

AGENDA
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
4:00 p.m. Wednesday, November 4, 2020
City Council Chambers, 2nd Floor of City Hall
823 Rosenberg, Galveston, Texas

In order to advance the public health goal of limiting face-to-face meetings (also called "social distancing") to slow the spread of the Coronavirus (COVID-19), the meeting will be held by videoconference and there will be no public access to the location described above.

Public Comment can be submitted on-line: <https://forms.galvestontx.gov/Forms/PublicComment> or by calling 409-797-3665.

1. Call Meeting To Order
2. Attendance
3. Election Of Chair And Vice-Chair
4. Conflict Of Interest
5. Approval Of Minutes: September 2, 2020

Documents:

[2020-09-02 ZBA MINUTES.PDF](#)

6. Meeting Format (Staff)
7. Public Comment

Members of the public may submit a public comment using the web link below. All comments submitted prior to the meeting will be provided to the Planning Commission.

[HTTPS://FORMS.GALVESTONTX.GOV/FORMS/PUBLICCOMMENT](https://forms.galvestontx.gov/forms/publiccomment)

- a. Agenda Items
- b. Non-Agenda Items

8. New Business And Associated Public Hearings

- A. 20Z-014 (3512 Avenue P ½) Request For Appeal Of Staff Determination Of The Galveston Land Development Regulations, Article 2, Section 2.601(C) Regarding Fence Materials. Property Is Legally Described As M. B. Menard Survey, West 28-6 Feet Of Lot 10 And East 25-10 Feet Of Lot 11 And Portion Of Lots 4 And 5, And Adjacent Alley (1010-1), Northeast Block 86, Galveston Outlots, In The City And County Of Galveston, Texas. Representative: Wayne D. Holt Applicant: Della Shorman Property Owner: Darryl R. Goalen

Documents:

[20Z-014 STF PKT.PDF](#)

- B. 20Z-015 (1127 Avenue M) Request For A Variance From The Galveston Land Development Regulations, Article 3, Addendum For Urban Neighborhood, Minimum Lot Standards, Regarding Lot Area. Property Is Legally Described As The M.B. Menard

Survey, Lot 1, Northeast Block 23, Galveston Outlots, In The City And County Of Galveston, Texas. Applicant And Property Owner: Brian Root, Emily's Home Building Remodeling And Design Services LLC

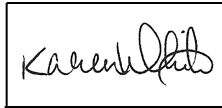
Documents:

[20Z-015 STF PKT.PDF](#)

9. Discussion Items

10. Adjournment

I certify that the above Notice of Meeting was posted in a place convenient to the public in compliance with Chapter 551 of the Texas Government Code on October 28, 2020 at 5:00 P.M.

A rectangular box containing a handwritten signature in black ink. The signature appears to be "Karen White" written in a cursive, stylized script.

Prepared by: Karen White, Planning Technician

IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA), PERSONS IN NEED OF A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHALL, WITHIN THREE (3) DAYS PRIOR TO ANY PROCEEDING, CONTACT THE CITY SECRETARY'S OFFICE, SUITE 201, 823 ROSENBERG, GALVESTON, TEXAS 77550 (409-797-3510)

MEMBERS OF CITY COUNCIL MAY BE ATTENDING AND PARTICIPATING IN THIS MEETING



City of Galveston

MINUTES OF THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF GALVESTON REGULAR MEETING – September 2, 2020

CALL MEETING TO ORDER

The meeting was called to order at 4:00 p.m.

ATTENDANCE

Members Present via Videoconference: Bill Clement, Andrew Galletti, Robert Girndt, Jeff Patterson, Sharon Stetzel-Thompson, Alice Watford (Alternate), CM David Collins (Ex-Officio)

Members Absent: None

Staff Present: Catherine Gorman, AICP, Assistant Director/Historic Preservation Officer

Staff Present via Telephone: Daniel Lunsford, Planner; Karen White, Planning Technician; Donna Fairweather, Assistant City Attorney

CONFLICT OF INTEREST

None

APPROVAL OF MINUTES

The August 5, 2020 minutes were approved as presented.

MEETING FORMAT

Staff explained the adjusted meeting format to the Commission and the public.

PUBLIC COMMENT

None

NEW BUSINESS AND ASSOCIATED PUBLIC HEARINGS

20Z-012 (2302 Wimcrest) Request for a variance from the Galveston Land Development Regulations, Article 3, District Yard, Lot and Setback Addendum, for the Residential, Single-Family (R-1) zoning district, to reduce the front yard setback. Property is legally described as Lot 44, Wimcrest Addition, in the City and County of Galveston, Texas.

Applicant: Joshua Winkelmann

Property Owner: Felicia Benavides

Staff presented the staff report and noted that of sixteen (16) notices of public hearing sent, one (1) had been returned in favor.

Chairperson Andrew Galletti opened the public hearing on case 20Z-012. Applicant Joshua Winkelmann and property owner Felicia Benavides presented to the Commission. The public hearing was closed and the Chairperson called for questions or comments from the Commission.

Vice-Chairperson Robert Girndt made a motion to deny case 20Z-012 due to a lack of a special circumstance. Bill Clement seconded, and the following votes were cast:

In favor:	Clement, Galletti, Girndt, Patterson, Stetzel-Thompson
Opposed:	None
Absent:	None
Non-voting participants:	Watford (Alternate); CM David Collins (Ex-Officio)

The motion passed.

DISCUSSION ITEMS

THE MEETING ADJOURNED AT 4:29 PM





20Z-014

MEMORANDUM

TO: Andrew Galletti, Zoning Board of Adjustment Chair and Zoning Board of Adjustment

FROM: Tim Tietjens, Executive Director
Development Services Department

DATE: October 28, 2020

RE: **20Z-014 (3512 Avenue P ½)** Request for appeal of staff determination of the Galveston Land Development Regulations, Article 2, Section 2.601(C) regarding fence materials. Property is legally described as M. B. Menard Survey, West 28-6 feet of Lot 10 and East 25-10 feet of Lot 11 and Portion of Lots 4 and 5, and Adjacent Alley (1010-1), Northeast Block 86, Galveston Outlots, in the City and County of Galveston, Texas.
Representative: Wayne D. Holt
Applicant: Della Shorman
Property Owner: Darryl R. Goalen

The above referenced case was originally scheduled for the regular meeting of October 7, 2020, but the meeting was canceled due to the lack of a quorum.

There are no associated costs.



20Z-014

STAFF REPORT

ADDRESS:

3512 Avenue P ½

LEGAL DESCRIPTION:

Property is legally described as M. B. Menard Survey, West 28'-6" of Lot 10 and East 25'-10" of Lot 11 and a portion of Lots 4 and 5 and adjacent alley (1010-1) Northeast Block 86, Galveston Outlots, in the City and County of Galveston, Texas

APPLICANT/REPRESENTATIVE:

Della Shorman/Wayne D. Holt

PROPERTY OWNER:

Darryl R. Goalen

ZONING:

Urban Neighborhood

APPEAL REQUEST:

Appeal of Staff Determination regarding fence materials

APPLICABLE ZONING LAND

USE REGULATIONS:

LDR Section 13.901, Administrative Appeals, and Section 2.601, Fences and Walls

ATTACHMENTS:

- A - Section 2.601, Fences and Walls
- B - Section 13.901, Administrative Appeals
- C - Applicant's Submittal
- D - Photographs

STAFF:

Tim Tietjens
 Director of Development Services
 409-797-3668
 ttietjens@galvestontx.gov

Public Notice and Comment:

Sent	Returned	In Favor	Opposed	No Comment
36				

Per Section 13.808 of the Land Development Regulations and state law, written public notice of this request is required. Public notices are sent to all property owners within 200 feet of the subject site and are sent to the address on file with the Galveston Central Appraisal District.

City Department Notifications: No Objections



Executive Summary

Della Shorman, who resides at 3509 Avenue P, has filed an appeal of a staff determination related to code enforcement case 20CMP-1475 in which her adjacent rear neighbor, Darryl R. Goalen who resides at 3512 Avenue P1/2 has erected a fence that is alleged to be in violation of Land Development Regulations (LDRs), Section 2.601, aka city's fence ordinance (See attachment A). Planning Division staff initially made a determination that the proposed fence would comply with the regulations and issued the permit to allow construction based on that determination. After commencement of construction, citizen complaints were received and subsequent Code Enforcement action was initiated. In response, the Director was asked by the City Marshall to provide a final determination so the code enforcement case could be resolved. The resulting Directors determination differed from the initial staff determination and part of the visible metal fence material was required to be replaced. The appeal filed by Ms. Shorman thereafter contends that the final determination did not remove enough of the fence material she finds offensive and the resulting appeal is before the ZBA for action.

Procedure

The appeal is filed pursuant to LDR Section 13.901, Administrative Appeals (see attachment B). Such appeals of staff determinations are heard by the ZBA. Aggrieved parties may file such an appeal if they are within 200 feet of the property that is subject to the decision. The notice of appeal shall specify the decision appealed from and the basis for the appeal, which shall include the specific sections of these Regulations that are alleged to have been overlooked or applied in error, and in what specific way this has affected or will affect the aggrieved party who initiated the appeal. Such statement of the basis of the appeal shall provide sufficient detail to put the City on notice with respect to the matters to be raised.

In exercising the power to decide an appeal, the decision-maker may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer or body from whom the appeal is taken. With respect to decisions of the Zoning Board of Adjustment, the concurring vote of 73 percent of the members of the board is necessary to reverse an order, requirement, decision, or determination of a City staff member.

Should the applicant or City be aggrieved by or dissatisfied with the decision of the Zoning Board of Adjustment, the applicant or City may pursue all legal remedies to appeal the decision to a court of competent jurisdiction pursuant to Texas Local Government Code, Chapter 211.

Foreword

While the creation of any regulatory language is meant to be as clear and unambiguous as possible, it is also meant to be concise so as not to overwhelm the public with voluminous amounts of daunting language. Therefore, interpretation of ordinance language is an important duty of Planning staff and is absolutely necessary for effective land use management. In fact, there is a specific section of the LDRs that allows for a citizen to request an administrative interpretation if there is such a question.

Facts and Analysis

In April of this year, the Goalen's permitted and subsequently constructed an eight-foot wood-frame fence with painted corrugated metal panels and stained wood trim. The fence extended along the rear property line and up the side property lines to the front yard area, but did not extend laterally across the front yard. Section 2.601 of the LDRs does allow corrugated metal fencing in this mixed-use zone of Urban Neighborhood, but prohibits the use of corrugated metal to the extent that it is visible from public street right of way.

The Goalen's relied upon Staffs initial determination to permit and construct the fence, although that determination was later overturned in part. The initial determination relied upon viewing the fence that is perpendicular to the adjacent right of way to which the lot

fronts from a static point (standing at one spot in the adjacent right of way), resulting in much less visibility of the fence. The director instead, relied upon viewing the perpendicular fence dynamically (moving along the adjacent right of way) which produces a more visible view of the fence. Because the side yard portions of the fence toward the front of the lot were clearly visible from the right of way, those metal panels were therefore required to be replaced with wood.

While there was a difference in staff interpretation to determine how visible a fence may be, staff is and has been unanimous in the interpretation that the view is from any adjacent street right of way upon which the lot has frontage. That interpretation precedence has been in place since the creation of the fencing regulations in LDRs.

However, the appellant asserts that the interpretation should be defined as, and precedence changed to, any public street right of way in which the panels are visible, without further qualification. Further, the appellant references section 13.1001 Administrative Interpretations, (...) 2. The plain and ordinary meaning of the term visible as defined in Webster's dictionary. "Capable of being seen; exposed to view". There are vast consequences of the expectation that this standard be used which I address below.

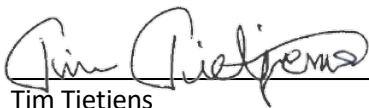
I also reference that same Section 13.1001, but refer to paragraph 7. which requires the city to consider "The consequences of the interpretation." If the interpretation were to be defined and implemented as the applicant suggests, it would not be subject to just a view from the adjacent street frontage; it would require staff to view any such fence proposal while looking through other properties. If a glimpse of the fence were visible through 200 feet of a neighbors back yard it would be applicable. If that same glimpse were not visible while standing, but became visible if on one knee, it would be applicable. If it were visible from a street three blocks away across a school athletic field or an area without intervening development, it would be applicable. In order for staff to prospectively issue a permit, they would have to document any conceivable view of the fence from every street right of way, staff levels would likely have to be correspondingly increased. And I call to question the circumstances over time...what about the if neighboring landscaping shielded the fence at construction, but was later removed resulting in a new view of the fence, it would become applicable. The permit issuance and code enforcement implications are enormous and untenable.

The director's determination took any reasonable objection into account, acted upon the objection in accordance with Section 2.601 and balanced it with the ability to effectively enforce city code.

It is hoped by Development Services staff that the Zoning Board of Adjustment will deny the appeal and uphold the staff interpretation as both reasonable and prudent.

Please see Agenda for Appeal from Decision of Board Process.

Respectfully Submitted,



Tim Tietjens
Director of Development Services

10/01/2020

Date

Division 2.600 Supplemental Nonresidential and Mixed Use Standards (ORD. 18-037)

SEC. 2.601 FENCES AND WALLS

- A. **Applicability.** The provisions of this Section shall apply in all nonresidential and mixed-use zoning districts unless indicated otherwise elsewhere in these regulations, such as when a fence or wall required for screening purposes must be taller than the maximum height allowed by this Section.
- B. **Height.** No fence or freestanding wall shall exceed the following heights:
 - 1. 8 feet for any nonresidential use or mixed-use development; or
 - 2. 12 feet for any tennis court fence.
- C. **Materials.** Fences and walls shall be constructed of durable, high-quality materials used for commercial application including: weather-resistant wood species, wood treated with preservatives approved by the U.S. Environmental Protection Agency, painted wood, composite materials, ornamental wrought iron, powder-coated aluminum, brick ore, and stone.
 - 1. **Prohibited Materials.** When a fence or wall is visible from a public street, the following materials shall not be used:
 - a. Scrap lumber, plywood, sheet metal, corrugated metal, plastic, or fiberglass sheets;
 - b. Barbed or razor wire, except as provided in subsection 2.600.C.2., or welded wire or chicken wire; and
 - c. Glass, spikes, nails, or other sharp point or instrument on the top or sides of fences.
 - 2. **Safety and Security Considerations.** Barbed or razor wire may be placed on top of fences enclosing public utility buildings, protective care facilities, correctional facilities, industrial properties, agricultural uses, and in other situations as required by federal or state law.

Division 13.900 Administrative Appeals

SEC. 13.901 ADMINISTRATIVE APPEALS (ORD. 19-043)

- A. **Generally.** Administrative appeals are processed according to the provisions of this Section.
- B. **Appellate Bodies Designated.**
1. Appeals from final decisions of City staff are heard by the Zoning Board of Adjustment, except that appeals from decisions of City staff related to subdivision regulation are heard by the Planning Commission.
 2. Appeals from final decisions of the Landmark Commission are heard by the Zoning Board of Adjustment.
 3. Appeals from final decisions of the City Council, the Planning Commission with respect to subdivision matters, and the Zoning Board of Adjustment with respect to appeals from City staff decisions or from Landmark Commission decisions are heard by a court of competent jurisdiction.
- C. **Initiation and Timing of Appeal.**
1. Appeals to the body specified in subsection B, above, may be made by filing a notice of appeal with the Development Services Director or with the Historic Preservation Officer for appeals of Landmark Commission decisions.
 - a. For administrative decisions not related to a specific application, address, or project, the following persons may appeal:
 - A. A person aggrieved by the decision; or
 - B. Any officer, department, board, or bureau of the municipality affected by the decision.
 - b. For administrative decision related to a specific application, address, or project, the following persons may appeal:
 - A. The applicant;
 - B. The property owner or representative of the owner;
 - C. A person aggrieved by the decision and is the owner of real property within 200 feet of the property that is subject of the decision; or
 - D. Any officer, department, board, or bureau of the City affected by the decision.

The notice of appeal must be filed not more than 20 days from the date of the final decision. The right of appeal terminates if the notice of appeal is not filed in this time period.
 2. The notice of appeal shall specify the decision appealed from and the basis for the appeal, which shall include the specific sections of these Regulations that are alleged to have been overlooked or applied in error, and in what specific way this has affected or will affect the aggrieved party who initiated the appeal. Such statement of the basis of the appeal shall provide sufficient detail to put the City on notice with respect to the matters to be raised.
- D. **Process.** Appeals shall be processed by the body specified in subsection B., above, according to the general procedures set out in Division 13.300, Standardized Development Approval Procedures, except that:
1. Staff shall provide a report describing the nature of the decision and the notice of appeal; and
 2. No recommendations are required from boards or commissions other than the decision-maker.
- E. **Hearings and Sworn Testimony.** A public hearing shall be held on the appeal not later than 60 days from the date the appeal is filed. Testimony at the public hearing shall be sworn.
- F. **Decision.** In exercising the power to decide an appeal, the decision-maker may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer or body from whom the appeal is taken. With respect to decisions of the Zoning Board of Adjustment, the concurring vote of 73 percent of the members of

the board is necessary to reverse an order, requirement, decision, or determination of a City staff member.

- G. The Zoning Board of Adjustment on appeal shall decide an appeal of a determination of whether preexisting regulations apply to an application, approval, or permit, a determination that an application, approval, or permit has expired or an application, approval, or permit is dormant based upon the following factors:
 - 1. Whether the City received fair notice of the project and the nature of the permit sought;
 - 2. Whether the nature and scope of the project prevents the City from applying one or more current regulations to the proposed or pending applications;
 - 3. Whether any prior approved applications for the property have expired or have been terminated in accordance with law;
 - 4. Whether any statutory exception to a right asserted pursuant to Texas Local Government Code Chapter 243 is applicable to one or more current regulations;
 - 5. Whether any exemption from one or more regulations under these Land Development Regulations or other ordinances is applicable to the project; and
 - 6. Whether the project is dormant.
- H. **Binding determination.** If an appeal is taken to the Board of Adjustment, their decision shall be so filed with the City as related to the project and the determination shall be considered binding upon the City and the applicant for the life of the project. The Zoning Board of Adjustment's decision on appeal shall be filed in the office of the Director of Development Services.
- I. **Judicial Review.** Should the applicant or City be aggrieved by or dissatisfied with the decision of the Zoning Board of Adjustment, the applicant or City may pursue all legal remedies to appeal the decision to a court of competent jurisdiction pursuant to Texas Local Government Code, Chapter 211.

RECEIVED AUG 14 2020

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RECEIVED AUG 14 2020

To Responsible Parties, Effective Immediately:

I appoint Wayne D. Holt to represent my appeal issue regarding original code enforcement case #20CMP-1475 before the Planning Commission, officials or any other venue appropriate to hearing this appeal.

You may direct all information or requests for materials pertinent to this appeal to him at wdholt@startmail.com



Date 8-10-2020

Della R. Shorman
3509 Avenue P
Galveston, TX 77550

FACTS

Ms. Shorman lodged a request on April 28, 2020, with Joe Toland for investigation of *Code Section 2.601 Fences and Walls (1.)(a.) Prohibited Materials* regarding a fence erected behind Shorman's home by owner Goalen at 3512 Avenue P-1/2. **Fence was constructed of a prohibited material clearly visible down the side yard approach from Ave. P, a public street. This appeal is to a denial of request to enforce the ordinance and code language.**

SEC. 2.601 FENCES AND WALLS

...C. **Materials.** Fences and walls shall be constructed of durable, high-quality materials used for commercial application including: weather-resistant wood species, wood treated with preservatives approved by the U.S. Environmental Protection Agency, painted wood, composite materials, ornamental wrought iron, powder-coated aluminum, brick ore, and stone.

1. **Prohibited Materials. When a fence or wall is visible from a public street, the following materials shall not be used:**
 - a. Scrap lumber, plywood, sheet metal, **corrugated metal**, plastic, or fiberglass sheets; ...

Shorman has made repeated attempts beginning in April 2020, both informal and through the formal complaint process, requesting enforcement of the plain language of the ordinance regarding the fence, which impacts both the visual character of this neighborhood as well as enjoyment of her property as a nuisance through reflected heat and light. **She was informed on two occasions through Mayor Pro Tem Brown that the City Attorney and staff attorneys agreed with the initial and subsequent opinions of the site inspector that the fence did not comply with the above ordinance and needed to be removed. A citation to that effect was served on the property owner by the City Marshal's Office (see addendum).**

After nearly three months of inaction, she was informed an agreement was worked out with the fence owner to remove sections of the fence but that the part impacting Shorman was allowed. This despite the admission by the City that the language used in the ordinance provided a "loophole" to request enforcement and that a mistake had been made in allowing the fence construction. To date, despite attempts to determine the deliberative process that arrived at this change, Shorman has been given no written or verbal explanation as to what transpired to change the outcome of the citation or any information as to the nature of the loophole.

ISSUES

1. Intent of an ordinance is shown foremost by the unambiguous wording of the ordinance; in lieu of that, by evidence provided that shows the intention at the time of deliberations before adoption of the ordinance language was something other

than the words used in the adopted ordinance; absent the first two cases, by the consistent application of this intent to similar requests for enforcement. The City has provided no examples that would satisfy any of the above three tests for "intent."

Intent cannot be applied as later subjective re-interpretations of clearly defined code language after the fact of ordinance review and the adoption process.

2. SEC. 13.1001 ADMINISTRATIVE INTERPRETATIONS G. Standards for Interpretations. "The interpretation shall be based on: (...)2. The plain and ordinary meaning of the terms that are subject to the application for an interpretation as set out in Webster's Third New International Dictionary or other current and authoritative dictionaries; (...)" **Webster's defines "visible" as capable of being seen; exposed to view. The fence was visible from a public street as was attested to as a code violation by the initial inspector and subsequent determinations on or about May 19 and June 8 by the City Attorney/staff attorneys conveyed to Shorman through Brown.** A citation for service by a city marshal that specified fence removal was prepared and delivered to Goalen (*see addendum*). Sometime after this service, Tietjens began to assert a different "intent" for application of the code.

Ms. Gorman originally raised her differing interpretation of the code in a May email:

"The fencing material restriction does not apply to fences perpendicular to Ave P ½ or the rear property line."

"The intention of the code is that regulation is in affect when the fence is fully visible from an adjacent public street."

"I recognize that portions of the fence may be visible from Ave P or 35th Street by looking between the houses. But, again, that's not the intent."

Tietjens hinges the City's revised position on the principle of intent as well, as below and in other portions of a July 23 email:

Tietjens denies the enforcement request based solely on reliance on an unpublished "intent" of the subject code section; that he has the legal prerogative to interpret the code and exercising that prerogative, he determines the fence in compliance. In part from that email: *"Essentially that a fence is deemed visible if it is substantially so from any public right of way upon which the subject lot has frontage. I do not consider any portion of the fence parallel to any roadway as seen through the depth of adjoining lots to be deemed visible by intent."*

Neither Gorman nor Tietjens' language appears anywhere in the Code itself, the enabling ordinance adopted, the extensive available public and private deliberations during four levels of review that preceded the adoption, or in any subsequent denial of a similar request that the City has cited. It is, de facto, a rewriting of the ordinance language for Shorman's request alone, outside of City Council and other land use regulatory bodies' input and approval.

RESOLUTION

It is apparent by any objective standard the adopted code language and underlying ordinance as they now exist do not reflect the current objectives of the department or

director on this topic; fair enough. The solution is simple: at some later date's review and revision, rewrite the ordinance/code to reflect the actual intent. **But that does not absolve the City of the responsibility to enforce the code as it is written now when enforcement is petitioned for, relying on the clear meaning of the ordinance language. To do otherwise is to willfully ignore the directions of City Council and state law regarding citizens' right to reliance on clear and consistent application of the law. It makes ordinance and code language use by four levels of land development review teams subservient to one person's interpretation.**

There are other anomalies in the handling of this incident that are significant of themselves:

- 1) **The deliberate misrepresentation of the intended fence material** by Goalen under their signature in the Fence Permit Application (*see addendum*);
- 2) **The denial of an Open Records inquiry in providing material requested under the paragraph in the Goalen citation's defective items as, "See Attachment".** Failure in producing legitimate open records requests' material may be submitted to the Texas Attorney General's Office for review and correction.

Shorman proposes that the City may resolve this issue through either one of two ways, at its discretion:

- 1) Through enforcement of the original citation prescription and the removal of the entire fence section abutting Shorman's back yard and its replacement with materials not in violation of the code. Using the same wood slats that the City accepted in its revised enforcement order for the property's frontage would be agreed to by Shorman (*see accompanying image*); or,
- 2) Through a monetary settlement to Shorman which would allow her to erect a wood fence section that would obscure the corrugated metal fence abutting her yard, eliminating the code infraction and nuisance. She also requests as part of a settlement, a) a waiver on the fence height so that her fence could completely obscure the adjoining fence; and, b) a waiver of any permit fees for the construction of such fence.

ADDENDUM

Timeline

April 29: Inspector Patricia Aiker on-site judges the fence to be visible from a public street and opines the fence was illegal. Photographs were taken at this time.

May 5: Shorman contacted Toland again re ongoing construction and was told the fence was permitted. Shorman's request for the reasoning was unanswered. Shorman was referred to Aiker who confirmed her opinion of an illegal construction.

May 11: Called and emailed Mayor Pro Tem Brown (her district representative) as well as Catherine Gorman. Gorman indicated the "intent of the code" was to only apply the regulation to fences that were fully visible, not partially visible.

May 19: Brown called Shorman and informed her City Attorney Glywasky had determined the fence was illegal according to the code and a citation would be given to remove the fence.

June 1: Emailed and personally spoke to Brown due to continued construction of the fence.

June 2: Brown called and informed Shorman the City Attorney had reiterated the illegality of the construction and it would need to come down.

June 8: Citation delivered to homeowners building the fence.

July 15: Brown calls Shorman to inform her changes in the frontage fence have been agreed between the City and the homeowner, but a "mistake" was made and the portion abutting Shorman's back yard will not require any changes.

July 21: Contacted Code Enforcement to file a formal complaint regarding the fence.

Validity of Ordinances

Inasmuch as there is a strong presumption of validity of municipal legislation, the burden of proof is on the party seeking invalidation, and the burden is a heavy one. *Haynes v. City of Abilene*, 659 S.W.2d 638 (Tex. 1983); *City of Pharr v. Tippitt*, 616 S.W.2d 173 (Tex. 1981).

Regarding Deliberations That Indicated Different Intent of Code Language

The City received a public information request for

Please provide any notes, discussions, deliberations, workshop dialog or other communications of whatsoever kind whether by council members or department staff concerning City Code Section SEC. 2.601 - FENCES AND WALLS which was included in any public record during discussions of City Ordinance 18-037, dated June 21, 2018. If there is no contemporaneous record of mention of this code section found, please so state., 7/20/2020.

The City has reviewed its files and has located responsive records to your request. Documentation is attached.

Attachments:

17ZA-004_-_STF_PKT_for_4-3-18_PC.pdf
Adriel_email_RE_Notification_New_Public_Information_Request_Received.msg
Chamber_of_Commerce_Comments_to_Council_R.pdf
City_of_Galveston_LDR_-_Revisions_Updated_October_2017.pdf
City_of_Galveston_LDR_-_Revisions_Updated_September_2017.pdf
City_of_Galveston_LDR_-_Website_Revisions_Updated_September_2017.pdf
City_of_Galveston_LDR_Final_-_Revisions_Updated_July_2016.pdf
City_of_Galveston_LDR_Final_-_Revisions_Updated_July_2016_printready.pdf
City_of_Galveston_LDR_Final_PC_Draft_100517.pdf
City_of_Galveston_LDR_Final_PC_Draft_4-3-18.pdf
Comments_Submitted_R.pdf
LDR_Public_Meeting_1-17-18.MP3
LDR_Public_Meeting_2-8-18.MP3
LDR_Revisions_List_-_CG.pdf
LDR_Revisions_List_with_PC__LC_Recommendation.pdf
LDR_Revisions_List_with_PC__LC_Recommendation__Chamber_of_Commerce.pdf
LDR_Revisions_List_with_PC_and_LC_Recommendation_and_Chamber_of_Commerce_2.pdf
LDR_Revisions_List_with_Public_Input_Column.pdf
LDR_Revisions_Process_PP_for_CC_12-14-17.pptx
LDR_Revisions_Process_PP_for_Public_Meeting.pptx
LDR_Revisions_Project_Overview_PP_for_CC_3-22-18.pptx
ORD_18-026_-_Update__Revise_And_Clarify_Certain_Provisions_Regulating_Land_Development_-_17ZA-004.pdf
Ordinance_No._18-037.pdf
PIR_7756.docx
Posted_on_Website042017.pdf

I have been unable to locate or identify any comment or reference in the provided records as shown above that this section of the ordinance was discussed or that any intent other than the clear wording of the final ordinance approved by Council was proposed.





Planning and Development Division
823 Rosenberg, 4th Floor, Room 401, Galveston, TX 77550

FENCE PERMIT APPLICATION DEVELOPMENT SERVICES DEPARTMENT

409/797-3660

planningcounter@galvestontx.gov
www.galvestontx.gov

I. PROPERTY INFORMATION

3512 Ave. P1/2
Street Address/Location, or

NE Block of Outlot 86
Legal Description (Lot Number, Block Number, Subdivision)

II. APPLICANT INFORMATION

OWNERSHIP (Check One): ☐ Individual ☐ Corporation ☐ Partnership ☐ Trust
If ownership is a trust or corporation, list the partners or principal, their address and positions on a separate attachment

Darryl & Laura Goalen
Property Owner Name

(409) 750-3792
Telephone

Same
Mailing Address

E-mail Address

Applicant/Representative Name

Telephone

Mailing Address

E-mail Address

Is the fence located in a Historic District or is it a Historic Landmark? Yes ☐ No ☒
(IF YES, PLEASE ATTACH PHOTOGRAPHS OF ANY EXISTING FENCES ON THE SITE AND A DESIGN OF THE PROPOSED FENCE)

Is the fence located in Cedar Lawn Neighborhood Conservation District? Yes ☐ No ☒

Is this fence within 1000-feet of the Mean High Tide? Yes ☐ No ☒
(IF YES, PLEASE EMAIL A SITE PLAN TO THE COASTAL DIVISION COASTALRESOURCES@GALVESTONTX.GOV)

III. NEW FENCE DESCRIPTION

Residential ☒ Commercial ☐

Value of the Fence including labor and materials: \$13K

Total Fence Height: 7-8FT Fence Material: Wood & Steel Top Foot is shaded wood

Will Barbed Wire or Razor Wire be used: Yes ☐ No ☐

Explain the reason for using Barbed or Razor Wire:

Prohibited Fencing Materials.

When a fence or wall is visible from a public street, the following materials shall not be used:

a. Scrap lumber, plywood, sheet metal, corrugated metal, plastic, or fiberglass sheets;

- b. Barbed or razor wire, except as provided in subsection 2.600. C.2., or welded wire or chicken wire; and
 - c. Glass, spikes, nails, or other sharp point or instrument on the top or sides of fences.
2. Security Considerations. Barbed or razor wire may be placed on top of fences enclosing public utility buildings, protective care facilities, correctional facilities, industrial properties, and in other situations as required by federal or state law.

SWIMMING POOL BARRIER REQUIREMENTS:

BARRIERS FOR RESIDENTIAL SWIMMING POOLS, SPAS AND HOT TUBS SHALL COMPLY WITH APPENDIX G, SECTION AG105 OF THE 2012 INTERNATIONAL RESIDENTIAL CODE AND COMMERCIAL POOLS, SECTION 3109 OF THE 2012 INTERNATIONAL BUILDING CODE. INSPECTIONS MUST BE CONDUCTED AND PASSED BEFORE PUTTING WATER IN POOL.

ATTEST: I hereby certify that the above information is true and correct, and further that the permission of the owner and authorized lessee (if any) of the premises has been obtained for the subject fence. Additionally, the fence does not violate any applicable deed restrictions or other restrictions on the premises. Having read the restrictions and requirements of the Article 2, Section 2.601 and 2.602, of the Land Development Regulations, the fence is being erected and maintained in compliance with the ordinance.

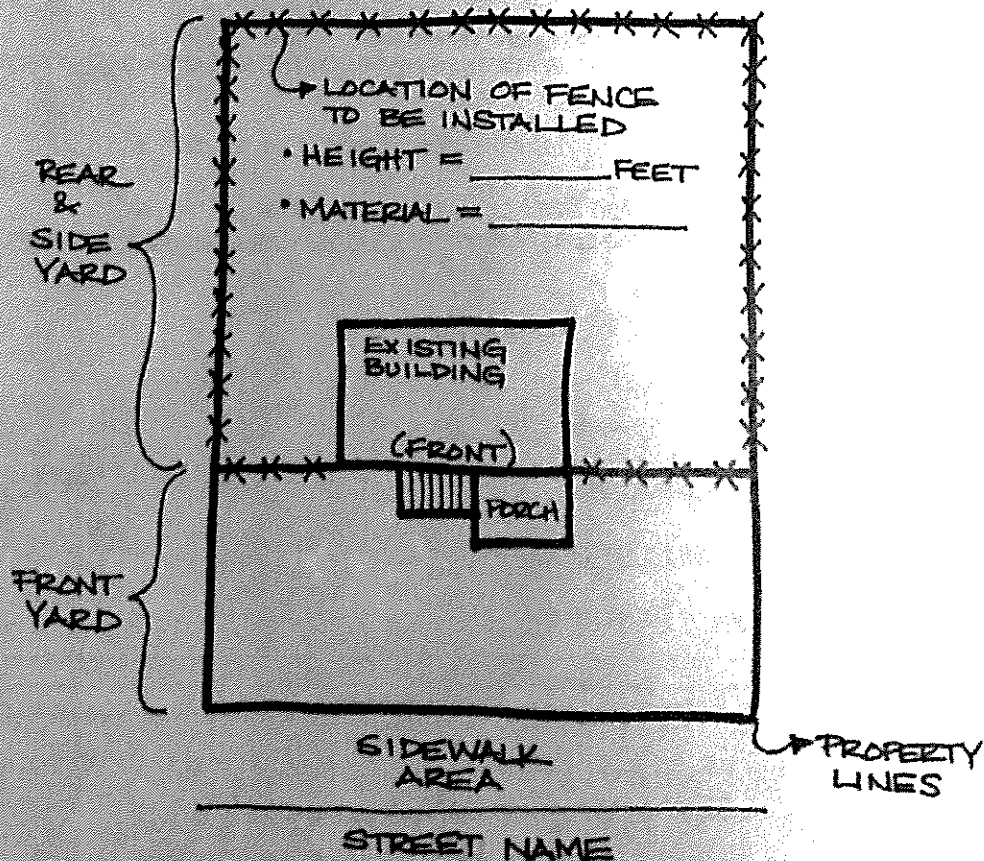
Signature of Applicant

Date

Signature of Property Owner

Date

SAMPLE SITE PLAN *COMMERCIAL FENCE MAY NOT USE THIS SITE PLAN*
COMMERCIAL PROPERTIES USE SURVEY INDICATING FENCE LOCATION





City Marshal's Office

City of Galveston

823 Rosenberg | Galveston, TX 77550- 0779
www.galvestontx.gov | 409-797-3660

June 8 2020

CE-D-1: Repair required

Darryl Goalen
3512 Ave P 1/2
Galveston, TX 77550

VIA US FIRST CLASS MAIL
and HAND DELIVERY/ POST ON PROPERTY

RE: 20CE-2700 3512 Ave P 1/2

ABST 628 PAGE 115 W 28.5 FT OF LOT 10 & E 25.83 FT OF LOT 11 & PT OF LOTS 4 & 5 & ADJ ALLEY (1010-1) NE
BLK 86 GALVESTON OUTLOTS

Dear Property Owner:

An inspection on the above referenced property reveals the property is in violation of the International Property Maintenance Code, International Building Code, and/or the City Code of the City of Galveston.:

SEC. 2.601 - FENCES AND WALLS

C. Materials. Fences and walls shall be constructed of durable, high-quality materials used for commercial application including: weather-resistant wood species, wood treated with preservatives approved by the U.S. Environmental Protection Agency, painted wood, composite materials, ornamental wrought iron, powder-coated aluminum, brick, or stone.

1. Prohibited Materials. When a fence or wall is visible from a public street, the following materials shall not be used:

- a. Scrap lumber, plywood, sheet metal, corrugated metal, plastic, or fiberglass sheets;
- b. Barbed or razor wire, except as provided in subsection 2.600.C.2., or welded wire or chicken wire; and
- c. Glass, spikes, nails, or other sharp point or instrument on the top or sides of fences.

The inspection of the property revealed the following items to be defective:

See Attached

(This information was never provided to the Requestor through an ORR)

Please be advised that you have **thirty (30) days** in which to complete the defects listed above. Before any work is started, please check with the inspector to see if necessary permits are required for building, plumbing or electrical work, regardless of whether this is new work or repairs.

The Property Maintenance Code for the City of Galveston, Section 106.3 and 106.4, states. "(Any person failing to comply with a notice of violation or order shall be deemed guilty of a misdemeanor or civil infraction as determined by the local municipality, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of the code or of the order or direction made pursuant thereto. Any action taken by the authority having jurisdiction on such premises shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate. Any person, who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense)."

Please note that within the stated time limit from the date you receive this notice you may appeal the determination that a violation exists, and whether the person served with this notice is responsible for its abatement. Please contact staff for the



City Marshal's Office

City of Galveston

823 Rosenberg | Galveston, TX 77550-0779
www.galvestontx.gov | 409-797-3660

appropriate appeal procedures.

Please feel free to contact me at 409-797-3660, ext: **409-797-3660** if you have any questions or concerns.

Sincerely,

Nicholas Yeley
City Marshal's Office

Use of these same wood slat materials for replacement of the entire section of fence abutting Shorman's property would be an agreed resolution.





10/01/2020 11:58



10/01/2020 11:58



10/01/2020 11:58



10/01/2020 11:58



727207

3517

10/01/2020 12:01



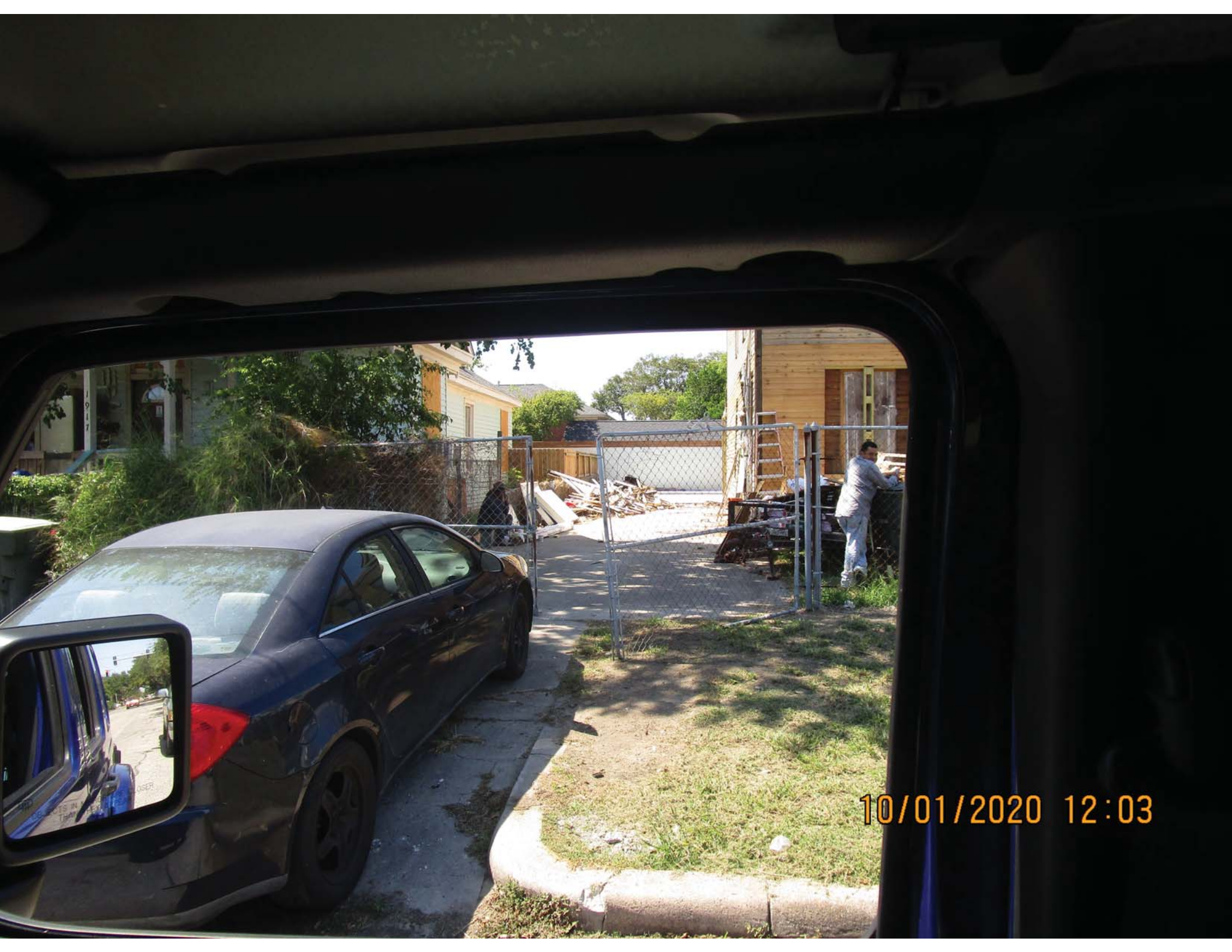
10/01/2020 12:01



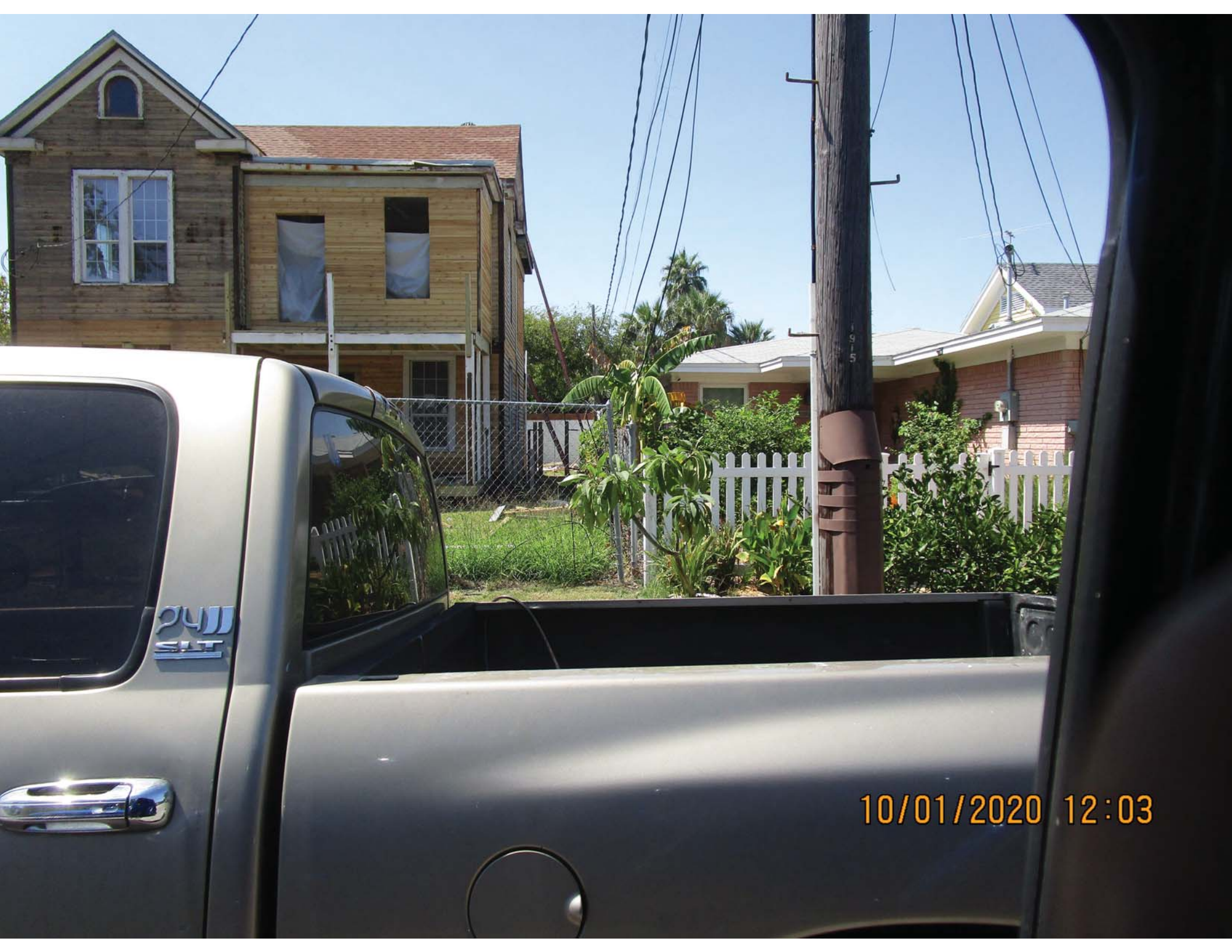
3220

3517

10/01/2020 12:02



10/01/2020 12:03



10/01/2020 12:03



20Z-015

STAFF REPORT

ADDRESS:

1127 Avenue M

LEGAL DESCRIPTION:

Property is legally described as the M.B. Menard Survey, Lot 1, Northeast Block 23, Galveston Outlots, in the City and County of Galveston, Texas.

APPLICANT/REPRESENTATIVE:

Brian Root

PROPERTY OWNER:

Emily's Home Building, Remodeling and Design Services, LLC

ZONING:

Urban Neighborhood, San Jacinto Neighborhood Conservation District Overlay (UN-NCD-1)

VARIANCE REQUEST:

Request to decrease the lot area requirement from 2,500 square feet to 2,107 square feet.

APPLICABLE ZONING LAND

USE REGULATIONS:

Article 3, District Yard, Lot and Setback Requirements for the Urban Neighborhood, San Jacinto Neighborhood Conservation District Overlay (UN-NCD-1)

EXHIBITS:

- A – Survey
- B – Replat Configuration
- C – Applicant's Submittal

STAFF:

Karen White
 Planning Technician
 409-797-3608
 kwhite@galvestontx.gov

Public Notice and Comment:

Sent	Returned	In Favor	Opposed	No Comment
32				

Per Section 13.808 of the Land Development Regulations and state law, written public notice of this request is required. Public notices are sent to all property owners within 200 feet of the subject site and are sent to the address on file with the Galveston Central Appraisal District.

City Department Notifications

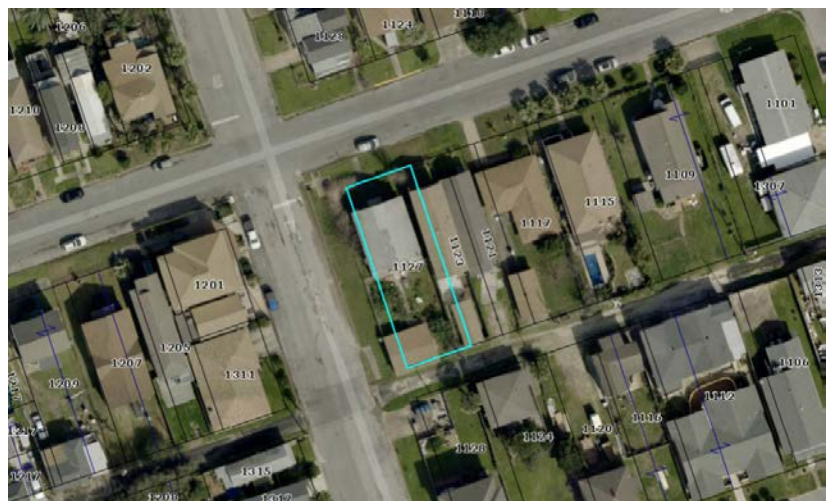
Airport: The airport has no comments or concerns

Building: Building has no objections

Fire Marshal: No objection

Police: I do not see any Law Enforcement related issue, so will leave it to the experts

Texas Gas: Texas Gas Service has no issues with this proposal, will still need to maintain easement/ROW to serve gas service to rear/additional structures within this property



Executive Summary

The applicant is requesting a variance from the Galveston Land Development Regulations, Article 3, District Yard, Lot and Setback Requirements for Urban Neighborhood, San Jacinto Neighborhood Conservation District Overlay (UN-NCD-1) Addendum, in order to replat the lot into two lots.

Applicable Standards

Article 3, District Yard, Lot and Setback Standards, Addendum for Urban Neighborhood, San Jacinto Neighborhood Conservation District Overlay (UN-NCD-1) zoning district:

Requirement: Lot Area: 2,500 square feet minimum.

Requested Variance

Lot	Required Lot Area	Requested Lot Area
1127 Avenue M	2,500 square feet	2,107 square feet

Applicant's Justification

Approval Standards. The Board of Adjustment may grant a variance under this Section only if the variance is not prohibited by Section 12.401.C, and if the Zoning Board of Adjustment makes a determination in writing that all of the following are demonstrated.

- 1. The request for the variance is rooted in special conditions of the applicant's property that do not generally exist on other properties in the same zoning district.**
The request for the variance is rooted in special conditions of our property regarding the fact that there are several nearby lots in the same zone with very similar lot square footage of our proposed replat.
- 2. Due to said special conditions, the literal enforcement of the strict terms of these Land Development Regulations would impose an unnecessary hardship on the applicant.**
Due to special conditions, the literal enforcement of the strict terms of the land development regulations would impose an unnecessary hardship for others that are not allowed.
- 3. The variance is not contrary to the public interest, in that:**
 - 1) Land use would not change*
 - 2) It would not affect adjacent properties*
 - 3) The same infrastructure and public services that have been used will continue to be used*
 - 4) From a public health safety and general welfare of the community perspective, the replat would enforce fire walling and other safety related building requirement where needed*
 - a. It does not allow applicants to impair the application of these regulations for:**
 - i. Self-imposed hardships;**
 - ii. Hardships based solely on financial considerations, convenience or inconvenience; or**
 - iii. Conditions that are alleged to be "special," but that are actually common to many properties within the same zoning district.**
 - 1) The variance would not impair application for self imposed hardships of for hardships based on solely on financial considerations*
Because there are similar or common properties throughout Galveston's urban core. The granting of this variance, as previously stated, not only will allow this property to be similar to others as stated, it will also bring it up to national and city building requirements.
 - b. The variance will not have a detrimental impact upon:**
 - i. The current or future use of adjacent properties for purposes for which they are zoned;**
 - ii. Public infrastructure or services; and**

iii. **Public health, safety, morals and general welfare of the community.**
There is no impact or change in use and therefore it will not affect adjacent properties.

- 1) *House and proposed lot will remain single family*
- 2) *Everything will be in accordance with the character of the neighborhood*

4. **The degree of variance allowed from these Land Development Regulations is the least that is necessary to grant relief from the identified unnecessary hardship.**

We feel that this is the least necessary to grant relief given the current configuration of the house and lot. There is no way to request any lesser of a variance.

5. **The variance shall not be used to circumvent other procedures and standards of these Land Development Regulations that could be used for the same or comparable effect (e.g., if alternative development patterns, alternative development standards, or other flexible measures in these regulations are available that would avoid or mitigate hardship without using a variance, then they must be used).**

We are requesting this variance but are not compromising any other rule of codes besides the 2500 minimum lot size requirement. Everything else will be in compliance with all building codes and all other requirements

6. **By granting the variance, the spirit of these Land Development Regulations is observed and substantial justice is done.**

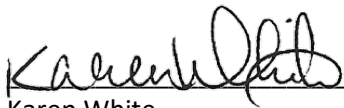
We believe so. Given the fact that we are not changing the use of the property and the property will continue to conform to the high neighborhood standards.

Additionally, the applicant has submitted the following:

If we were to split the in equal parts the property line would be about 3 ft from the back of the existing house. We would like to put in a single driveway behind the house so that [1127] has off road parking. The new lot, south of [1127] Ave M, will be new construction and built high enough to park cars under so it being a smaller lot is acceptable. For the new lot or most southern lot will have entrance from the alley so no curb cut would be necessary. We are hoping this is an easy task due to multiple smaller lots on the street currently.

Please see agenda for Appeal from Decision of Board process.

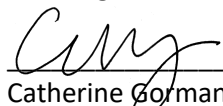
Respectfully Submitted,



Karen White
Planning Technician

10-26-2020

Date



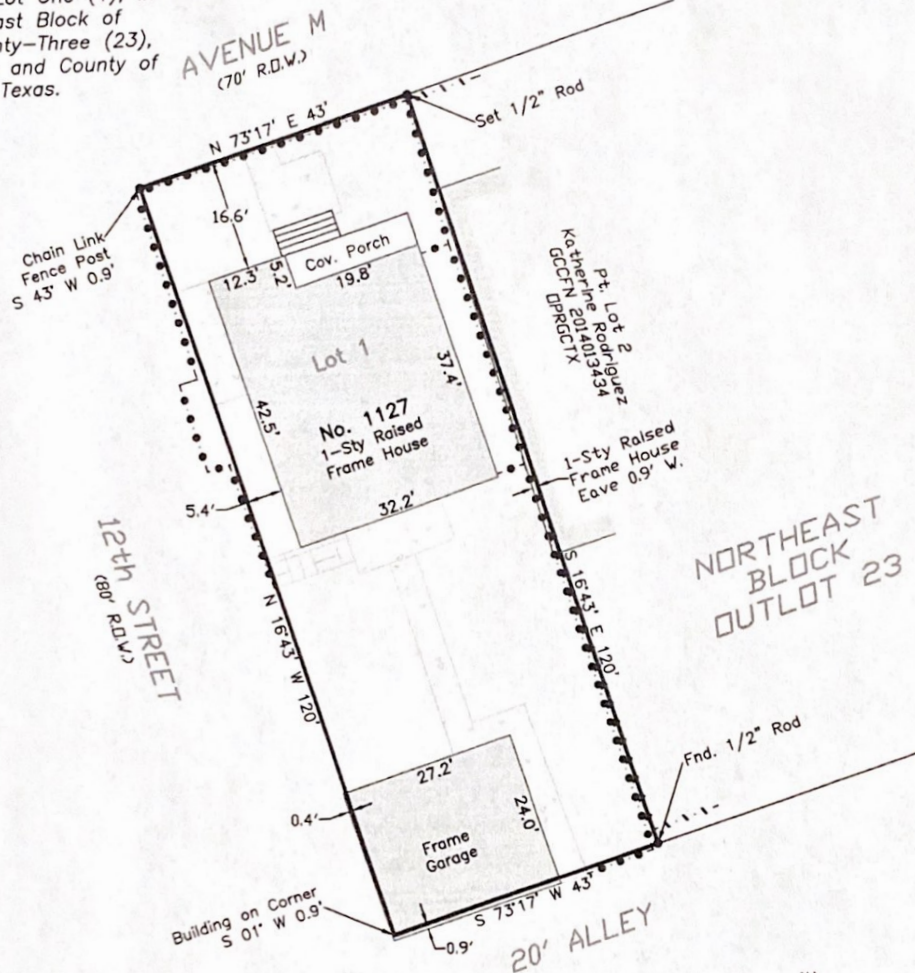
Catherine Gorman, AICP
Assistant Director/HPO

10-28-2020

Date

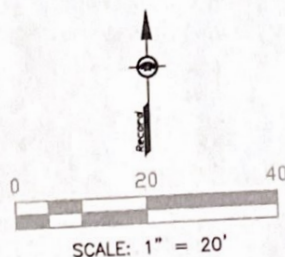
TLS Job No 20-0410	1127 Avenue M, Galveston, TX. 77550	Ref No: 3510-0023-1001-000
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Survey of Lot One (1), in the Northeast Block of Outlot Twenty-Three (23), in the City and County of Galveston, Texas.



I hereby certify that on the below date, the herein described property, together with improvements located thereon, was surveyed on the ground and under my direction, and that this map, together with dimensions as shown hereon, accurately represents the facts as found on the ground this date.

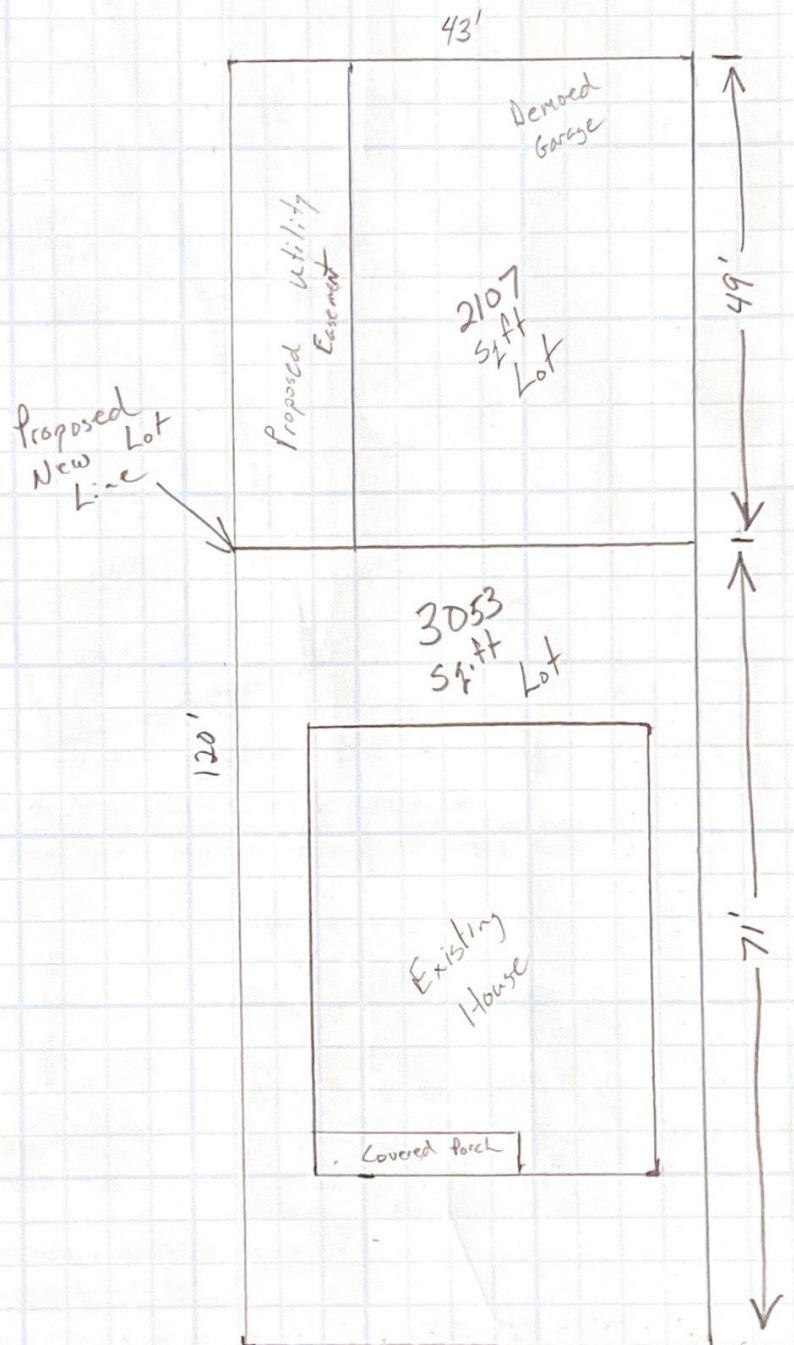
Brene Addison
Brene Addison
Registered Professional
Land Surveyor No. 6598



NOTES:
1) This property is subject to the building and zoning ordinances of the City of Galveston.
2) This property lies within Zone AE (EL 11) as established by the FEMA Flood Insurance Rate Map Community No. 485469, Panel No. 0442G, Dated August 15, 2019.
3) This property is subject to any restrictions of record and may be subject to setbacks from power lines as established by DSHA and/or the local power company.
4) Bearings are based on the nonumentation of the South line of Avenue M.
Surveyed without the benefit of a title commitment. This property may be subject to matters of record not shown hereon that might be revealed by title report or title commitment.

Legend: - Chain Link Fence - Wood Fence - Concrete - Brick		TRICON LAND SURVEYING, LLC Mailing: 6341 Stewart Rd. #251 Physical: 2011 50th Street Galveston, TX 77551 409-497-2772 TriconLandSurveying.com T.B.P.L.S. Firm No. 10194309
Drafting: LP Survey Date: June 24, 2020 Surveyed for: Brian Root		

Exhibit B





City of Galveston - Zoning

+

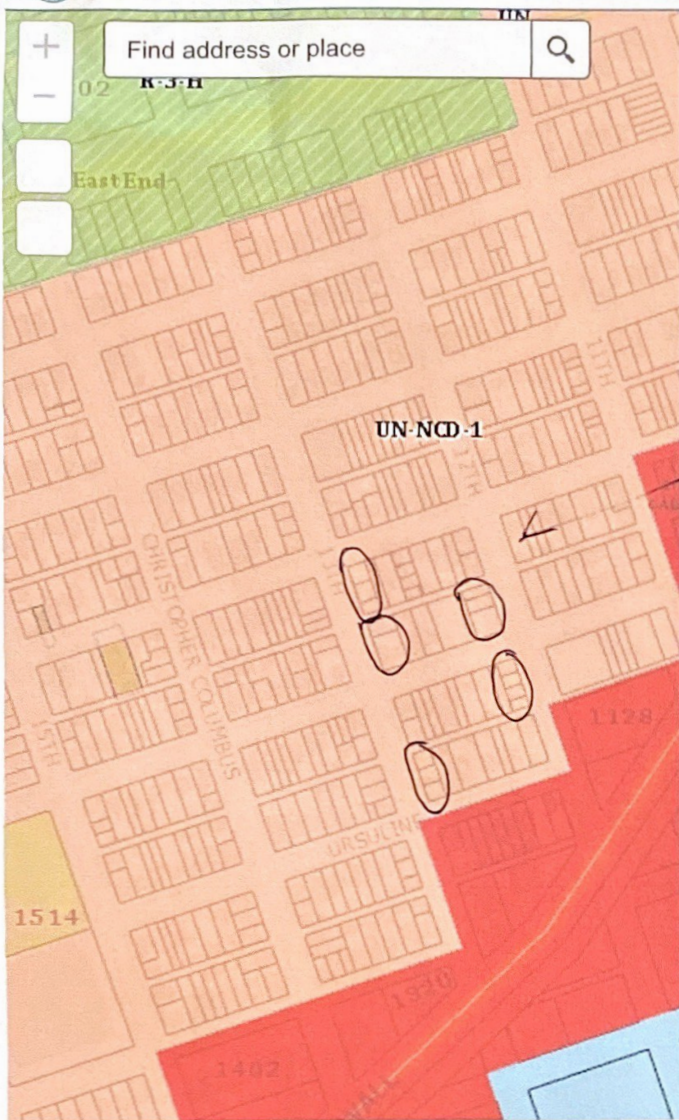
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02

East End

Find address or place

Q



Print

Map title:

City of Galveston - Zoning Web Map

Layout:

Letter_ANSI_A_Portrait

Format:

PDF

Advanced

Print

1.

 City of Galveston - Zoning Web Map

Clear prints

Lot Proposing Variance

Circled Lots within
2 blocks that don't
not meet 2500 sq.ft requirement

Hello,

If we were to split the in equal parts the property line would be about 3 ft from the back of the existing house. We would like to put in a single driveway behind the house so that 2037 has off road parking. The new lot, south of 2037 Ave M, will be new construction and built high enough to park cars under so it being a smaller lot is acceptable. For the new lot or most southern lot will have entrance from the alley so no curb cut would be necessary. We are hoping this is an easy task due to multiple smaller lots on the street currently.

Thank you,

Emily Root

**Emily's
Home Building,
Remodeling & Design Services
409-344-2726**