfamiliar with the historical basis of the adjoining owner's claim. An unimproved area with dilapidated fencing was used as a driveway by the adjacent lot owner. This was discovered to encroach on Applicant's lot in the course of surveying the lot - this area comprises a portion of the five foot strip now claimed by the adjacent owner.

Applicant has been advised that in the event that the adjoining lot owner establishes adverse possession of the five foot strip of Applicant's lot, the lot would be out of compliance with the following additional zoning regulations (measurements and percentages are approximate as a result of the imprecision of the adjoining owner's claim):

1. Impervious cover of the home that is the subject of the issued building permit would increase from 44.9% to 49.7%
2. The lot size would be reduced from 5750 sf to 5179 sf
3. The lot width would be reduced below the minimum required
4. Building coverage would be increased from 40% to 41%

Variances from the impervious cover and building coverage limitations, and the lot width and size requirements are sought on the same basis as the variance from the side setback requirement.

All requested variances are for completion of the partially constructed home in a size that that does not exceed the size approved in the building permit issued for the construction, and in a location on Applicant's platted lot that is not closer to any side, front, or back of such lot than permitted pursuant to the issued building permit. No change in size or location is proposed or

requested - Applicant's request for variances is premised on the contingent movement of one side by approximately five feet, as a result of the adjacent owner's claim of adverse possession.

The basis of this supplemental request is as follows:

REASONABLE USE:

1. Without the requested variances, Applicant would not be allowed a reasonable use of its lot because it would either have to: (i) destroy partially constructed improvements and re-build on the reduced lot, if possible, in order to attain certainty; or (ii) be delayed an unreasonable amount of time awaiting completion of pre-trial proceedings, trial, and any appeals of the claims asserted by the adjoining lot owner.

HARDSHIP:

2. (a) The hardship resulting from the adjacent lot owner's claim and contingent affect on Applicant's lot is unique to Applicant's property. The right to not only a five foot strip of Applicant's lot, but to enforce a new setback claimed by the adjacent lot owner would result in the only known deviation in the area from long-platted lot lines, with the only potential exception being similar minor encroachments of fencing.

(b) Applicant's hardship is not general to the area - Applicant knows of no other lot owners either claiming a part of an adjoining lot by adverse possession or claiming a right to establish and enforce a new setback on an adjoining lot.

AREA CHARACTER:


3. The variances will not alter the character of the area adjacent to Applicant's lot or impair the use of adjacent conforming property or impair the purpose of the regulations in the zoning district. The area was platted many decades ago. All improvements in the area are believed to have been constructed in conformance with the boundaries as shown on the long-standing plats of lots, so that setbacks and utility easements conform to plat lines. The only possible exception is that fencing in the area may deviate from platted lot lines - it is believed that the owner of the adjacent lot who claims a portion of Applicant's lot may base his claim of adverse possession on the location of fencing. Nevertheless, the variances requested will not result in crowding of existing homes and related structures.

No variances from parking regulations is requested.

Applicant Certificate - I affirm that my statement contained in the foregoing Supplement to Application are true and correct to the best of my knowledge and belief.

OWNER-APPLICANT

Bouldin Green, LLC

By 

Richard Kooris

Its: Manager

501 IH-35
Austin, Texas 78702
(512) 478-3000

Date : 4.5.14

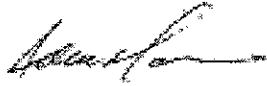
C15 - 2014 - 0095

March 28 , 2014

To Whom It May Concern at the City of Austin,

As a neighbor in close proximity to the newly constructed home at 902 W. Live Oak, I **SUPPORT**
or **Do not Oppose** the request by the owner for variances to the setback and other requirements to
allow the completion of construction of the home on this property to within 8 feet from the existing platted
lot line on the west side of the property.

Thank you for your time.



Adam Mosier
809 W. Live Oak
Austin, TX 78704
512-309-5110

C-15-2014-0055

March 25, 2014

To Whom It May Concern at the City of Austin,

As a neighbor in close proximity to the newly constructed home at 902 W. Live Oak,

I **SUPPORT** or **Do not Oppose** the request by the owner for variances to the setback and other requirements to allow the completion of construction of the home on this property to within 8 feet from the existing platted lot line on the west side of the property.

Thank you for your time.

Guadalupe B. Lomon
Name

906 W. Live Oak Austin TX 78704
Address

512 520 9478
Phone number

C15-2014-0055

March 26th, 2014

To Whom It May Concern at the City of Austin,

As a neighbor in close proximity to the newly constructed home at 902 W. Live Oak,

I SUPPORT or Do not Oppose the request by the owner for variances to the setback and other requirements to allow the completion of construction of the home on this property to within 8 feet from the existing platted lot line on the west side of the property.

Thank you for your time

Victor Limon / [Signature]
Name

910 West Live Oak St.
Address

512 826 0574
Phone number

C15-2014-0055

March 26, 2014

To Whom It May Concern at the City of Austin,

As a neighbor in close proximity to the newly constructed home at 902 W. Live Oak,

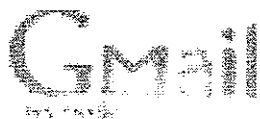
I **SUPPORT** or **Do not Oppose** the request by the owner for variances to the setback and other requirements to allow the completion of construction of the home on this property to within 8 feet from the existing platted lot line on the west side of the property.

Thank you for your time.

Agapita Limon / Mercedes Limon
Name

906 W. Live Oak, Austin, Tx 78704
Address

512-444-9724
Phone number



C15-2014-0055

Request for Variance

Paul Kern

To: [REDACTED]

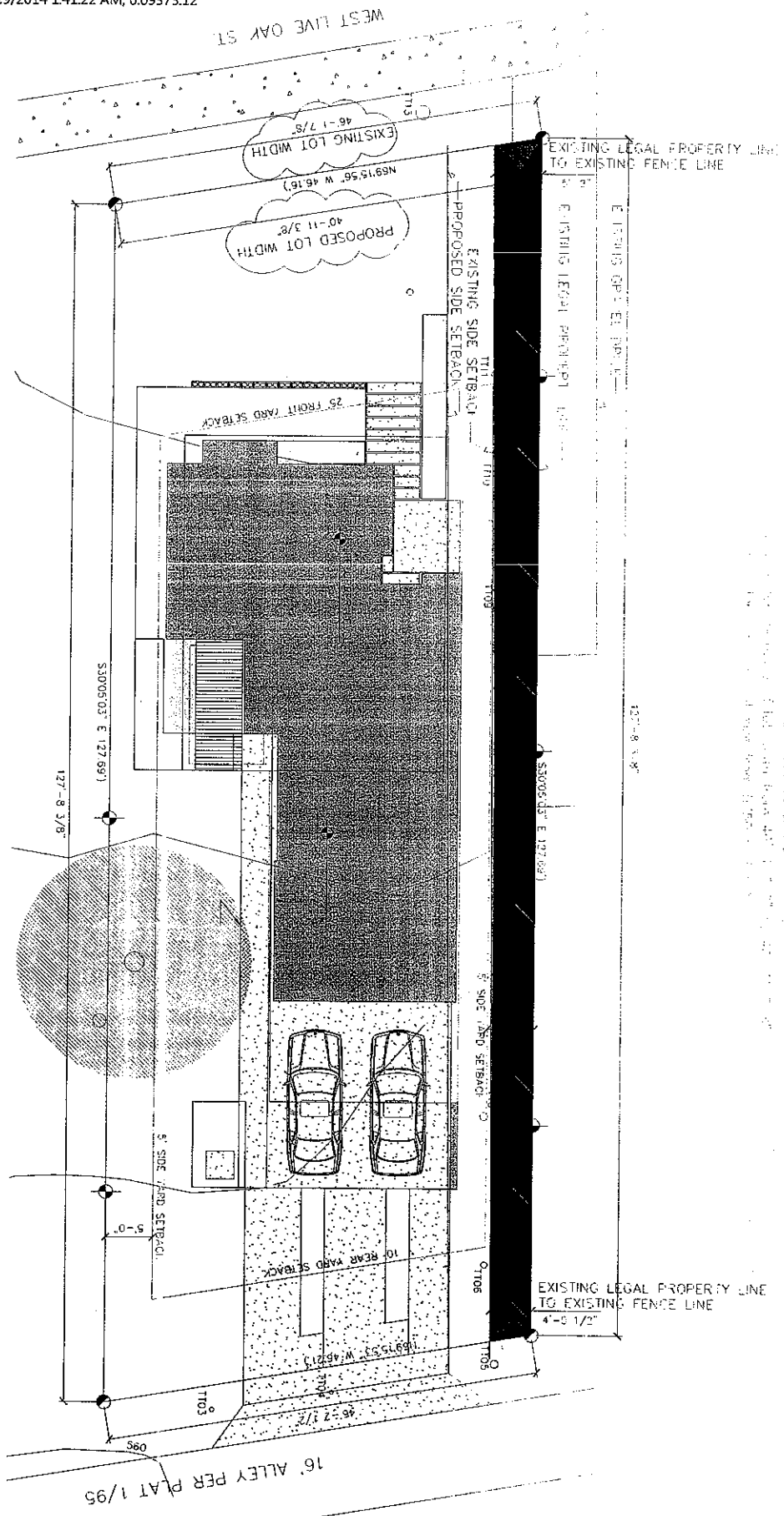
Mon, Mar 31, 2014 at 10:00 PM

I live at 917 W Live Oak and received a copy of your letter requesting support to complete the home at 902 W Live oak. I am fine with what you are requesting and you can use this email to show the city as proof of my support as a neighbor. I support your request for variances to the setback and other requirements to finish the home.

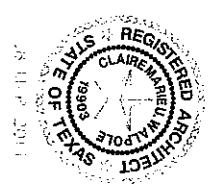
Paul Kern
917 W Live Oak
Austin, TX 78704

C19 - 2014 - 0055

3/29/2014 1:41:22 AM, 0.09375:12



PROPOSED BUILDING COVERAGE	31.5	40.57
PROPOSED IMPERVIOUS COVERAGE	29.2	46.21



SITE

902 W LIVE OAK STREET
SINGLE-FAMILY RESIDENCE

EXHIBIT A AREA STUDY

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak **FOR** or **AGAINST** the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing; and:

- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: www.austintexas.gov/development.

Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: C15-2014-0055, 902 West Live Oak
Contact: Leane Heldenfels, 512-974-2202
Public Hearing: Board of Adjustment, April 14th, 2014

W. R. Wells
 Your Name (please print)

☐ I am in favor
☐ I object

WELLS
 Your address(es) affected by this application

1011 BODIE ST. 4 7 14
 Signature Date

Daytime Telephone: _____

Comments: _____

The limits should not be changed for
the applicant

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/1st Floor
 Leane Heldenfels
 P. O. Box 1088
 Austin, TX 78767-1088

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

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- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing; and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

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Case Number: C15-2014-0055, 902 West Live Oak
Contact: Leane Heldenfels, 512-974-2202
Public Hearing: Board of Adjustment, April 14th, 2014

Your Name (please print)

APRIL & MARY WATKINS

☐ I am in favor
☒ I object

Your address(es) affected by this application

906 W. JOHNSON ST Austin TX 78704

Signature

Date

Daytime Telephone:

601-213-0632

04/05/14

Comments:

I have discussed this with
several of my neighbors (have
signed) on 906 block at W. Johnson
Amenity oppose large / duplex's
in smaller size lots. Do we testifi-
cally have new homes by existing city codes.

THANKS

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing; and:

- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: www.austintexas.gov/development.

Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: C15-2014-0055, 902 West Live Oak

Contact: Leane Heldenfels, 512-974-2202

Public Hearing: Board of Adjustment, April 14th, 2014

MARGARET ROSE WELLS
Your Name (please print)

☐ I am in favor
☒ I object

1011 BROOME ST.
Your address(es) affected by this application

M. Wells *4/7/14*
Signature Date

Daytime Telephone: *512 443 8581*

Comments:

The side yard set back requirement should remain at the "New" statement as the others as well.

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

C15-2014-2055

HX 40512 974-2934

PUBLIC HEARING INFORMATION

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- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

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Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: C15-2014-0055, 902 West Live Oak
Contact: Leane Heldenfels, 512-974-2202
Public Hearing: Board of Adjustment, April 14th, 2014

Wendell Taylor
Your Name (please print)

☐ I am in favor
☒ I object

1011 Brodie St #24, Austin TX 78704
Your address(es) affected by this application

Wendell Taylor
Signature

Date

Daytime Telephone: 512 441 6298

Comments: At this time, I object to decreasing the side yard setback requirement. I also object to decreasing the minimum lot width. I believe this is too much density in a small area characterized by decent amounts of space between houses. This is "trying to do too much with too little"

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088

Heldenfels, Leane

From: Kemp Gorthey [redacted]
Sent: Monday, April 14, 2014 3:19 PM
To: Heldenfels, Leane
Cc: 'Kemp Gorthey'
Subject: C15-2014-0055; Richard Kooris; 902 West Live Oak Street
Attachments: IMG_0153.jpg

Dear Ms. Heldenfels:

I represent and Joel Mitchell, who has filed the adverse possession claim that is the subject of the referenced variance application.

Mr. Mitchell opposes the application.

I would like to call to your attention several misrepresentations of fact contained in the application:

On page 1, the applicant states that the adverse possession claim was not made after work on the foundation commenced. This is incorrect. The claim was made when my clients contacted me on or about September 26, 2013 and told me that someone had just bulldozed their chain-link fence. I went to the site and took pictures, including the one attached. At that time, no work on the foundation had commenced. I then spoke with Mike at Sett Studio (whose sign was on the property) and send an e-mail on September 26, 2013 to Mike and Mr. Kooris advising that I represented Mr. Mitchell, that he had owned 904 W. Live Oak Street since 1979 and had title by adverse possession to the strip of property within the fence that they had just bulldozed. I asked that they refrain from any construction activities and was later told by their lawyer by e-mail dated October 22, 2013 that Bouldin Green "has re-designed the home and does not intend to use any part of the disputed area in connection with the construction."

On page 2, the applicant states that they "had no knowledge of any claim to adverse possession or of historical facts that might support a claim of adverse possession." This is also incorrect. The survey that is included with their application dated March 7, 2012, over year prior to when they purchased the property (the deed into Bouldin Green is dated July 1, 2013), specifically shows on it the fence and the gravel drive located within the survey lot lines. The location of a fence and gravel drive are clearly, at a minimum, "historical facts" indicating the basis for an adverse possession claim.

On page 2, the applicant also states that the fence they tore down was "decrepit." As you can see by the photographs, this is incorrect.

Finally, on page 3, the applicant states that it "cannot timely obtain relief in the litigation", so it has to ask for this conditional variance.

The lawsuit was filed on December 16, 2013. The applicant, who is the defendant, has done absolutely nothing in the lawsuit to obtain any relief.

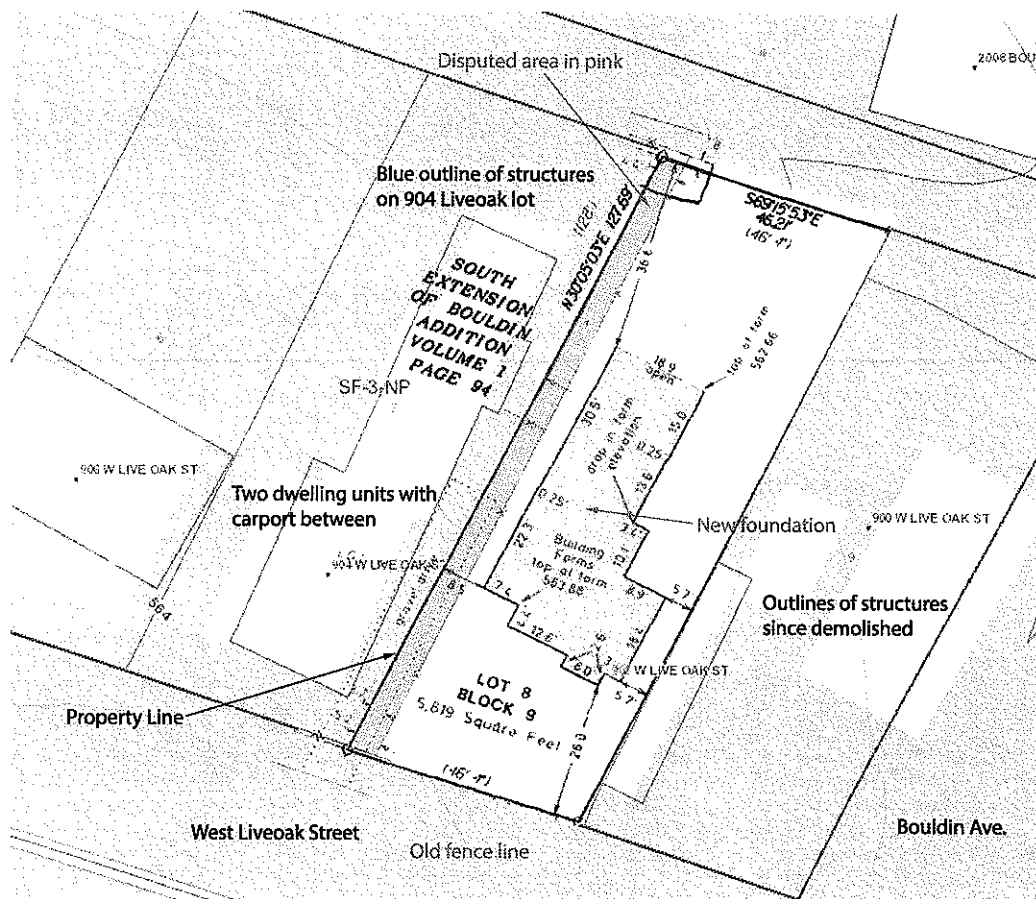
I would note that I did not filed suit until December 16, 2013 because I was relying upon the representation that Bouldin Green did not intend to use any part of the disputed area in connection with construction. This appeared to be the case with the construction that was ongoing, which was well to the east of my clients property line. When my client advised me that a new foundation was being formed in what appeared to part of the disputed area, I immediately filed suit.

Bouldin Green knew before they purchased the property of the basis for the adverse possession claim. They deliberately bulldozed a fence and tore down trees without bothering to contact the owner of the joining property. Then, after receiving a threat of litigation and making promises that they would not build within the disputed area, they began



**902 WEST LIVE OAK ST.
VARIANCE APPLICATION TEXT**

This is a contingent application for a variance from the setback requirement of five feet on one side of the lot at 902 West Live Oak St. to permit completion of a new home to within 3.5 feet of what is claimed by the adjoining property owner to be the new side property line accounting for the adjoining property owner's claim of adverse possession to a strip on the common side of Applicant's lot (see attached drawing).



The undeveloped lot, which was platted more than 75 years ago, was purchased by applicant in July, 2013. A survey of the lot was prepared confirming the lot lines and a building permit was obtained for construction of a single family residence. After the work on the foundation commenced, the owner of the adjoining lot, Zoned SF-3 but containing two dwelling units joined by a common carport, claimed ownership of an approximate five foot strip on the side of

Applicant's lot by adverse possession (the "Disputed Area"). The new foundation was formed to be located partially in the Disputed Area.

Having just purchased the lot, Applicant had no knowledge of any claim to adverse possession or of historical facts that might support a claim of adverse possession. Applicant requested that the adjoining owner provide evidence of a right to ownership of the Disputed Area by adverse possession but no response was provided. No exception regarding adverse possession was made in the conveyance of the lot to Applicant. Applicant has no knowledge that the Central Appraisal District has ever excluded for tax purposes the Disputed Area from Applicant's lot. Rather, TCAD's description of both Applicant's property and the adjoining owner's property is by reference to the existing platted lots. Both the Seller of the lot to Applicant and Applicant have paid property taxes when due. Nor do the plat records reveal any effort by the adjoining owner to re-subdivide his lot to include the Disputed Area. Applicant has not investigated whether the improvements on the adjoining property, which extend much further toward both the street in front and alley in the back than the improvements being constructed by Applicant, are in compliance with current front and rear setback requirements and applicable use restrictions. It is believed to be likely that not only the existing plat of the adjoining property but also the improvements located thereon pre-date current regulations by many years.

Decrepit fencing had been cleared from the lot in connection with construction activities. Applicant now understands that the Disputed Area is claimed to extend to the location of that fencing. In order not to further delay the construction of the home, for which financing had already been obtained, Applicant adjusted the design of the proposed home so that the structure was not in the Disputed Area. The completed foundation now extends to within 3.5 feet of the Disputed Area (see drawing). No structures are located in either the Disputed Area or in the setback area of the adjoining property measured from the actual lot line.

After the foundation was completed, the adjoining owner filed suit against Applicant, in which the adjoining owner not only claims the Disputed Area, but further claims to have a right to enforce building setback lines against Applicant, measured from what the adjoining owner contends is the new boundary as a result of his claim for adverse possession of the Disputed Area.

Applicant is proceeding with the construction of the home under the terms of the building permit issued to Applicant. The adjoining owner apparently desires to interfere with any construction on Applicant's lot, seeking a judgment that Applicant must tear down the partially completed home because it is in what the adjoining owner claims is a new setback. Applicant cannot timely obtain relief in the litigation to ensure that Applicant can proceed with the use of Applicant's property.

The variance requested is contingent because the adjoining owner's claim to adverse possession has not been established, and may not ever be established. Applicant requests a variance in the event that the adjoining owner establishes a right to ownership of the Disputed Area to allow continued construction of the home for which a building permit has already been issued, to extend to within 3.5 feet of the Disputed Area.

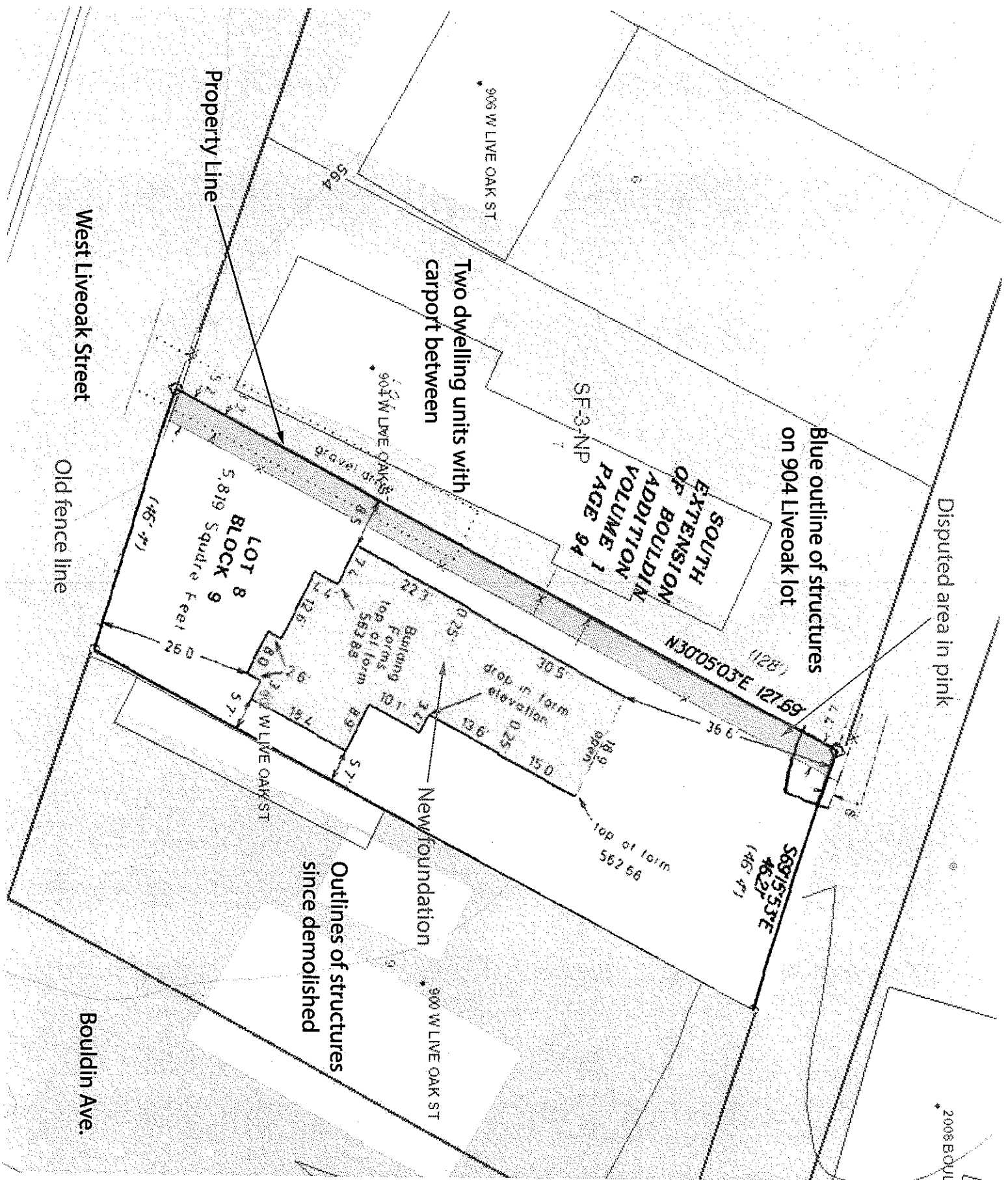
Applicant only requests a right to build within what would constitute a greater setback from the lot line than would otherwise be required. Because setbacks of existing improvements were established according to the actual lot lines, there would be no crowding of improvements.

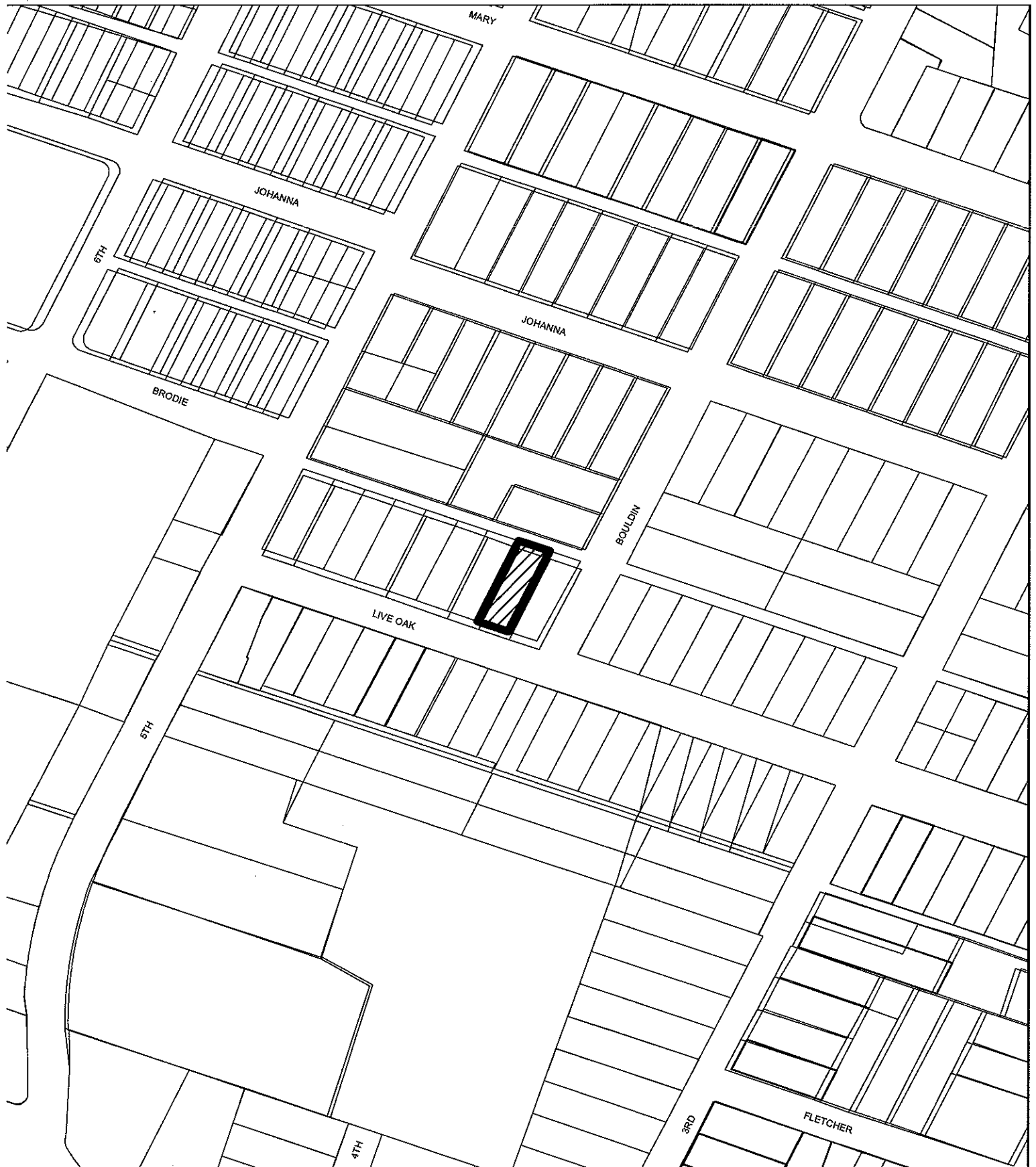
Applicant requests a reasonable use of its property: To continue with the construction of the home for which a building permit was obtained in good faith, modified to be even further away from the adjoining property than provided in the pending permit.

The character of the area will not be affected, as the area was developed in accordance with the lot lines. The adjoining property owner will not be impaired - there is a greater distance between improvements than would be required pursuant to regularly applicable setback regulations.

The hardship experience by Applicant is unique - it is caused by the adjoining property owner's aggressive and unreasonable effort to require the destruction of improvements already built, and possibly to prevent any development on Applicant's lot.

The purposes of the setback regulations will not be impaired - existing improvements were located in accordance with the original lot lines, so that the relief requested will result in a greater distance between improvements than otherwise required.





N



SUBJECT TRACT



ZONING BOUNDARY

CASE#: C15-2014-0055
LOCATION: 902 WEST LIVE OAK



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.

This product has been produced by the Planning and Development Review Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

If you need assistance completing this application (general inquiries only) please contact Susan Walker, 974-2202; 505 Barton Springs Road, 2nd Floor (One Texas Center).

ROW

CASE # C15-2014-0055
ROW # 11104061
Tax Roll # 0402040301

CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
GENERAL VARIANCE/PARKING VARIANCE

WARNING: Filing of this appeal stops all affected construction activity.

PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED INFORMATION COMPLETED.

STREET ADDRESS: 902 West Live Oak Austin, Texas 78704

LEGAL DESCRIPTION: Subdivision – Bouldin

Lot(s) 8 Block 9 Outlot _____ Division Travis County

I/We Bouldin Green, LLC on behalf of myself/ourselves as authorized agent for
_____ affirm that on _____, _____,

hereby apply for a hearing before the Board of Adjustment for consideration to:

(check appropriate items below)

___ ERECT ___ ATTACH x COMPLETE ___ REMODEL ___ MAINTAIN

See attached

in a SF-3 district.
(zoning district)

NOTE: The Board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

VARIANCE FINDINGS: I contend that my entitlement to the requested variance is based on the following findings (see page 5 of application for explanation of findings):

REASONABLE USE:

1. The zoning regulations applicable to the property do not allow for a reasonable use because:

Please see attached explanation.

HARDSHIP:

2. (a) The hardship for which the variance is requested is unique to the property in that:

Please see attached explanation.

- (b) The hardship is not general to the area in which the property is located because:

Please see attached explanation.

AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

Please see attached explanation.

PARKING: (Additional criteria for parking variances only.)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed Section 479 of Chapter 25-6 with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonable require strict or literal interpretation and enforcement of the specific regulation because:

No parking variance is requested.

2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

No parking variance is requested.

3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

No parking variance is requested

4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

No parking variance is requested.

NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

APPLICANT CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed  Mail Address 501 North I-35

City, State & Zip Austin, Texas 78702-3201

Printed Richard Kooris Phone 512-485-3000 Date 2.24.14

OWNERS CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed  Mail Address 501 North I-35

City, State & Zip Austin, Texas 78702-3201

Printed Richard Kooris, Manager Phone 512-422-8878 Date 2.24.2014

Bouldin Green LLC

If you need assistance completing this application (general inquiries only) please contact Susan Walker, 974-2202; 505 Barton Springs Road, 2nd Floor (One Texas Center).

ROW

CASE # _____

CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
GENERAL VARIANCE/PARKING VARIANCE

WARNING: Filing of this appeal stops all affected construction activity.

PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED INFORMATION COMPLETED.

STREET ADDRESS: 902 West Live Oak, Austin, TX 78704

LEGAL DESCRIPTION: Subdivision - South Extension of Bouldin Addition

Lot(s) 8 Block 9 Outlot _____ Division _____

I/We Richard Horius on behalf of myself/ourselves as authorized agent for

Bouldin Green, LLC ("Owner") affirm that on I,

hereby apply for a hearing before the Board of Adjustment for consideration to:

(check appropriate items below)

 ERECT ATTACH X COMPLETE REMODEL MAINTAIN

Construction of a single family residence

in a SF-3 district.
(zoning district)

NOTE: The Board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

VARIANCE FINDINGS: I contend that my entitlement to the requested variance is based on the following findings (see page 5 of application for explanation of findings):

REASONABLE USE:

1. The zoning regulations applicable to the property do not allow for a reasonable use because:

(See Attached narrative.) Adjacent owner claimed adverse possession of a 5' strip of my lot after partial completion of the home and claims a right to an adjusted setback that would require destruction of part of the partially completed home.

HARDSHIP:

2. (a) The hardship for which the variance is requested is unique to the property in that:

The claims of adverse possession and claim to adjusted setback has not occurred anywhere else in the area and would result in the only known deviation from platted lot lines.

- (b) The hardship is not general to the area in which the property is located because:

All properties are developed in relation to platted lot lines - to the extent a variance is necessary no crowding of improvements would result.

AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

Surrounding structures are built in accordance with platted lot lines - the variance to any adjustment of the setback based on any adverse possession would not be a deviation.

PARKING: (Additional criteria for parking variances only.)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed Section 479 of Chapter 25-6 with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonable require strict or literal interpretation and enforcement of the specific regulation because:

N/A

1. This map was prepared without the benefit of a current title commitment, and therefore these lots may be subject to easements and/or restrictions in addition to the ones shown hereon.
2. NAVD 1988 Elevations shown hereon are based upon post processed static GPS observations.



LOCATED ON WEST LIVE OAK STREET.

John C. ...

Registered Professional Land Surveyor No. 5166

Reference Page 152

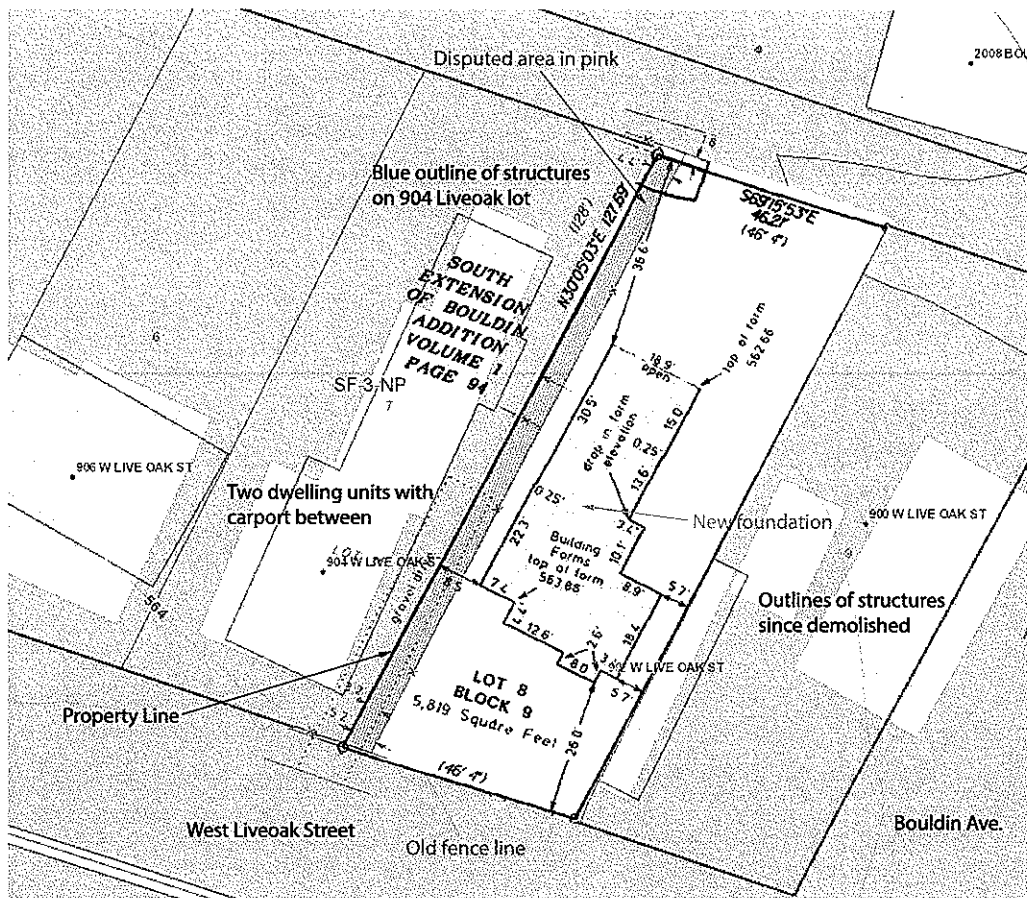
© copyright 2013

A 888054

902 WEST LIVE OAK ST.

VARIANCE APPLICATION NARRATIVE

This is a contingent application for a variance from the setback requirement of five feet on one side of the lot at 902 West Live Oak St. to permit completion of a new home to within 3.5 feet of what is claimed by the adjoining property owner to be the new side property line accounting for the adjoining property owner's claim of adverse possession to a strip on the common side of Applicant's lot (see attached drawing).



The undeveloped lot, which was platted more than 75 years ago, was purchased by applicant in July, 2013. A survey of the lot was prepared confirming the lot lines and a building permit was obtained for construction of a single family residence. After the work on the foundation commenced, the owner of the adjoining lot, Zoned SF-3 but containing two dwelling units joined by a common carport, claimed ownership of an approximate five foot strip on the side of

Applicant's lot by adverse possession (the "Disputed Area"). The new foundation was formed to be located partially in the Disputed Area.

Having just purchased the lot, Applicant had no knowledge of any claim to adverse possession or of historical facts that might support a claim of adverse possession. Applicant requested that the adjoining owner provide evidence of a right to ownership of the Disputed Area by adverse possession but no response was provided. No exception regarding adverse possession was made in the conveyance of the lot to Applicant. Applicant has no knowledge that the Central Appraisal District has ever excluded for tax purposes the Disputed Area from Applicant's lot. Rather, TCAD's description of both Applicant's property and the adjoining owner's property is by reference to the existing platted lots. Both the Seller of the lot to Applicant and Applicant have paid property taxes when due. Nor do the plat records reveal any effort by the adjoining owner to re-subdivide his lot to include the Disputed Area. Applicant has not investigated whether the improvements on the adjoining property, which extend much further toward both the street in front and alley in the back than the improvements being constructed by Applicant, are in compliance with current front and rear setback requirements and applicable use restrictions. It is believed to be likely that not only the existing plat of the adjoining property but also the improvements located thereon pre-date current regulations by many years.

Decrepit fencing had been cleared from the lot in connection with construction activities. Applicant now understands that the Disputed Area is claimed to extend to the location of that fencing. In order not to further delay the construction of the home, for which financing had already been obtained, Applicant adjusted the design of the proposed home so that the structure was not in the Disputed Area. The completed foundation now extends to within 3.5 feet of the Disputed Area (see drawing). No structures are located in either the Disputed Area or in the setback area of the adjoining property measured from the actual lot line.

After the foundation was completed, the adjoining owner filed suit against Applicant, in which the adjoining owner not only claims the Disputed Area, but further claims to have a right to enforce building setback lines against Applicant, measured from what the adjoining owner contends is the new boundary as a result of his claim for adverse possession of the Disputed Area.

Applicant is proceeding with the construction of the home under the terms of the building permit issued to Applicant. The adjoining owner apparently desires to interfere with any construction on Applicant's lot, seeking a judgment that Applicant must tear down the partially completed home because it is in what the adjoining owner claims is a new setback. Applicant cannot timely obtain relief in the litigation to ensure that Applicant can proceed with the use of Applicant's property.

The variance requested is contingent because the adjoining owner's claim to adverse possession has not been established, and may not ever be established. Applicant requests a variance in the event that the adjoining owner establishes a right to ownership of the Disputed Area to allow continued construction of the home for which a building permit has already been issued, to extend to within 3.5 feet of the Disputed Area.

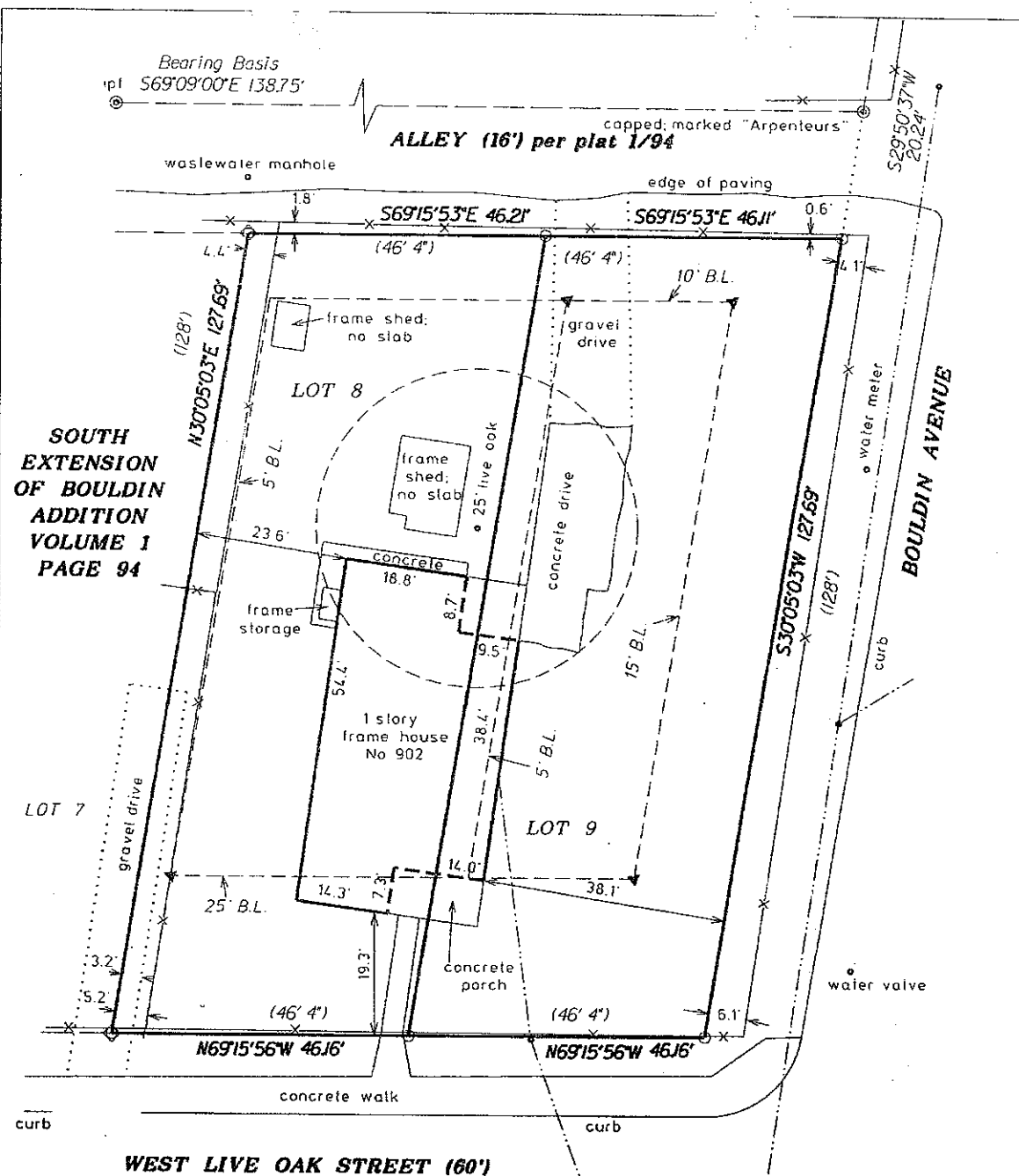
Applicant only requests a right to build within what would constitute a greater setback from the lot line than would otherwise be required. Because setbacks of existing improvements were established according to the actual lot lines, there would be no crowding of improvements.

Applicant requests a reasonable use of its property: To continue with the construction of the home for which a building permit was obtained in good faith, modified to be even further away from the adjoining property than provided in the pending permit.

The character of the area will not be affected, as the area was developed in accordance with the lot lines. The adjoining property owner will not be impaired - there is a greater distance between improvements than would be required pursuant to regularly applicable setback regulations.

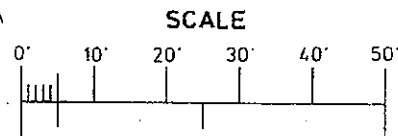
The hardship experience by Applicant is unique - it is caused by the adjoining property owner's aggressive and unreasonable effort to require the destruction of improvements already built, and possibly to prevent any development on Applicant's lot.

The purposes of the setback regulations will not be impaired - existing improvements were located in accordance with the original lot lines, so that the relief requested will result in a greater distance between improvements that otherwise required.



**SURVEY MAP OF
 LOTS 8 AND 9, BLOCK 9, SOUTH EXTENSION OF
 BOULDIN ADDITION, A SUBDIVISION IN TRAVIS
 COUNTY, TEXAS, ACCORDING TO THE MAP
 OR PLAT THEREOF RECORDED IN VOLUME 1
 PAGE 94 OF THE PLAT RECORDS OF TRAVIS
 COUNTY, TEXAS, LOCATED AT 902 WEST LIVE
 OAK STREET.**

This survey was completed without the benefit
 of a current title commitment. This lot may be
 subject to restrictions and easements not
 shown hereon.

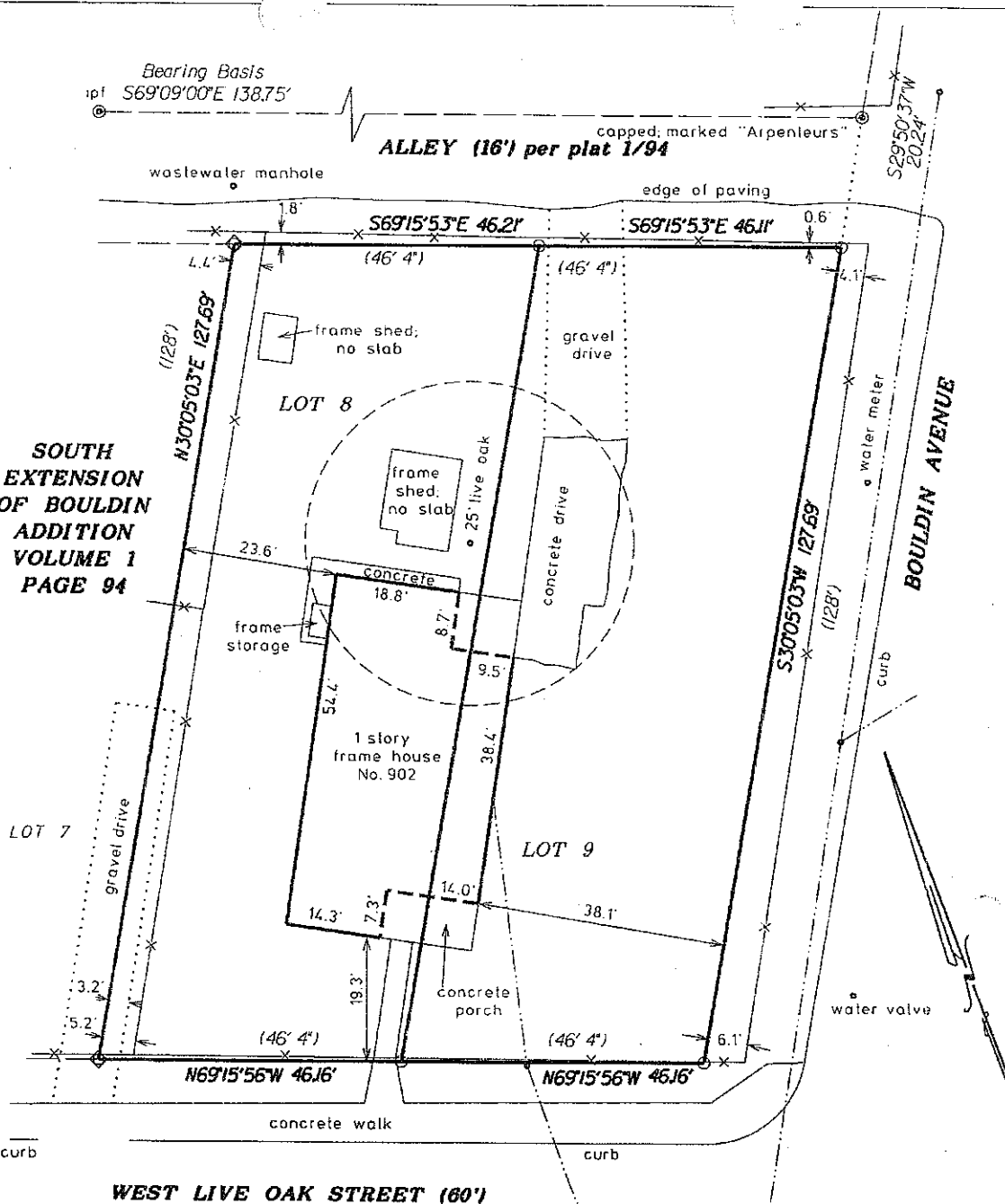


LEGEND

- ⊙ ½" Iron Rod Found
- ipf ⊙ ½" Iron Pipe Found
- ½" Iron Rod Found with Cap marked "Seelig"
- ◇ Corner Monument to Be Set
- x— Chain Link Fence
- Overhead Utility Line
- guy wire
- (Record Distance)
- ▼ Nail Set

HOLT CARSON, INC.
 1904 FORTVIEW ROAD
 AUSTIN, TX 78704
 (512) 442-0990 888054

**SOUTH
EXTENSION
OF BOULDIN
ADDITION
VOLUME 1
PAGE 94**



**SURVEY MAP OF
LOTS 8 AND 9, BLOCK 9, SOUTH EXTENSION OF
BOULDIN ADDITION, A SUBDIVISION IN TRAVIS
COUNTY, TEXAS, ACCORDING TO THE MAP
OR PLAT THEREOF RECORDED IN VOLUME 1
PAGE 94 OF THE PLAT RECORDS OF TRAVIS
COUNTY, TEXAS, LOCATED AT 902 WEST LIVE
OAK STREET.**

This survey was completed without the benefit of a current title commitment. This lot may be subject to restrictions and easements not shown hereon.

PREPARED: March 7, 2012
BY:

Anne Thayer

Anne Thayer
Registered Professional Land Surveyor No. 5850



HOLT CARSON, INC.
1904 FORTVIEW ROAD
AUSTIN, TX 78704
(512) 442-0990 888054