

# BOA GENERAL REVIEW COVERSHEET

**CASE:** C15-2020-0053

**BOA DATE:** October 12<sup>th</sup>, 2020

**ADDRESS:** 900 Old Koenig Ln &  
5916 N. Lamar Blvd

**COUNCIL DISTRICT:** 7

**OWNER:** Thomas Bercy

**AGENT:** Michael J. Whellan

**ZONING:** CS-MU-V-CO-NP

**LEGAL DESCRIPTION:** LOT 4, 5 & 6 AMENDED PLAT OF LTS A-E & G WUPPERMAN ADDN SEC 2; LOT 2  
AMENDED PLAT OF LTS A-E & G WUPPERMAN ADDN SEC 2

**VARIANCE REQUEST:** reduce setback from 25 ft. to 0 ft., increase height limit from 30 ft. to 60 ft., and increase height limit from 40 ft. to 60 ft.

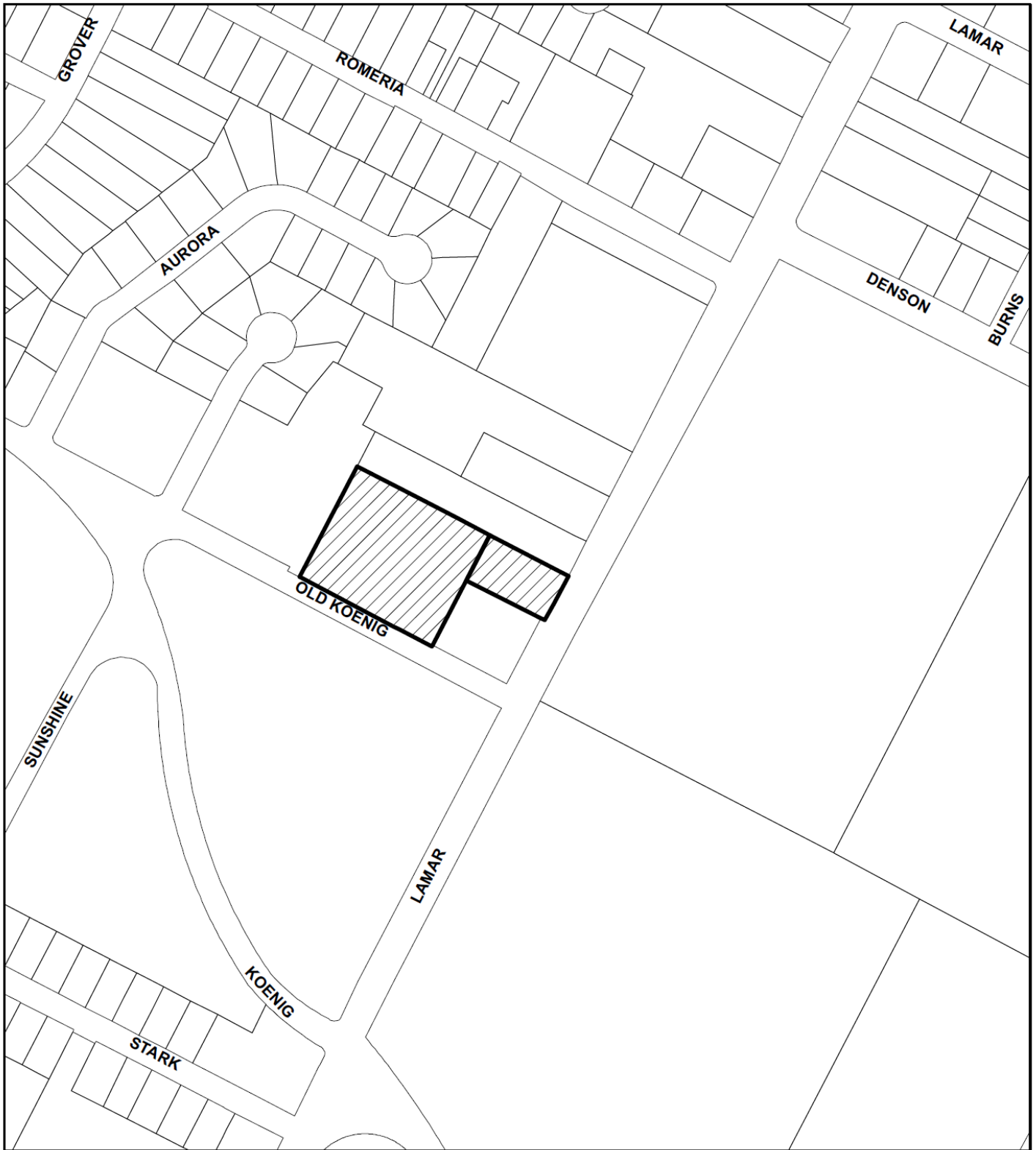
**SUMMARY:** erect a Vertical Mixed-Use project with on-site affordable units.




**ISSUES:** heritage tree and additional setback required from a transmission line running down Old Koenig Ln.

|              | <b>ZONING</b> | <b>LAND USES</b>                                |
|--------------|---------------|---|
| <i>Site</i>  | CS-MU-V-CO-NP | General Commercial Services- Vertical Mixed Use |
| <i>North</i> | CS-MU-V-CO-NP | General Commercial Services- Vertical Mixed Use |
| <i>South</i> | CS-MU-V-CO-NP | General Commercial Services- Vertical Mixed Use |
| <i>East</i>  | CS-MU-V-CO-NP | General Commercial Services- Vertical Mixed Use |
| <i>West</i>  | P-NP          | Public  |

## **NEIGHBORHOOD ORGANIZATIONS:**

Austin Independent School District  
Austin Lost and Found Pets  
Austin Neighborhoods Council  
Bike Austin  
Brentwood Neighborhood Assn.  
Brentwood Neighborhood Plan Contact Team  
Central Austin Urbanists  
Friends of Austin Neighborhoods  
Homeless Neighborhood Association  
Neighborhood Empowerment Foundation  
North Austin Neighborhood Alliance  
SELTexas  
Shoal Creek Conservancy  
Sierra Club, Austin Regional Group



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

1" = 250'

## NOTIFICATIONS

CASE#: C15-2020-0053  
LOCATION: 900 OLD KOENIG LN &  
5916 N LAMAR BLVD

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.

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## CITY OF AUSTIN

### Development Services Department

One Texas Center | Phone: 512.978.4000  
505 Barton Springs Road, Austin, Texas 78704

## Board of Adjustment General/Parking Variance Application

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

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. ***If more space is required, please complete Section 6 as needed.*** All information is required (if applicable).

### For Office Use Only

Case # \_\_\_\_\_ ROW # \_\_\_\_\_ Tax # \_\_\_\_\_

### Section 1: Applicant Statement

Street Address: 5916 North Lamar Blvd. and 900 Old Koenig Ln.

Subdivision Legal Description:

Tract 1: Lot 2, Amended Plat of Lots A, B, C, D, E, & G, Wupperman Addition Section Two

Tract 2: Lots 4, 5, 6, Amended Plat of Lots A, B, C, D, E, & G, Wupperman Addition Sec. Two

Lot(s): \_\_\_\_\_ Block(s): \_\_\_\_\_

Outlot: \_\_\_\_\_ Division: \_\_\_\_\_

Zoning District: CS-MU-V-CO-NP

I/We Michael J. Whellan on behalf of myself/ourselves as  
authorized agent for 5916 N Lamar Investor, LLC affirm that on  
Month August, Day 19, Year 2020, hereby apply for a hearing before the  
Board of Adjustment for consideration to (select appropriate option below):

☒ Erect ☐ Attach ☐ Complete ☐ Remodel ☐ Maintain ☐ Other: \_\_\_\_\_

Type of Structure: Vertical mixed-use project, with on-site affordable units.

Portion of the City of Austin Land Development Code applicant is seeking a variance from:

We request a variance waiving Section 25-2-1063(B)(2), Section 25-2-1063(C)(1)(b), and Section 25-2-1063(C)(2)(b) of Section 25-2-1063 – Height Limitations and Setbacks for Large Sites.

See "Additional Space" below for more information.

## Section 2: Variance Findings

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 supporting documents.

**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.**

I contend that my entitlement to the requested variance is based on the following findings:

### Reasonable Use

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

City policy has consistently identified North Lamar as a major corridor in which increased housing is appropriate, including designating it a Core Transit Corridor, Imagine Austin Corridor, and Transit Priority Network Roadway, and funding a North Lamar Corridor Plan through the 2016 bond program. The City has also zoned the property for mixed-use and an affordable unit bonus through the Vertical Mixed-Use opt-in/opt-out program. However, hardships related to the site (described below) have had a meaningful impact on the site. The variance will help provide a mixed-use project consistent with City plans and featuring affordable housing.

### Hardship

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

The variance is necessary and warranted due to site constraints unique to the property, including: preservation of an on-site heritage tree and additional setback required from a transmission line running down Old Koenig Lane.

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

The site constraints listed above are unique to the property. The applicant is requesting a variance from compatibility to a nearby church in order to account for these constraints. As noted in the attached documentation, the church supports this variance application requesting that their property not trigger compatibility.



**Area Character**

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:

The variance will allow the project to fulfill the City's vision for redevelopment along North Lamar Boulevard by providing a mixed-use project with affordable, income-restricted units. It will also maintain compatibility with nearby single-family structures, ensuring that the design is sensitive to neighborhood scale.

**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 in the City of Austin Land Development Code Chapter 25-6, Appendix A 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 reasonably require strict or literal interpretation and enforcement of the specific regulation because:

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:

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

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

**Section 3: Applicant Certificate**

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

Applicant Signature:  Date: 8/14/20

Applicant Name (typed or printed): Michael J. Whellan

Applicant Mailing Address: 100 Congress Ave., Suite 1300

City: Austin State: TX Zip: 78701

Phone (will be public information): (512) 435-2300

Email (optional – will be public information): \_\_\_\_\_

**Section 4: Owner Certificate**

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

Owner Signature:  Date: 8/11/2020

Owner Name (typed or printed): Thomas Bercy, 5916 N Lamar Investor, LLC

Owner Mailing Address: 1111 E. 11th St., Ste 200

City: Austin State: TX Zip: 78702

Phone (will be public information): 5126896529

Email (optional – will be public information): \_\_\_\_\_

**Section 5: Agent Information**

Agent Name: Michael J. Whellan

Agent Mailing Address: 100 Congress Ave., Suite 1300

City: Austin State: TX Zip: 78701

Phone (will be public information): (512) 435-2300

Email (optional – will be public information): \_\_\_\_\_

**Section 6: Additional Space (if applicable)**

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

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**Additional Space (continued)**

Portion of the City of Austin Land Development Code applicant is seeking a variance from (cont'd):

Currently, Section 25-2-1063 height limitations and setbacks are triggered by both zoning and use. We request waiving the provisions that specify use as a compatibility trigger, while maintaining the provisions that specify zoning as a compatibility trigger. Approving this request will allow for the Koenig Lane Christian Church (908 Old Koenig Ln.) not to trigger compatibility – a request that the Church supports – while still ensuring compatibility with nearby single-family lots.

The applicant plans to construct a Vertical Mixed-Use (VMU) project. The zoning for this site allows a maximum of up to 60 ft. of height. Article 10 compatibility standards triggered by zoning would provide the following restrictions in relation to single-family lots:

- No structure could be built within 25 ft. or less from a property in an SF-5 or more restrictive zoning district;
- A 30 ft. or two-story structure could be built between 25 ft. and 50 ft. from a property in an SF-5 or more restrictive zoning district;
- A 40 ft. or three-story structure could be built between 50 ft. and 100 ft. from a property in an SF-5 or more restrictive zoning district; and would allow
- Between 100 ft. and 300 ft. from a property in an SF-5 or more restrictive zoning district, an additional foot of height above 40 ft. could be allowed for each 10 ft. of distance in excess of 100 ft.

Under these standards, the property would reach its total maximum allowable height of 60 ft. at 300 ft. from a property in an SF-5 or more restrictive zoning district.

The project would be constructed in accordance with zoning requirements and compatibility standards triggered by zoning (described above).

**SAVE**

**ARMBRUST & BROWN, PLLC**

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744  
512-435-2300

FACSIMILE 512-435-2360

MICHAEL J. WHELLAN  
(512) 435-2320  
[REDACTED]

August 14, 2020

*Via email*

Board of Adjustment  
301 W. 2nd St.  
Austin, TX 78701

Subject: Variance Request for 5916 North Lamar Blvd. and 900 Old Koenig Lane  
("the Property")

Dear Members:

Please accept this letter on behalf of 5916 N Lamar Investor, LLC ("the Applicant"). The Applicant is requesting a variance from compatibility standards related to an adjacent church, the Koenig Lane Christian Church, in order to help provide a Vertical Mixed-Use (VMU) project featuring affordable housing. Koenig Lane Christian Church supports this request.

The Property is located near the intersection of North Lamar Boulevard and Old Koenig Lane, and is largely surrounded by sites zoned for mixed-use and commercial uses, with the North Austin Reservoir (zoned for Public) to the south.

The fact that the Property and neighboring sites are largely zoned for mixed-use and commercial is consistent with the City's longstanding vision for North Lamar Boulevard. The City has consistently identified North Lamar Boulevard as an appropriate location for increased housing and mixed-use development, designating it as a Core Transit Corridor (2005), an Imagine Austin Corridor (2012), and a Transit Priority Network Roadway (2019), as well as funding the development of a North Lamar Corridor Plan through the 2016 mobility bond.

This vision for directing growth on the North Lamar corridor complements the City's vision for affordable housing. The City's Strategic Housing Blueprint calls for 6,651 units at an affordability level of up to 80 percent MFI in District 7 by 2027 and 63,201 units up to 80 percent MFI by 2027. According the City data, however, to date there are currently only 896 income-restricted units up to 80 percent MFI in District 7 and 12,110 citywide. This means that the City will need to obtain roughly 720 affordable units in District 7 per year and 6,387 citywide per year in order to reach its goals.

The Applicants are seeking a variance in order to allow for a reasonable use of the Property as the type of corridor-oriented, affordable development called for in the City's policies and goals.



**ARMBRUST & BROWN, PLLC**

Page 2

Specifically, the variance would relieve the Property from the compatibility standards triggered by the Koenig Lane Christian Church, located at 908 Old Koenig Ln. This variance is necessary due to a number of constraints unique to the Property, including:

- Ensuring preservation of an on-site heritage tree; and
- Additional setback required along the Old Koenig Lane portion of the site due to an existing transmission line.

These constraints together hamper the ability of the site to achieve a reasonable use and deliver on the City's vision for corridor-oriented projects with meaningful long-term affordability.

In order to account for these constraints, the Applicant, with the agreement of the Koenig Lane Christian Church, has requested a variance from compatibility standards triggered by the church. The Applicant is *not* seeking a variance from any compatibility standards related to single-family homes or lots.

In addition to site constraints, there are three noteworthy factors that indicate that a compatibility variance related to the Koenig Lane Christian Church is appropriate. First, the Koenig Lane Christian Church is zoned with GR-MU-CO-NP, which provides that site with mixed-use entitlements that would not otherwise trigger compatibility standards. Second, there is a 75 ft.-tall cell tower already located on the Koenig Lane Christian Church site today that exceeds compatibility standards, and the site retains land use entitlements to construct a replacement tower of the same height. Our variance request would allow a project that is shorter and farther from the church building than this cell tower. Third, the Koenig Lane Christian Church site triggers compatibility not because of its zoning, but because it is used as a church – and in this case, the church agrees with and supports our variance request. (A copy of their letter of support is enclosed in this application packet.)

Ultimately, I believe our application demonstrates that the Property faces a number of site-specific challenges relating to transmission line setbacks and a heritage tree, and that our request to waive compatibility to a neighboring church – supported by that church – is appropriate and warranted. Obtaining this variance will allow the Property to move forward as the type of mixed-use project the City envisions for the North Lamar corridor, including affordable housing.

I appreciate your consideration of this application and look forward to presenting our requested variance to the Board of Adjustment.

Very truly yours,



Michael J. Whellan

## 5916 N. Lamar Blvd. Variance Summary

### City policies identify the 5916 N. Lamar site as appropriate for mixed-use and affordable housing.

- The City has consistently identified North Lamar Boulevard as appropriate for increased housing and mixed-use projects, designating it a Core Transit Corridor (2005), Imagine Austin Corridor (2012), 2016 Mobility Bond Corridor, and a Transit Priority Network Roadway (2019).
- The 5916 N. Lamar site is zoned for Vertical Mixed Use (VMU), an affordable housing bonus program through which applicants provide 10 percent of total units as affordable units at 60 percent of Median Family Income (MFI) in exchange for relaxed site development standards.

### However, the site faces unique constraints that impact its ability to achieve a reasonable use.

- The variance is necessary due to the constraints of preserving an on-site heritage tree and required additional setback along the Old Koenig Lane frontage due to a transmission line.
- Together, these constraints hamper the site's ability to achieve a reasonable use and deliver on the city's vision for corridor-oriented projects with meaningful long-term affordability.

### In order to account for these constraints, the applicant is requesting a variance from compatibility related to the adjacent Koenig Lane Christian Church site. Single-family compatibility would still apply.

- The Koenig Lane Christian Church is located adjacent to the 5916 N. Lamar site, and triggers compatibility based on its use as a church. It does not trigger compatibility based on zoning.
- Granting this variance would allow the applicant to waive compatibility in relation to the church – but would maintain full compatibility with all nearby single-family properties (See Figure 1).
- The Koenig Lane Christian Church supports this request.

### Additionally, a number of supporting factors indicate this variance request is appropriate:

- The church is zoned for mixed-use entitlements that would not otherwise trigger compatibility standards. The only reason it triggers compatibility today is because it is used as a church.
- There is a cell tower already located on the church site that exceeds compatibility standards; the variance would allow a project shorter and farther from the church than the cell tower.

**Granting this variance would address the site's unique constraints and allow it to achieve the type of mixed-use project the City envisions for North Lamar, including affordable housing.**

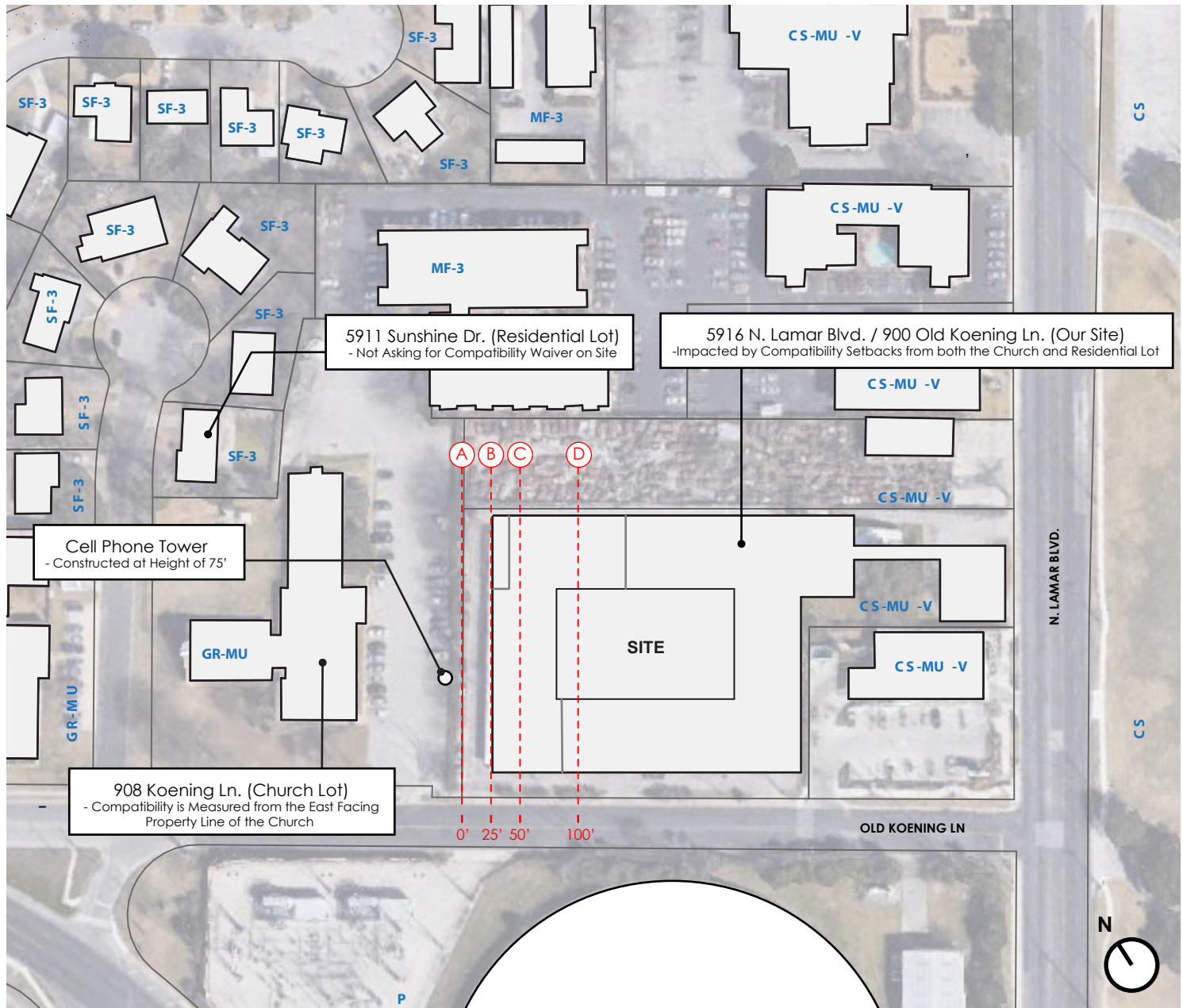
**Figure 1. Summary Table**

|   | Current Regulations | Regulations with Variance      |
|---|---------------------|--------------------------------|
| Single-Family Compatibility (By Zoning) | Applies             | Applies (No Change)            |
| Church Compatibility (By Use)           | Applies             | Waived                         |
| Within 25 ft. of Church                 | No Structure        | As Allowed by SF Compatibility |
| Within 50 ft. of Church                 | 30 ft. / 2 stories  | As Allowed by SF Compatibility |
| Within 100 ft. of Church                | 40 ft. / 3 stories  | As Allowed by SF Compatibility |
| Max. Height Allowed Under Zoning        | 60 ft.              | 60 ft. (No Change)             |

# SITE COMPATIBILITY DIAGRAM 01

EXISTING COMPATIBILITY  
WITH 908 KOENIG LN. (CHURCH SITE)

APPLICANT IS REQUESTING A VARIANCE WAIVING COMPATIBILITY WITH 908 KOENIG LN.



## LEGEND

### SITE PLAN DIAGRAM

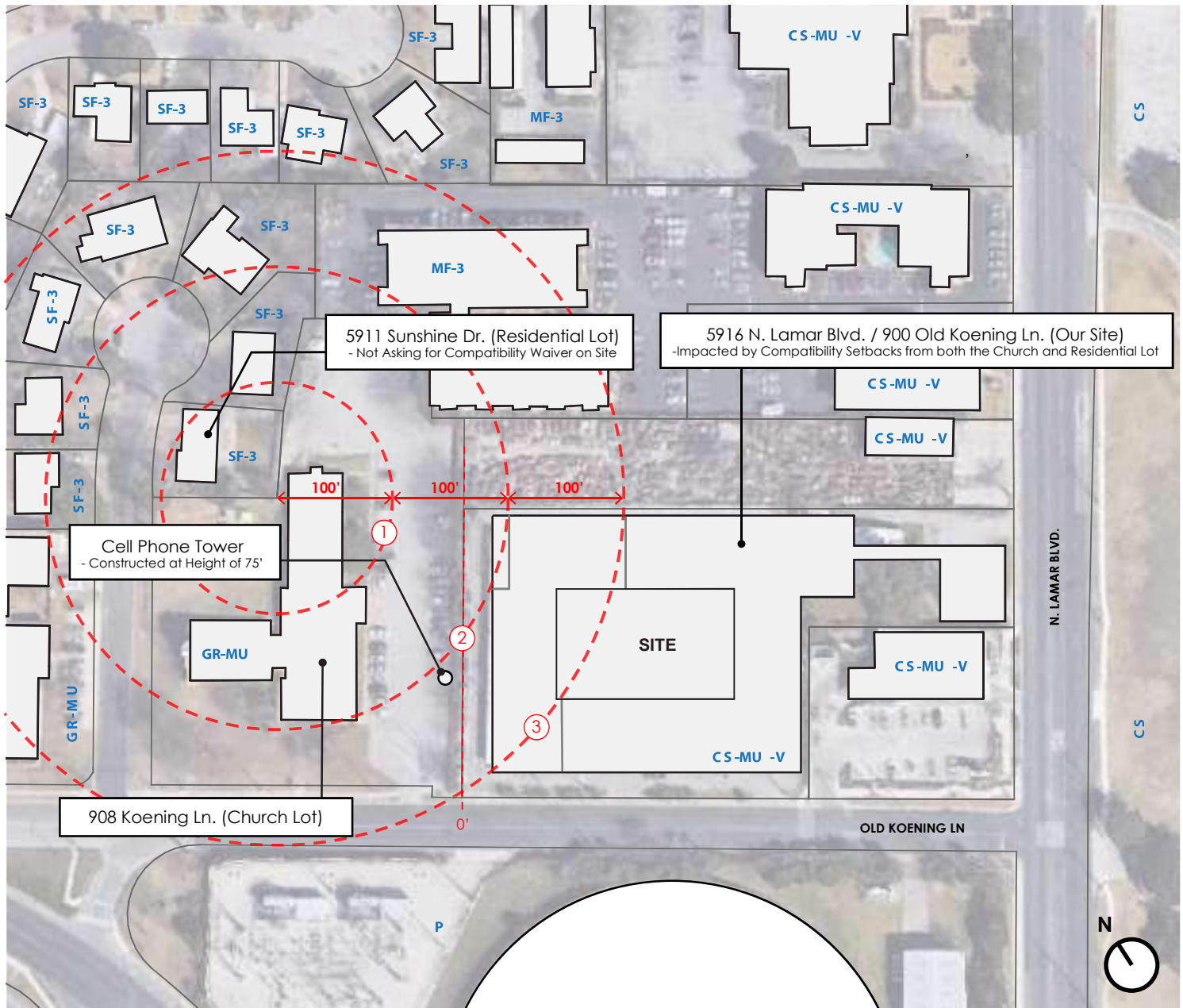
- COMPATIBILITY SETBACK
- PROPERTY LINE BOUNDARY
- SF-3** ZONING DISTRICT CLASSIFICATION
- BUILDING FOOTPRINT

- (A) TRIGGERING PROPERTY LINE (CHURCH)
- (B) AT 25' FROM TRIGGERING PROPERTY
- (C) AT 50' FROM TRIGGERING PROPERTY
- (D) AT 100' FROM TRIGGERING PROPERTY

- (A) → (B) NO STRUCTURE ALLOWED
- (B) → (C) MAXIMUM 30' PER CODE
- (C) → (D) MAXIMUM 40' PER CODE
- (D) → MAXIMUM 60'

# SITE COMPATIBILITY DIAGRAM 02 (IN COMPLIANCE WITH SF-3)

THE REQUESTED VARIANCE WILL NOT WAIVE COMPATIBILITY WITH SF-3 LOTS



\*The applicant is not requesting a compatibility waiver from any triggering single-family lots.

## LEGEND

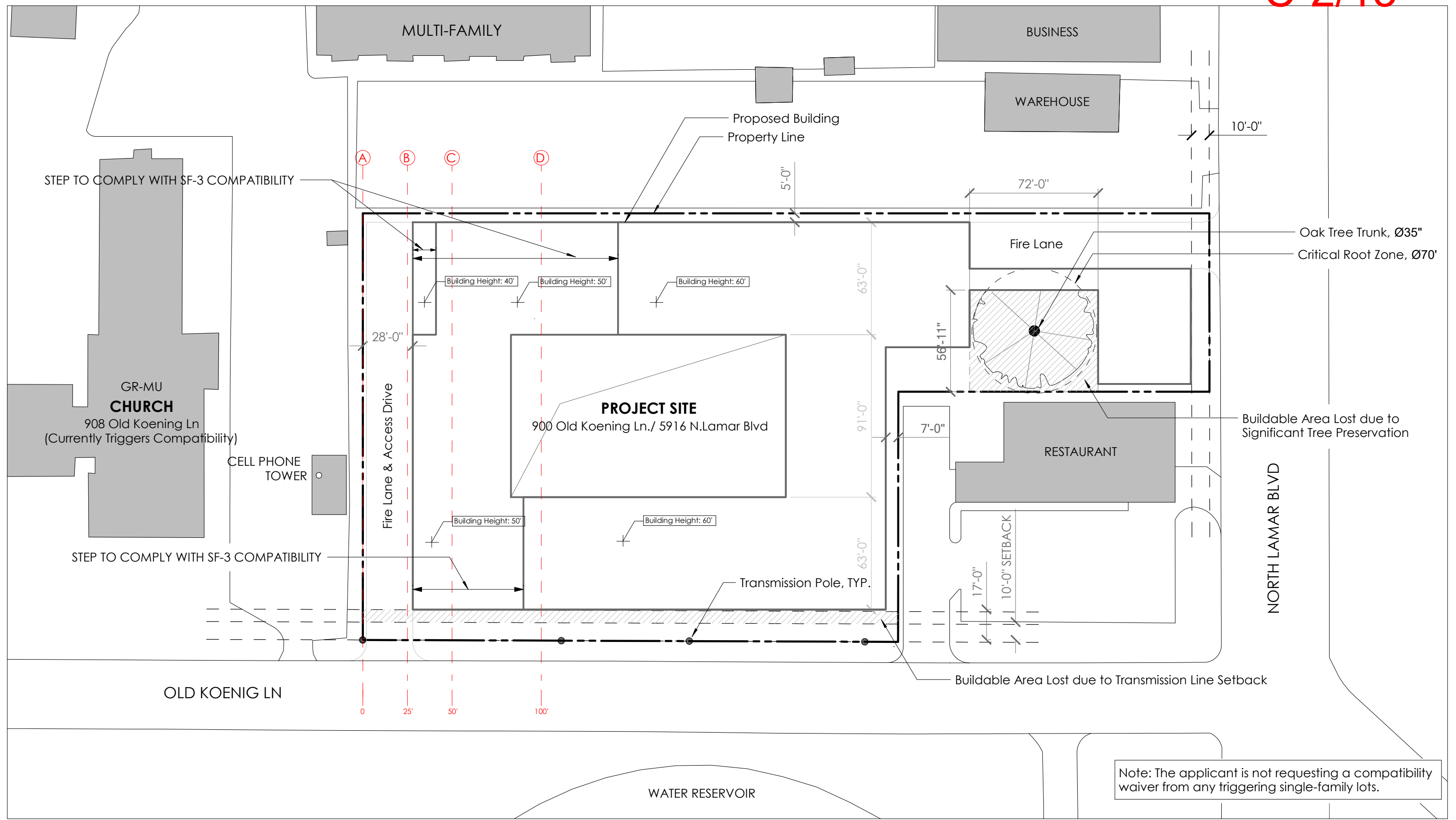
### SITE PLAN DIAGRAM

- COMPATIBILITY SETBACK
- PROPERTY LINE BOUNDARY
- SF-3 ZONING DISTRICT CLASSIFICATION
- BUILDING FOOTPRINT

- ① AT 100' FROM TRIGGERING PROPERTY
- ② AT 200' FROM TRIGGERING PROPERTY
- ③ AT 300' FROM TRIGGERING PROPERTY

- ① → ② 40' + UP 1' IN HEIGHT FOR 10' OF SETBACK
- ② → ③ 50' + UP 1' IN HEIGHT FOR 10' OF SETBACK
- ③ → 60' + UP 1' IN HEIGHT FOR 10' OF SETBACK





SITE PLAN

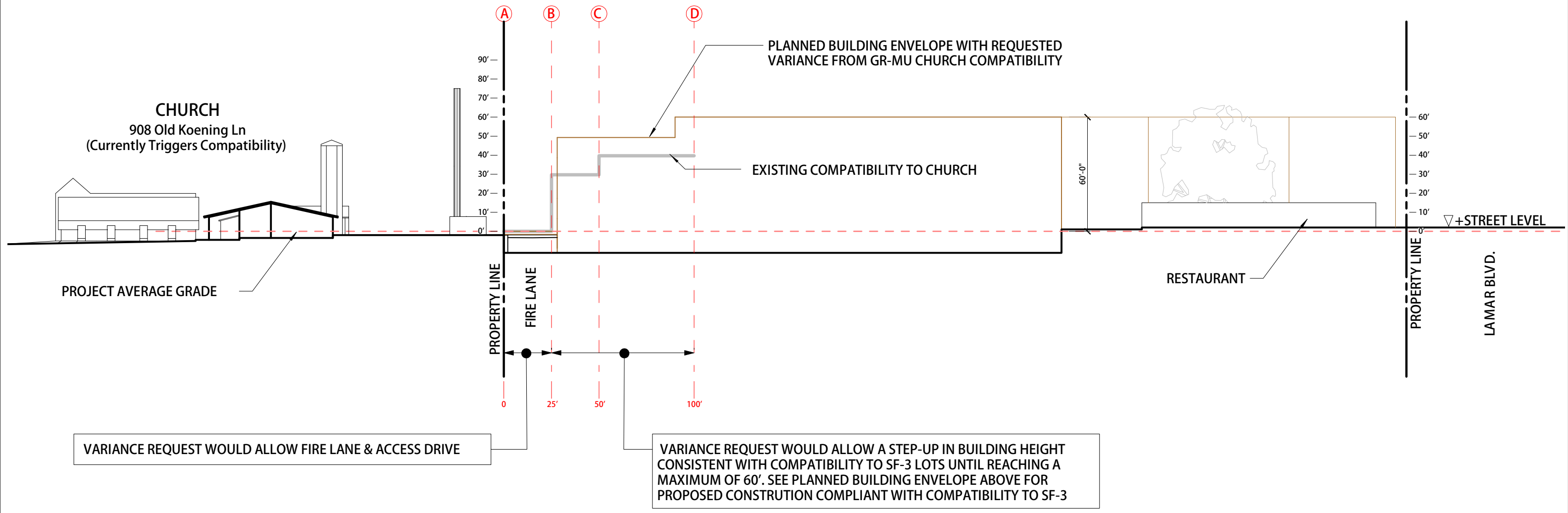
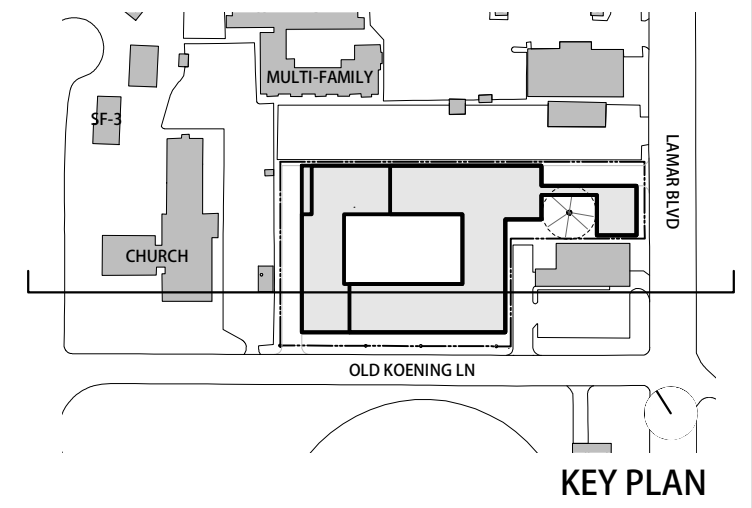
900 Old Koenig Ln / 5916 N. Lamar Blvd

bercy chen studio LP  
1111 E. 11th street, suite 200 :: austin, tx 78702 :: tel 512.481.0092 fax 512.476.7664

plan true

19 August, 2020

Scale 1/50" = 1'-0"



900 Old Koenig Ln / 5916 N. Lamar Blvd

bercy chen studio LP

1111 E. 11th street, suite 200 :: austin, tx 78702 :: tel 512.481.0092 fax 512.476.7664



25 September, 2020

Scale 1/50" = 1'-0"

SECTION - CHURCH COMPATIBILITY



## Property Profile

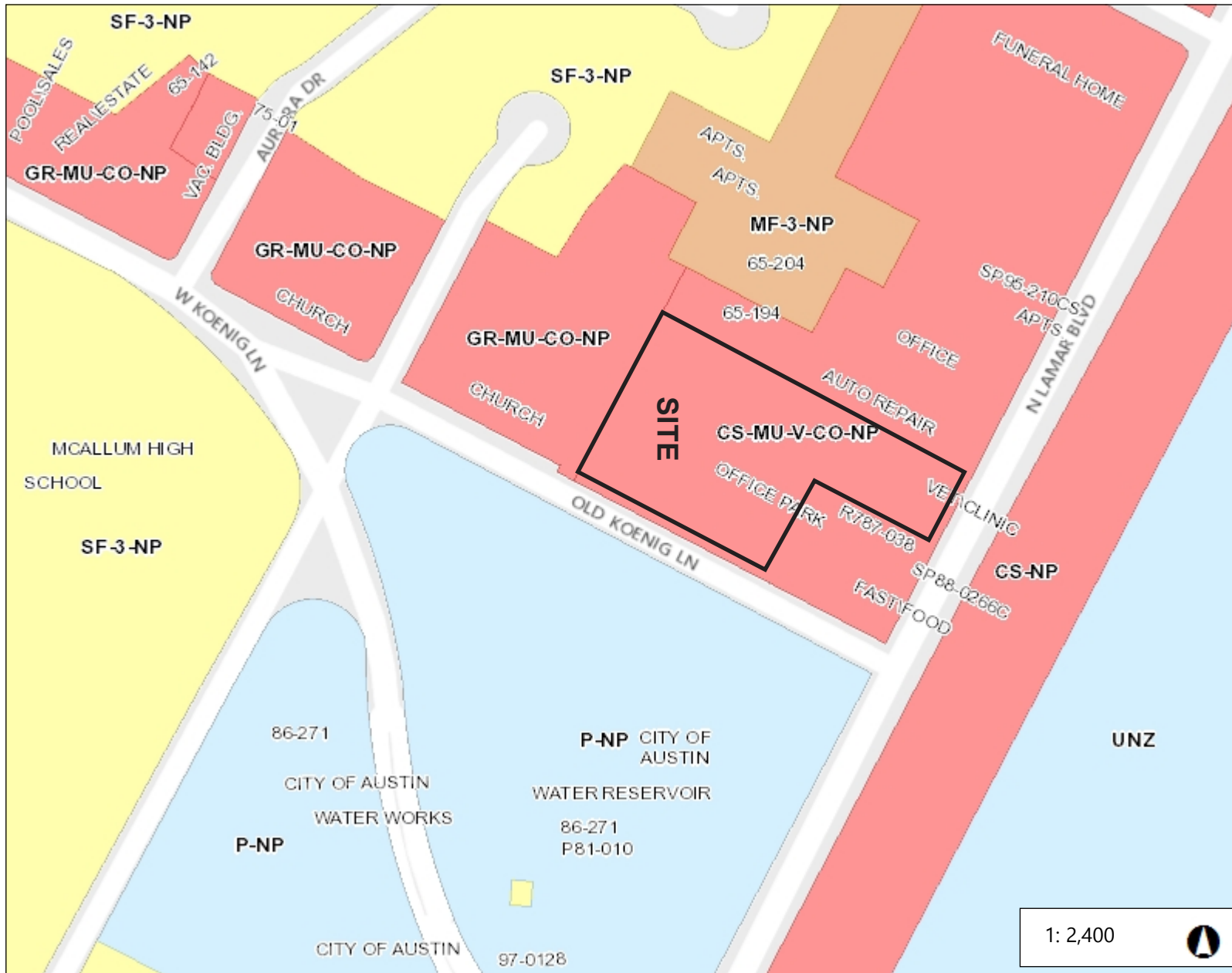
## Legend

### Zoning

- Lake Austin, Rural Residence (LA; SF-1; SF-2; SF-3; SI)
- Mobile Home (MH)
- Multi-family (MF-1; MF-2; MF-3; MF)
- Commercial (CH; CR; CS; CS-1; G)
- Office (GO; LO; NO)
- Industrial (IP; LI; MI; R&D; W/LO)
- CBD; Downtown Mixed Use (DMU)
- ERC; NRG; TND; TOD
- Planned Unit Development (PUD)
- Agriculture, Development Reserve
- Aviation, Public, Unzoned (AV; P; U)
- Unclassified

Zoning Text

Land Use Annotation-Old



1: 2,400



520 0 260 520 FEET

NAD\_1983\_StatePlane\_Texas\_Central\_FIPS\_4203\_Feet

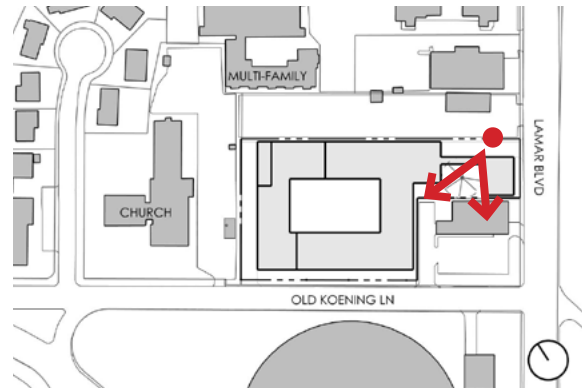
Date Printed:

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## Notes



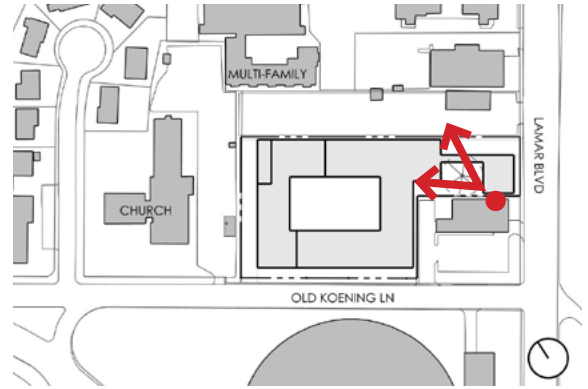
C-2/16



PRESERVED OAK TREE



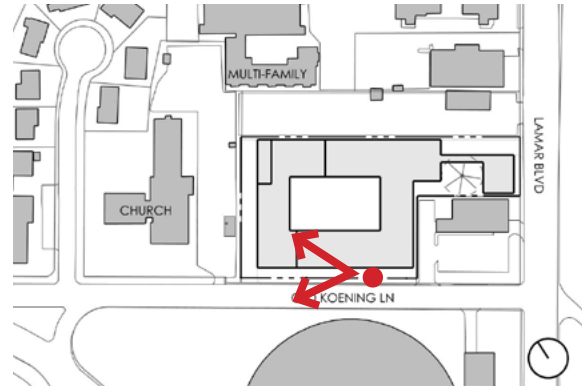
C-2/17



PRESERVED OAK TREE



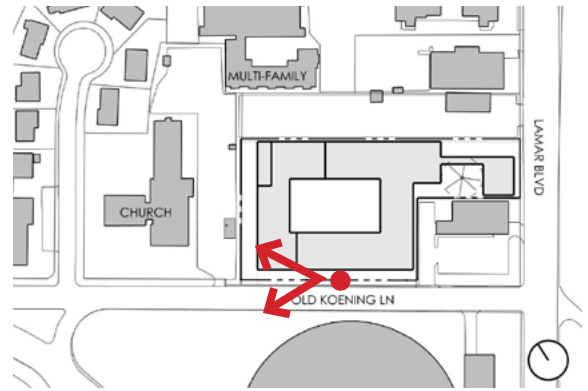
C-2/18



TRANSMISSION LINE AND CELL TOWER



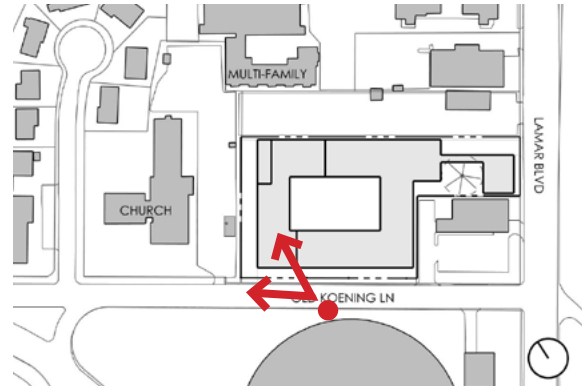
C-2/19



TRANSMISSION LINE AND CELL TOWER



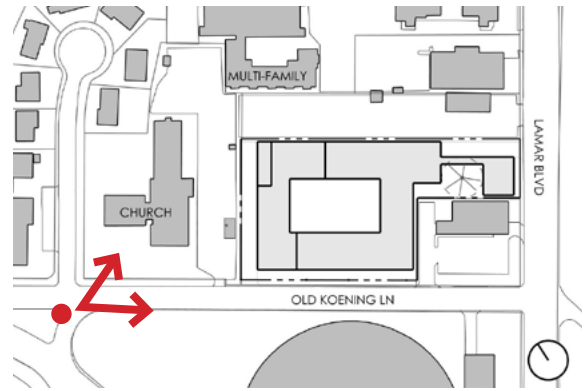
C-2/20



TRANSMISSION LINE AND CELL TOWER



C-2/21



TRANSMISSION LINE ON OLD KOENIG LN.



# KOENIG LANE CHRISTIAN CHURCH

908 Old Koenig Lane

Austin, Texas 78756



Dr. James Lewis, Pastor

Telephone (512) 454-7679

Christian Church  
(Disciples of Christ)

To Whom It May Concern

As the moderator for Koenig Lane Christian Church, I am writing in support of our neighbor's request for a variance that would allow our property not to trigger compatibility for their site plan.

Our church is located at 908 Old Koenig Lane, next door to the property in question (900 Old Koenig Lane). Both of our properties are zoned for mixed use. However, because we are a church, our presence at this location triggers compatibility standards that limit the amount of housing that can be provided for next door – and thus the number of future neighbors we could otherwise welcome into our community.

One of our roles as a church is to serve and strengthen our community, and we do not want our presence to be used to impose a harsher standard restricting the number of people who will be able to live next door to us.

Because of this, we support our neighbor's variance request – and ask for your support as well.

We appreciate the Board of Adjustment's service to our community and thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Stooksberry", with a long horizontal flourish extending to the right.

Daniel Stooksberry, Moderator Koenig Lane Christian Church

6/29/2020