



**AGENDA
BOARD OF ADJUSTMENT
WEDNESDAY, JULY 13, 2022
1371 WEST FM 550 - MCLENDON-CHISHOLM, TEXAS 75032
7:00 PM**

Page

1. CALL TO ORDER

**2. INVOCATION AND PLEDGE OF ALLEGIANCE TO U.S. AND TEXAS
FLAGS**

3. CITIZEN COMMENTS

4. APPROVAL OF MINUTES

- | | |
|---------|---|
| 3 - 17 | 4.1. Consider the approval of corrected minutes of the May 11, 2022 BOA Meeting
05.11.22 |
| 18 - 27 | 4.2. Consider the approval of the minutes of June 9, 2022 regular Board of Adjustment Meeting
06.09.22 |

5. ITEMS FOR CONSIDERATION

- | | |
|---------|--|
| 28 - 37 | 5.1. Consider a request for approval to the SF 2.5 Zoning District required side yard of 25 feet, reducing the side yard to 15 feet six inches, a reduction in the required side yard setback of nine feet six inches.
City Administrator Memo
Application
Staff Report |
| 38 - 49 | 5.2. Consider the request of Misti Nicholson for approval of variances to the GB General Business Zoning District requirements for Required Front Yard [Section 4-8 Zoning District Area Requirements] landscaping [Section 6-10 Landscape Requirements, Subsection G] |

[Application](#)
[Staff Recommendation](#)

6. ADJOURN

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session in order to seek confidential legal advice from the City Attorney on any agenda item herein.

I, Rochelle Green, do hereby certify that the above Notice of Meeting of the Board of Adjustment of the City of McLendon-Chisholm, Texas was posted or before 5:00 p.m., July 8, 2022, on the outside bulletin board at City Hall, a place convenient and readily accessible to the public at all times.



MINUTES
McLENDON-CHISHOLM, TEXAS
BOARD OF ADJUSTMENT
May 11, 2022

Members Present: Beverly Stibbens, Chairperson
Herb Harker, Board Member
Gary Nickel, Board Member
Melody Osorio, Board Member
David Cross, Board Member (Alternate)

Members Absent: Christian Giadolor, Board Member

Staff Present: Rick Crowley Interim City Administrator
Shelly Green City Secretary
Mike Coker City Planner

1. CALL TO ORDER

Chairperson Stibbens called the meeting to order at 7:01 p.m.

2. INVOCATION AND PLEDGE OF ALLEGIANCE TO U.S. AND TEXAS FLAGS

Chairperson Stibbens led the pledge of allegiance to the U.S. and Texas Flags

3. CITIZEN COMMENTS

None

4. APPROVAL OF MINUTES

4.1. November 22, 2021 Regular Board of Adjustment Meeting

MOTION: APPROVE THE MINUTES OF NOVEMBER 22, 2021 AS PRESENTED.

MADE BY: Board Member Nickel
SECONDED BY: Board Member Harker
APPROVAL: Unanimous by Members Present

May 11, 2022 - Board of Adjustment Minutes

MOTION: APPROVE THE MINUTES OF APRIL 13, 2022 AS PRESENTED

MADE BY: Board Member Osario
SECONDED BY: Board Member Nickel
APPROVAL: Unanimous by Members Present

5. ITEMS FOR CONSIDERATION

- 5.1. Consider the application of Perry Bowen, requesting a variance to Section 3-2, subsection 15 of the City of McLendon-Chisholm Zoning Ordinance. Subsection 15: "15. Accessory dwelling/garage apartments are limited to a maximum of 500 square feet." The request is to increase the size of an accessory guest house from 500 square feet to 1,171 square feet.

Chairperson Stibbens reported there have been no responses to this request.

City Planner Mike Coker presented his report:

REQUEST:

The applicant is requesting a variance to Section 3-2, subsection 15 of the City of McLendon-Chisholm Zoning Ordinance. Subsection 15: "15. Accessory dwelling/garage apartments are limited to a maximum of 500 square feet." The request is to increase the size of an accessory guest house from 500 square feet to 1,171 square feet.

PROPERTY OWNER: Seth and Vandy Mayer
288 S. Sandstone Street
Gilbert, Arizona 85296

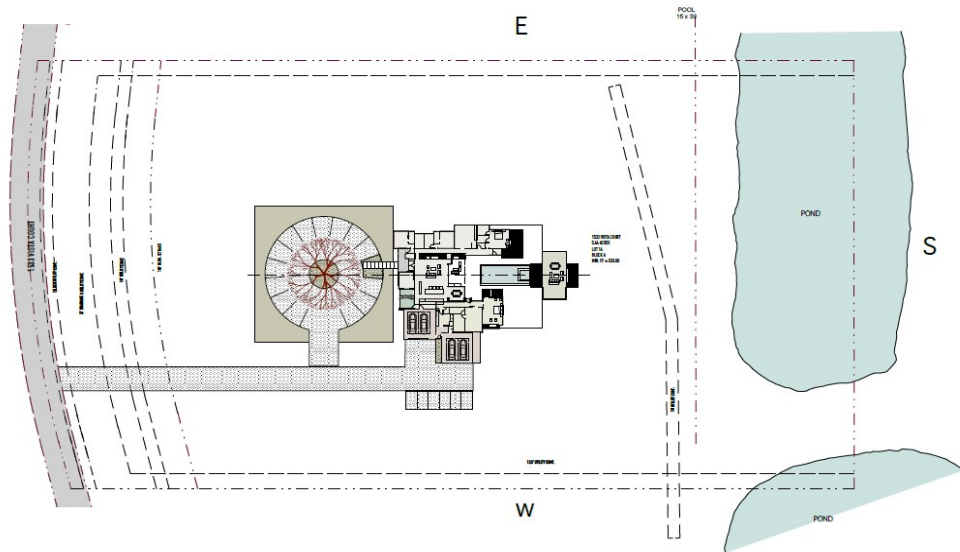
REPRESENTATIVE: Perry Bowen

STAFF RECOMMENDATION: Approval subject to the following condition: Accessory residential structure to be constructed as shown on the attached site plan and related construction plans and elevations as provided by the applicant with the variance request.

BACKGROUND INFORMATION:

The applicant applied for a building permit for the construction of a main residential structure and a guest house on property in the Mira Vista subdivision. A guest house is a use allowed by right in the Agricultural zoning district. The Building Official determined that the guest house portion of the permit application exceeded the maximum square footage for a guest house allowed by the Zoning Ordinance: Section 3-2, Subsection 15, which restricts accessory dwellings or garage apartments to a maximum of 500 square feet. The Building Official has delayed issuance of the Building Permit until such time as the Board of Adjustment approves or disapproves the request.

Site Plan



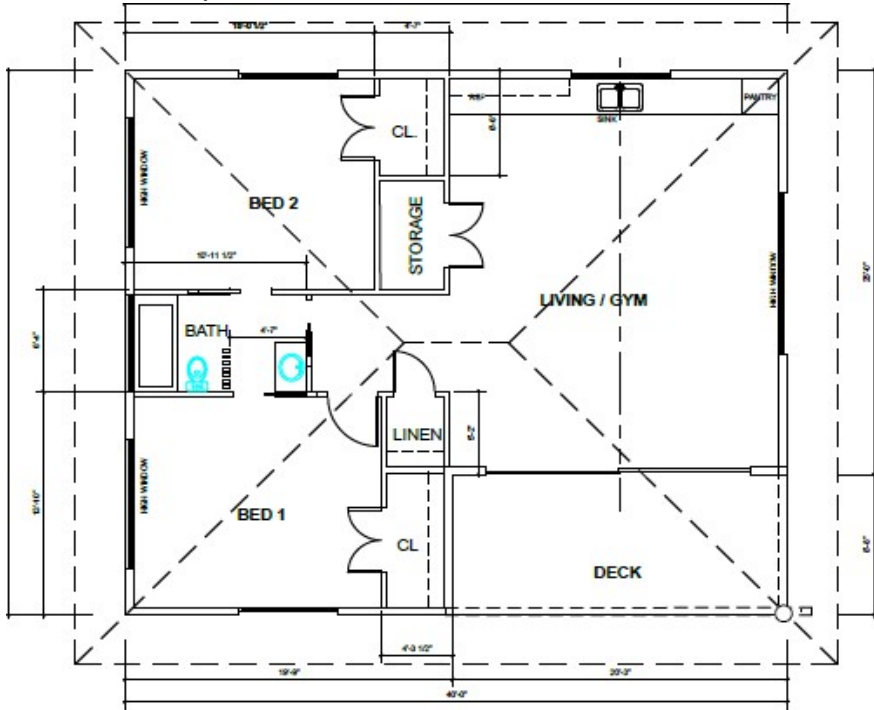
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May 11, 2022 - Board of Adjustment Minutes

May 11, 2022 - Board of Adjustment Minutes



Guest House floor plan



The guest house is a 40 foot by 33-foot 8-inch rectangle on one floor.

City staff believes this application satisfies the standards required of the Board for the granting of a variance.

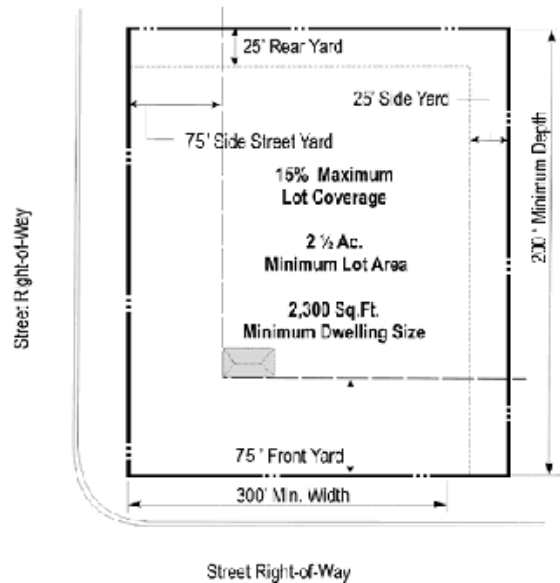
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Zoning:

The zoning district for the subject proposed new residential property is "Ag" Agriculture.

The zoning envelope for the Agriculture zoning district is shown in the graphic below.

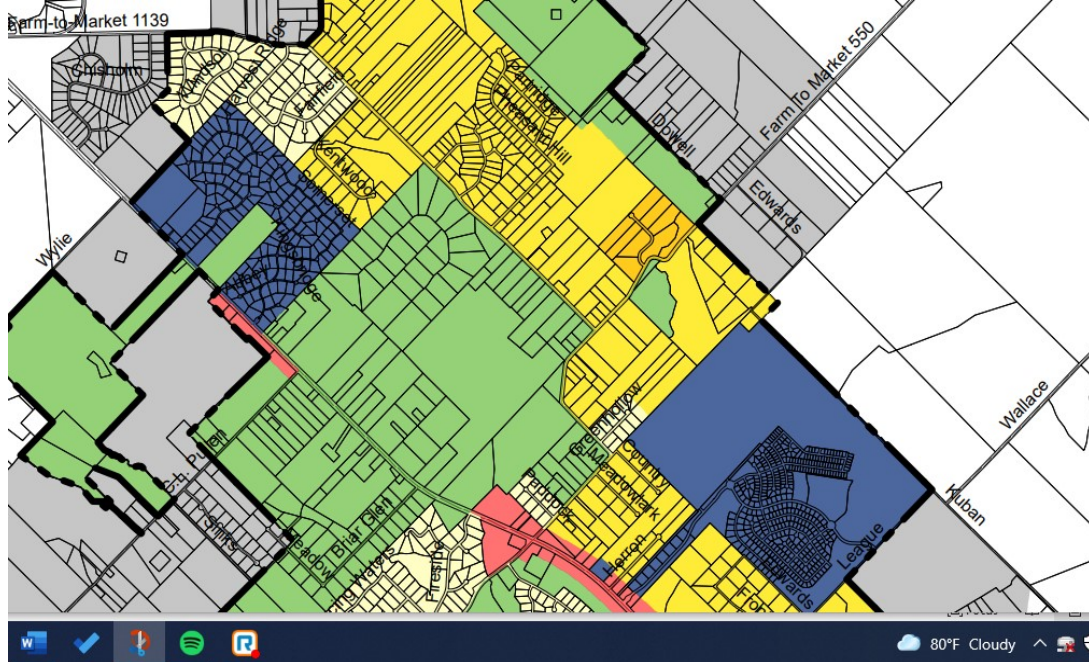
The subject property is Lot 14, Mira Vista Addition and is identified by Rockwall CAD as PID # 89038. The subject lot contains 5.4430 acres of land and satisfies the minimum lot size, depth, width and street frontage requirements.



The Ag-Agriculture zoning district requires a minimum residential lot size of 2.5 acres of land and minimum lot frontage of 300 feet adjacent to the street right of way. The proposed residential lot contains 2.97 acres of land and has the required width and depth, but not the required street frontage.

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Zoning map:



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Rockwall CAD map



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May 11, 2022 - Board of Adjustment Minutes

Thoroughfares/streets:

Vista Court is a local street and complies with the requirements of the Subdivision Ordinance.

Powers of the Board:

G. Variances. The board shall have the power to authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship and so that the spirit of this ordinance shall be observed and substantial justice done, including the following:

1. Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of the provisions due to an irregular shape of the lot or topographical or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare.
2. Authorize, upon appeal, whenever a property owner can show that a strict application of the terms of this ordinance relating to the construction or alteration of buildings or structures will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of this ordinance as are in harmony with its own general purpose and intent, but only when the board is satisfied that granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this ordinance and at the same time, the surrounding property will be properly protected.
3. The board shall have the power to hear and decide appeals where it is alleged there is error of law in any order, requirements, decision or determination made by the mayor or his/her designee in the enforcement of this ordinance. Except as otherwise provided herein, the board shall have, in addition, the following specific powers:
 - (a) To permit the erection and use of a building or the use of premises for railroads if such uses are in general conformance with the master plan and present no conflict or nuisance to adjacent properties.
 - (b) To permit a public utility or public service or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.
 - (c) To grant a permit for the extension of a use, height or area regulation into an adjoining district, where the boundary line of the district divides a lot in a single ownership on the effective date of this ordinance.
 - (d) To permit the reconstruction of a non-conforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more than 50 percent of its fair market value, where the board finds some compelling necessity requiring a continuance of the nonconforming use.

(e) To waive or reduce the parking and loading requirements in any of the districts, when (i) the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities; or (ii) when such regulations would impose an unreasonable hardship upon the use of the lot. The board shall not waive or reduce such requirements merely for the purpose of granting an advantage or a convenience.

(f) A written application for variance shall be submitted together with the required fee, accompanied by an accurate legal description, maps, site plans, drawings and any necessary data, demonstrating:

(g) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district;

(h) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;

(i) That the special conditions and circumstances do not result from the actions of the applicant;

(j) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings in the same district; and

(k) No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

MOTION: APPROVE THE REQUESTED VARIANCES WITH THE CONDITION THAT THE PROPRETY WILL NEVER BE SUBDIVIDED AND SOLD OFF.

MADE BY: Board Member Nickel
SECONDED: Board Member Cross
APPROVAL: Unanimous by Members Present

5.2. Consider the application of Mike Baker, requesting a variance to the required 25-foot yard setback to build a new detached garage. The request is to reduce the required 25-foot side yard to 15-feet.

City Planner Coker presented his staff report:

REQUEST:

The applicant is requesting a variance to the required 25-foot side yard setback to build a new detached garage. The request is to reduce the required 25-foot side yard to 15-feet.

PROPERTY OWNER: Mike and Lou Baker
804 Abington Way
Rockwall, Texas 75032

REPRESENTATIVE: Mike Baker

STAFF RECOMMENDATION: Approval subject to the following condition: Garage to be constructed as shown on the site plan provided by the applicant and that a building permit is issued prior to commencement of construction.

BACKGROUND INFORMATION:

The applicants would like to build a new detached garage that would require a 10-foot encroachment into the required 25-foot side yard setback. The irregular shape of the front of the lot and the location of the existing home would require construction of the garage to encroach into the set back.

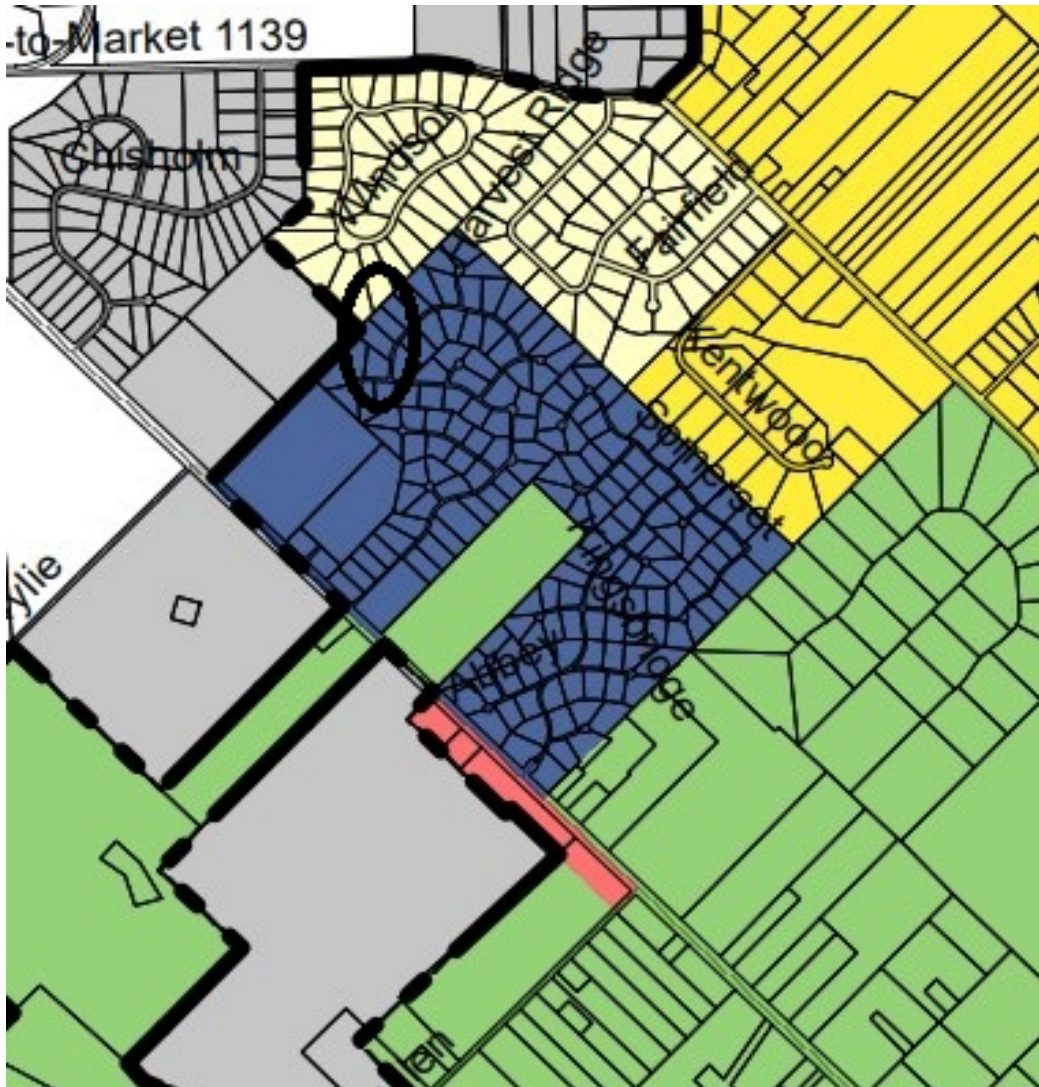
City staff believes this application satisfies the standards required of the Board for the granting of a variance.

[illegible]

The zoning district for the subject proposed new residential property is “The Kingsbridge/Kensington Planned Development District. The Planned Development District requires a minimum 25-foot side yard setback

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Zoning map:



May 11, 2022 - Board of Adjustment Minutes

Rockwall CAD map



May 11, 2022 - Board of Adjustment Minutes

Thoroughfares/streets:

Abington Way is a local street and complies with the requirements of the Subdivision Ordinance.

**MOTION: APPROVE THE VARIANCE TO REDUCE THE REQUIRED 25-FOOT
SIDE YARD TO 15-FEET.**

MADE BY: Board Member Nickel
SECONDED BY: Board Member Harker
APPROVAL: Unanimous by Members Present

5.3. Consider the application of Carlos & Alicia Rojas requesting a variance to the 300 feet frontage adjacent to a public street.

**BEVERLY STIBBENS, BOARD CHAIR, AND HERB HARKER, BOARD MEMBER,
RECUSED THEMSELVES FROM THIS ITEM.**

**THIS ITEM COULD NOT BE HEARD DUE TO A LACK OF QUORUM AND WILL BE
RESCHEDULED.**

6. ADJOURN

There being no further business to discuss, Chairperson Stibbens adjourned the meeting at 7:29 p.m.

ATTEST:

APPROVED:

Rochelle Green, City Secretary

Beverly Stibbens, Chairperson



MINUTES
McLENDON-CHISHOLM, TEXAS
BOARD OF ADJUSTMENT
June 9, 2022

Members Present:

Beverly Stibbens, Chairperson
Herb Harker, Board Member
Lee Nichols, Board Member
Melody Osorio, Board Member
David Cross, Board Member (Alternate)
James Parnell, Board Member (Alternate)
Christian Giadolor, Board Member (By Zoom)

Absent:

Gary Nickel, Board Member (Excused absence due to illness)

Staff Present:

Rick Crowley	Interim City Administrator
Shelly Green	City Secretary
Mike Coker	City Planner

1. CALL TO ORDER

Chairperson Stibbens called the meeting to order at 7:00 p.m.

2. INVOCATION AND PLEDGE OF ALLEGIANCE TO U.S. AND TEXAS FLAGS

Chairperson Stibbens led the pledge of allegiance to the U.S. and Texas Flags

Board Chairperson Stibbens and Member Herb Harker recused themselves at this time due to possible conflict.

Board Member Osorio assumed the role as Chairperson.

3. CITIZEN COMMENTS

Beverly Stibbens, 279 Partridge Dr., Addressed the Board regarding Item 8.1.

4. APPROVAL OF MINUTES

4.1. May 11, 2022, Regular Board of Adjustment Meeting

MOTION: APPROVE THE MINUTES OF MAY 11 22, 2021 AS PRESENTED.

MADE BY: Board Member Parnell
SECONDED BY: Board Member Cross
APPROVAL: Unanimous by Members Present

5. ITEMS FOR CONSIDERATION

- 5.1. Consider the application of Carlos & Alicia Rojas requesting a variance to the 300 feet frontage adjacent to a public street.

Chairperson Osorio reported there have been no responses to this request.

City Planner Mike Coker presented his report:

REQUEST:

The applicant is requesting a variance to Section 3-2, subsection 15 of the City of McLendon-Chisholm Zoning Ordinance. Subsection 15: "15. Accessory dwelling/garage apartments are limited to a maximum of 500 square feet." The request is to increase the size of an accessory guest house from 500 square feet to 1,171 square feet.

PROPERTY OWNER: Seth and Vandy Mayer
288 S. Sandstone Street
Gilbert, Arizona 85296

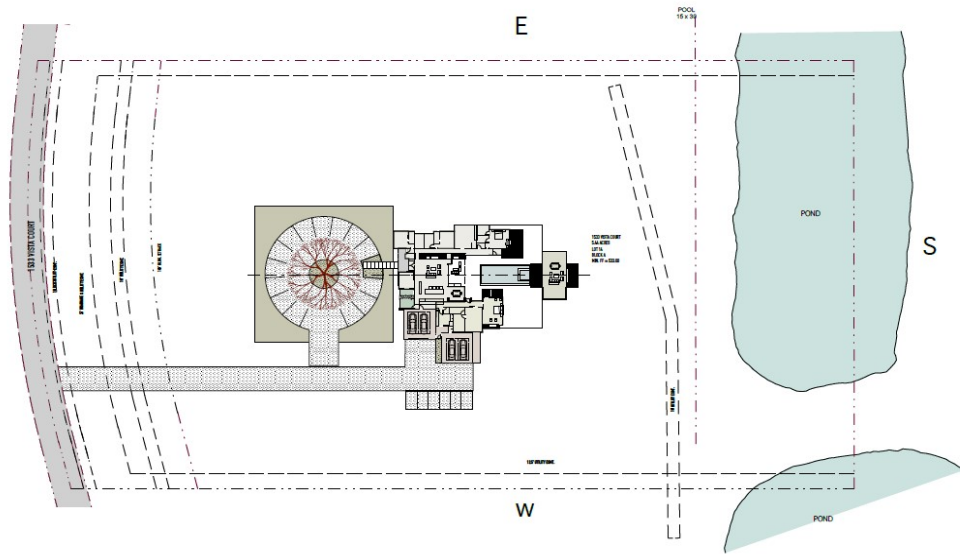
REPRESENTATIVE: Perry Bowen

STAFF RECOMMENDATION: Approval subject to the following condition: Accessory residential structure to be constructed as shown on the attached site plan and related construction plans and elevations as provided by the applicant with the variance request.

BACKGROUND INFORMATION:

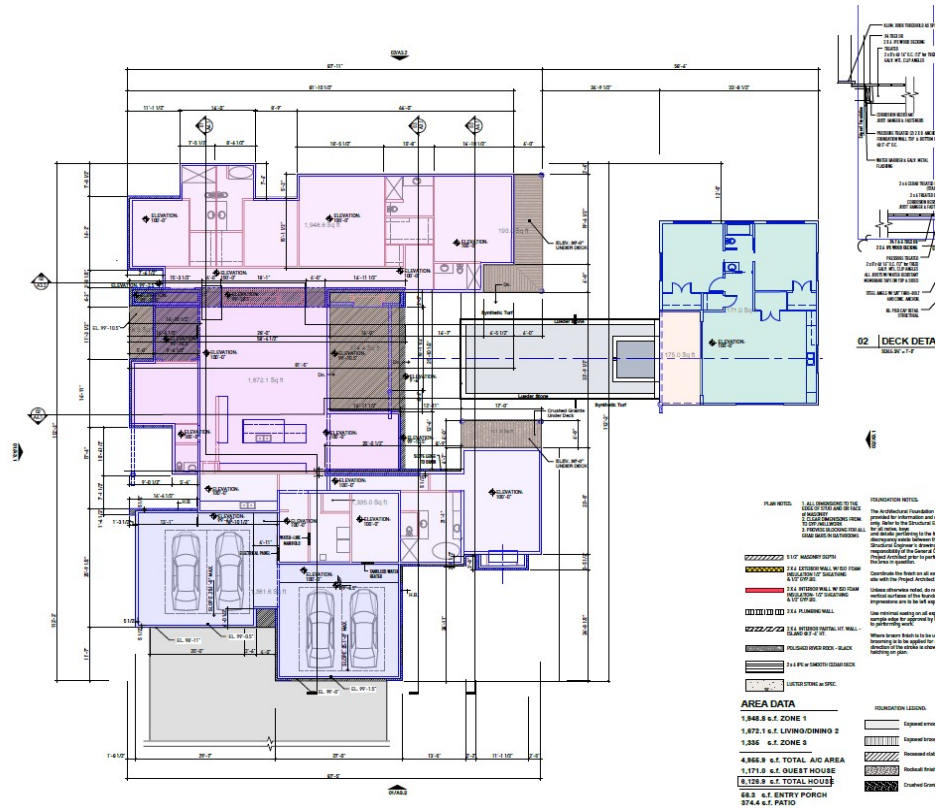
The applicant applied for a building permit for the construction of a main residential structure and a guest house on property in the Mira Vista subdivision. A guest house is a use allowed by right in the Agricultural zoning district. The Building Official determined that the guest house portion of the permit application exceeded the maximum square footage for a guest house allowed by the Zoning Ordinance: Section 3-2, Subsection 15, which restricts accessory dwellings or garage apartments to a maximum of 500 square feet. The Building Official has delayed issuance of the Building Permit until such time as the Board of Adjustment approves or disapproves the request.

Site Plan



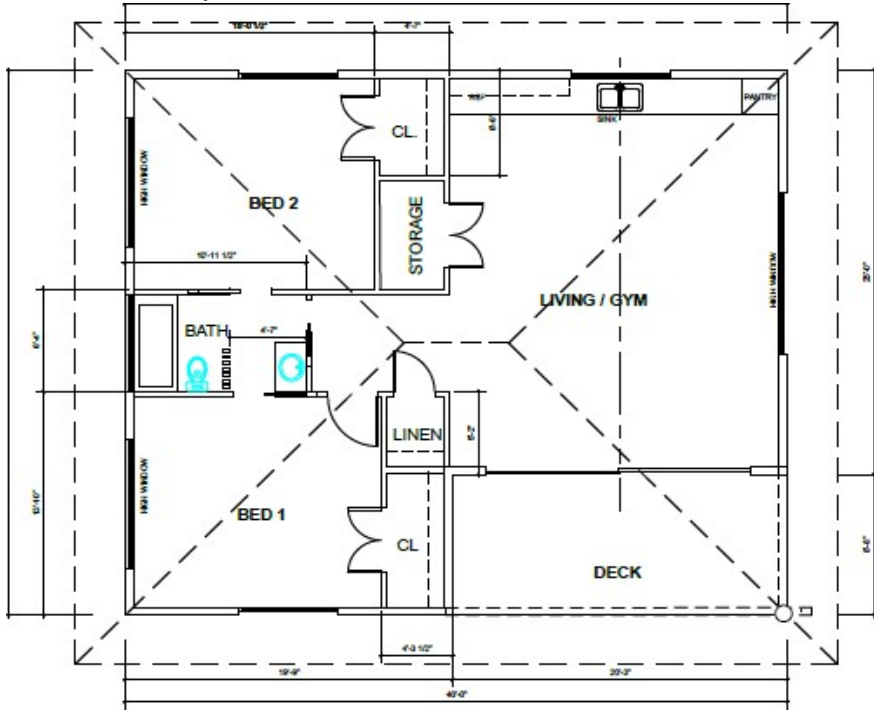
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Floor Plan



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Guest House floor plan



The guest house is a 40 foot by 33-foot 8-inch rectangle on one floor.

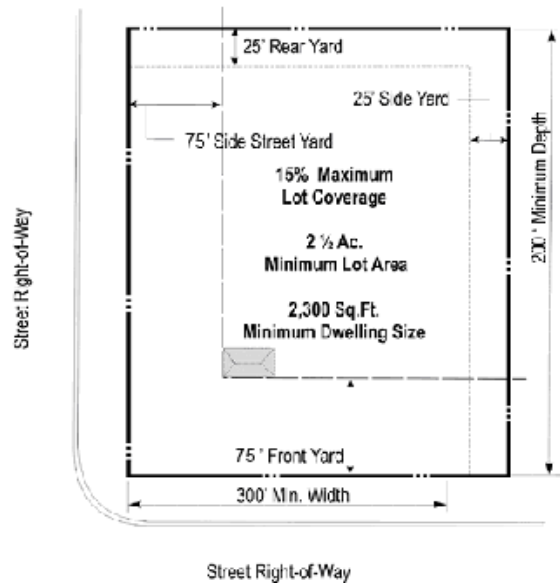
City staff believes this application satisfies the standards required of the Board for the granting of a variance.

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Zoning:

The zoning district for the subject proposed new residential property is "Ag" Agriculture.

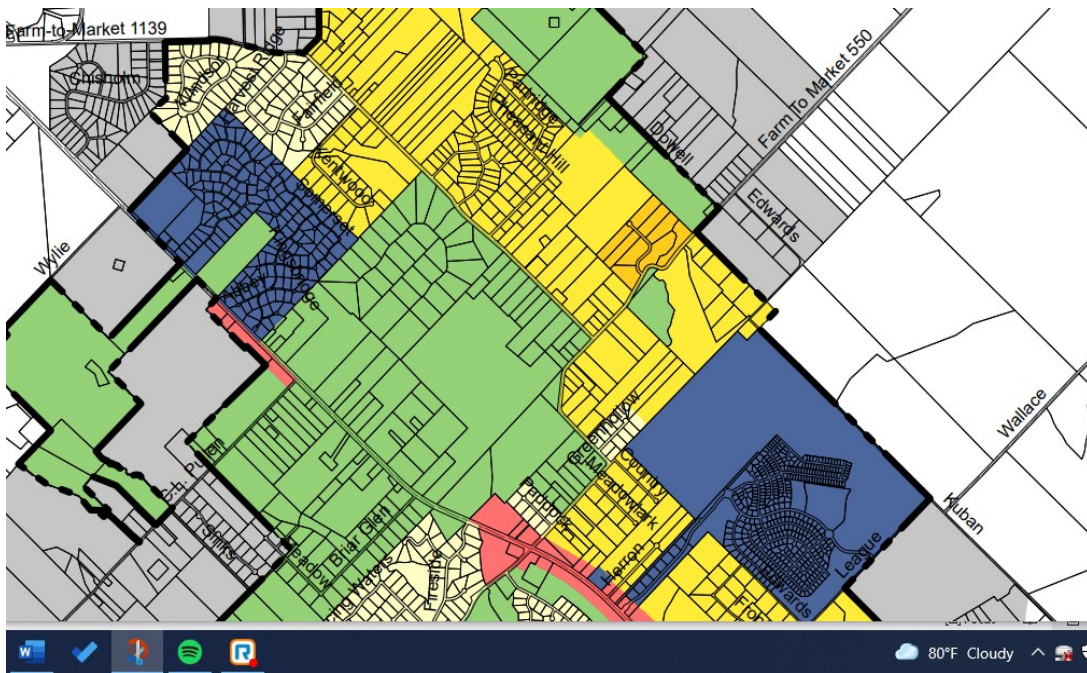
The zoning envelope for the Agriculture zoning district is shown in the graphic below. The subject property is Lot 14, Mira Vista Addition and is identified by Rockwall CAD as PID # 89038. The subject lot contains 5.4430 acres of land and satisfies the minimum lot size, depth, width and street frontage requirements.



The Ag-Agriculture zoning district requires a minimum residential lot size of 2.5 acres of land and minimum lot frontage of 300 feet adjacent to the street right of way. The proposed residential lot contains 2.97 acres of land and has the required width and depth, but not the required street frontage.

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Zoning map:



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Rockwall CAD map



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Thoroughfares/streets:

Vista Court is a local street and complies with the requirements of the Subdivision Ordinance.

Powers of the Board:

G. Variances. The board shall have the power to authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship and so that the spirit of this ordinance shall be observed and substantial justice done, including the following:

1. Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of the provisions due to an irregular shape of the lot or topographical or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare.
2. Authorize, upon appeal, whenever a property owner can show that a strict application of the terms of this ordinance relating to the construction or alteration of buildings or structures will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of this ordinance as are in harmony with its own general purpose and intent, but only when the board is satisfied that granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this ordinance and at the same time, the surrounding property will be properly protected.
3. The board shall have the power to hear and decide appeals where it is alleged there is error of law in any order, requirements, decision or determination made by the mayor or his/her designee in the enforcement of this ordinance. Except as otherwise provided herein, the board shall have, in addition, the following specific powers:
 - (a) To permit the erection and use of a building or the use of premises for railroads if such uses are in general conformance with the master plan and present no conflict or nuisance to adjacent properties.
 - (b) To permit a public utility or public service or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.
 - (c) To grant a permit for the extension of a use, height or area regulation into an adjoining district, where the boundary line of the district divides a lot in a single ownership on the effective date of this ordinance.
 - (d) To permit the reconstruction of a non-conforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more than 50 percent of its fair market value, where the board finds some compelling necessity requiring a continuance of the nonconforming use.

(e) To waive or reduce the parking and loading requirements in any of the districts, when (i) the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities; or (ii) when such regulations would impose an unreasonable hardship upon the use of the lot. The board shall not waive or reduce such requirements merely for the purpose of granting an advantage or a convenience.

(f) A written application for variance shall be submitted together with the required fee, accompanied by an accurate legal description, maps, site plans, drawings and any necessary data, demonstrating:

(g) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district;

(h) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;

(i) That the special conditions and circumstances do not result from the actions of the applicant;

(j) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings in the same district; and

(k) No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

MOTION: APPROVE THE REQUESTED VARIANCES WITH THE CONDITION THAT THE PROPRETY WILL NEVER BE SUBDIVIDED AND SOLD OFF.

MADE BY: Board Member Nickel
SECONDED: Board Member Cross
APPROVAL: Unanimous by Members Present

6. ADJOURN

There being no further business to discuss, Acting Chairperson Osorio adjourned the meeting at 7:29 p.m.

ATTEST:

APPROVED:

Rochelle Green, City Secretary

Melody Osorio, Acting Chairperson

Memorandum

July 5, 2022

TO : Board of Adjustments

FROM : Rick Crowley, Interim City Administrator

SUBJECT : Justin Ellis Board of Adjustment Application

CC : Keith Short, Mayor
Shelly Green, City Secretary
Mike Coker, City Planner

This past May, Mr. Justin Ellis applied for electric service to serve an accessory building on his property. The City's Building Official appropriately denied the requested electrical permit because the accessory building had been placed on the property without the required permit. Mr. Ellis then sought to secure a permit for the accessory building. I inquired as to the requirements for placement of an accessory building and was advised that a 15-foot setback from side property lines is required. I passed this information along to Mr. Ellis. The Building Official measured the distance from the property line and found that the accessory building, in its then current location was several feet short of being 15 feet from the side property line. At some point thereafter, I was advised that the side setback requirement is actually 25 feet. I erroneously believed that Mr. Ellis had been apprised of the 25-foot requirement. In fact, he had not been so advised.

In an effort to achieve compliance with what he believed to be a 15-foot requirement, at some point over the course of the next several weeks/months, Mr. Ellis had the building moved to achieve a 15.5 foot side setback and then sought a permit for the accessory building. At this point, he learned of the 25-foot requirement. Because of existing conditions on Mr. Ellis' property, a 25-foot setback is problematic for him.

The City Planner, Mr. Coker, was provided the information about the matter and developed the case for consideration by the Board of Adjustment to consider. Although I will not be at the BOA meeting since a permanent City Administrator has been hired and will be "on board" by the time of the meeting, I felt it important to share the information with the Board as to the circumstances surrounding the application that will come before you.



APPLICATION TO REQUEST A HEARING
BEFORE THE CITY OF MCLENDON-CHISHOLM
BOARD OF ADJUSTMENT

DATE OF APPLICATION 4/29/2022 CASE # _____

NAME OF APPLICANT JUSTIN ELLIS

ADDRESS 1201 E. FM 550 PHONE NO. 214-577-9976

BUSINESS PHONE NO. 214-577-9976

DESCRIPTION OF PROPERTY LOT NUMBER _____ BLOCK NUMBER _____

LEGAL DESCRIPTION OF PROPERTY:

VAC. LOT W/ HOME & LIVESTOCK ANIMALS ON SITE

ADDRESS OF PROPERTY: 1201 E FM 550

REASON FOR REQUEST: HARDSHIP REQ. DUE TO HAVING
BUILDING (SHED) ON PROP. EASEMENT LESS THAN 15 FT.

15 FT WAS QUOTED BY CITY STAFF & MR. CROWLEY.
PAID BUILDING MOVER 800⁰⁰ TO RE-MOVE & SET
BUILDING TO 15 FT. THEN ADVISED IT WAS 25 FT

CANNOT MOVE FURTHER OUT DUE TO ACCESS / DRIVE

TO LIVESTOCK ON PROPERTY. OTHER HOMES HAVE FIXED BUILDINGS
UNDER 25 FT EASEMENTS PLACING IN THE AREA OF MY HOME.

SIGNATURE OF APPLICANT Justin Ellis

Applicant must provide a survey or plat showing location of proposed improvements and existing structures as related to all boundary lines, pictures and descriptions of project, materials descriptions and list of property owners and address within 200'.

~~FEE \$400.00 and All Consulting Fees~~

DATE/AMOUNT PAID: 400.00

RECEIPT #:

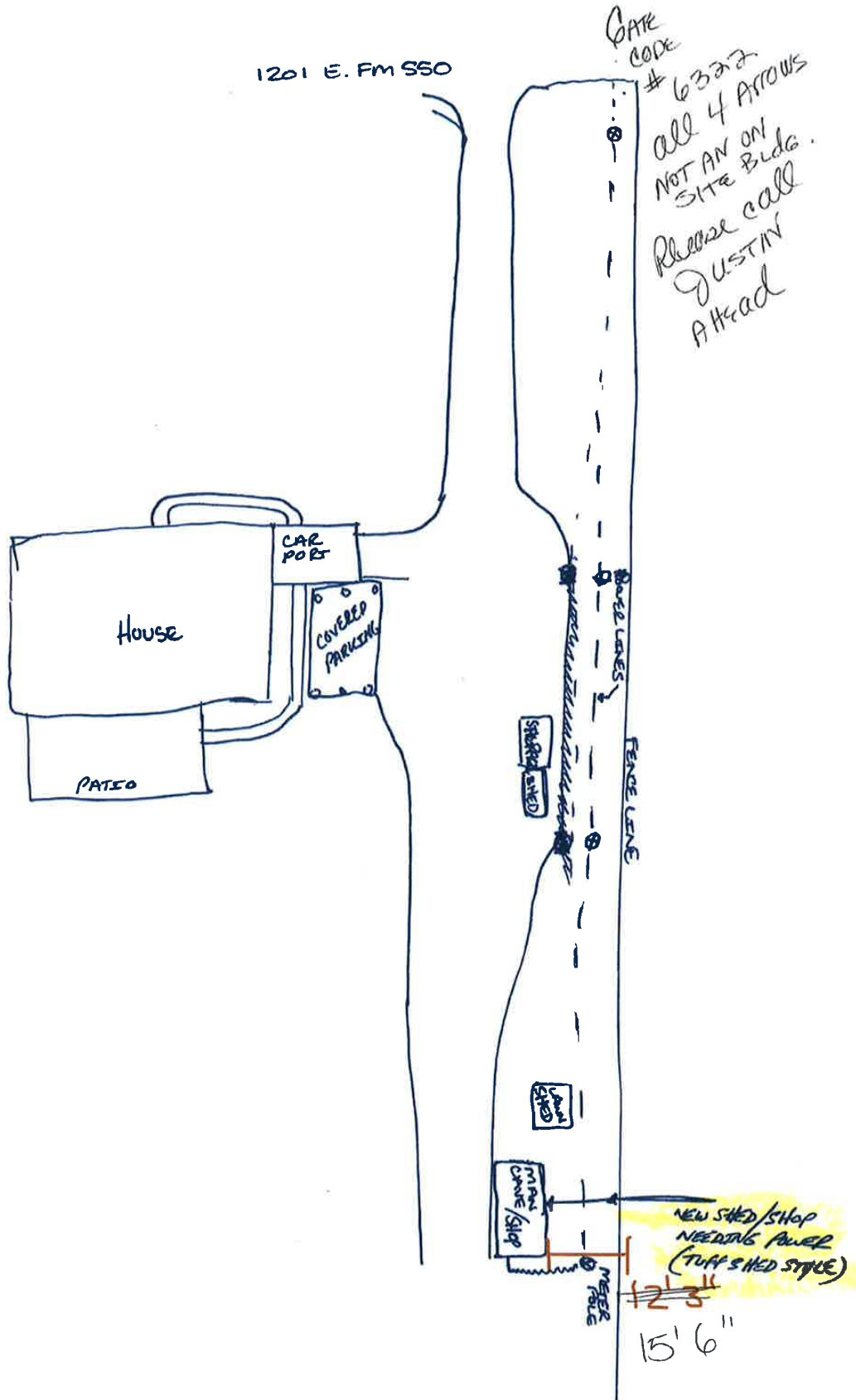
062922

FOR CITY USE ONLY

DATE AND TIME OF MEETING SCHEDULED _____

REQUEST FOR VARIANCE GRANTED/DENIED.

IF DENIED, REASON, _____





ZONING BOARD OF ADJUSTMENT – CITY OF MCLENDON-CHISHOLM, TEXAS

DATE: July 7, 2022

APPLICANT: Justin Ellis
1201 E. FM 550
McLendon-Chisholm, Texas

LOCATION: 1201 E. FM 550, McLendon-Chisholm, Texas [Rockwall CAD ID#10775]

ZONING BOARD OF ADJUSTMENT HEARING DATE: July 13, 2022

REQUEST:

The applicant is requesting approval of a variance to the SF 2.5 Zoning District required side yard of 25 feet, reducing the side yard to 15 feet six inches, a reduction in the required side yard setback of nine feet six inches.

PROPERTY OWNERS: Justin Ellis
1201 E. FM 550
McLendon-Chisholm, Texas

REPRESENTATIVE: Justin Ellis

STAFF RECOMMENDATION: City staff recommends that the Board of Adjustment approve the request to reduce the required side yard from 25 feet to 15 feet six inches.

Conditions:

The accessory structure must not be moved any closer to the eastern property line than it is currently located.

BACKGROUND INFORMATION:

The subject property is a six-acre residential lot with a single-family residence, a detached covered parking area and several small portable storage facilities. An electrical permit is required in order to provide electricity to the accessory structure. Since the accessory structure was located within the required setback, the applicant has requested the variance to the locational requirements.

The subject property is zoned SF 2.5. That is each lot must have 2.5 acres of land. The subject property is six acres of land. The SF 2.5 zoning district requires a minimum interior side yard of 25 feet. [See graphic below]. The applicant is requesting a variance to the required 25 foot setback for two reasons:

1. The City advised the applicant that the required side yard setback is 15 feet in this zoning district. [The actual required side yard setback is 25 feet. He expended money relocating his accessory structure to meet 15 foot setback. [See the note from the Interim City Administrator below].
2. Moving the building any further to the west will interfere with the driveway. [see the RCAD aerial]

SF2.5 - Zoning District Area Requirements	
Minimum Lot Area	2 1/2 Acres
Minimum Lot Width	300 ft.
Minimum Lot Depth	200 ft.
Minimum Front Yard	75 ft.
Minimum Side Yard	25 ft. Interior
	75 ft. Street
Minimum Rear Yard	25 ft.
Minimum Dwelling Size	2,300 sq. ft.
Maximum Lot Coverage	15 %
Maximum Building Height	45 ft.

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Zoning Map



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Rockwall CAD aerial with subject property outlined in red and accessory structure location to the left of the arrow.



Thoroughfares/streets:

The subject properties front on FM 550 and are located directly across FM 550 from the southeast end of FM 1139. The Thoroughfare Plan calls for FM 550 to be an existing Major Collector to have a minimum 60-80 foot right of way width, the existing right of way width is 80 feet.

Memorandum

July 5, 2022

TO : Board of Adjustments
FROM : Rick Crowley, Interim City Administrator
SUBJECT : Justin Ellis Board of Adjustment Application
CC : Keith Short, Mayor
Shelly Green, City Secretary
Mike Coker, City Planner

This past May, Mr. Justin Ellis applied for electric service to serve an accessory building on his property. The City's Building Official appropriately denied the requested electrical permit because the accessory building had been placed on the property without the required permit. Mr. Ellis then sought to secure a permit for the accessory building. I inquired as to the requirements for placement of an accessory building and was advised that a 15-foot setback from side property lines is required. I passed this information along to Mr. Ellis. The Building Official measured the distance from the property line and found that the accessory building, in its then current location was several feet short of being 15 feet from the side property line. At some point thereafter, I was advised that the side setback requirement is actually 25 feet. I erroneously believed that Mr. Ellis had been apprised of the 25-foot requirement. In fact, he had not been so advised.

In an effort to achieve compliance with what he believed to be a 15-foot requirement, at some point over the course of the next several weeks/months, Mr. Ellis had the building moved to achieve a 15.5 foot side setback and then sought a permit for the accessory building. At this point, he learned of the 25-foot requirement. Because of existing conditions on Mr. Ellis' property, a 25-foot setback is problematic for him.

The City Planner, Mr. Coker, was provided the information about the matter and developed the case for consideration by the Board of Adjustment to consider. Although I will not be at the BOA meeting since a permanent City Administrator has been hired and will be "on board" by the time of the meeting, I felt it important to share the information with the Board as to the circumstances surrounding the application that will come before you.

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View of accessory structure looking easterly from subject property



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View looking northerly showing the distance from the fence [Property Line] to the accessory structure.





APPLICATION TO REQUEST A HEARING
BEFORE THE CITY OF MCLENDON-CHISHOLM
BOARD OF ADJUSTMENT

DATE OF APPLICATION 6/29/2022 CASE # _____
NAME OF APPLICANT Misti Nicholson
ADDRESS 160 Pioneer Ct PHONE NO. 817-825-1617
Rose City Tx 75189 BUSINESS PHONE NO. 972-885-7356
DESCRIPTION OF PROPERTY LOT NUMBER _____ BLOCK NUMBER _____
LEGAL DESCRIPTION OF PROPERTY: A0133 K Latham, Tract 49
acres - 730

ADDRESS OF PROPERTY: 1400 S. State Hwy 205
REASON FOR REQUEST: EXISTING Building - non-conforming
Variances:

- Building Size
- masonry separation wall
- Landscaping
- Parking

SIGNATURE OF APPLICANT M. Nicholson

Applicant must provide a survey or plat showing location of proposed improvements and existing structures as related to all boundary lines, pictures and descriptions of project, materials descriptions and list of property owners and address within 200'.

FEE \$400.00 and All Consulting Fees

DATE/AMOUNT PAID: 3400.00

RECEIPT #: _____

FOR CITY USE ONLY

DATE AND TIME OF MEETING SCHEDULED _____

REQUEST FOR VARIANCE GRANTED/DENIED.

IF DENIED, REASON: _____



ZONING BOARD OF ADJUSTMENT – CITY OF MCLENDON-CHISHOLM, TEXAS

DATE: July 8, 2022

APPLICANT: Misti Nicholson
160 Pioneer Court
Royse City, Texas 75189

LOCATION: 1400 S. SH 205, McLendon-Chisholm, Texas [Rockwall CAD ID#11423]

ZONING BOARD OF ADJUSTMENT HEARING DATE: July 13, 2022

REQUEST:

The applicant is requesting approval of variances to the GB General Business Zoning District requirements for Required Front Yard [Section 4-8 Zoning District Area Requirements] landscaping [Section 6-10 Landscape Requirements, Subsection G].

PROPERTY OWNERS: Russell MacLelland
9607 Losa Drive
Dallas, Texas 75218

REPRESENTATIVE: Misti Nicholson

STAFF RECOMMENDATION: City staff recommends that the Board of Adjustment approve the request to vary the requirements of the Zoning Ordinance: Section 4-8 Zoning District Area Requirements; reducing the required front yard to the depth from 25 feet to nine feet, as shown on the attached survey;

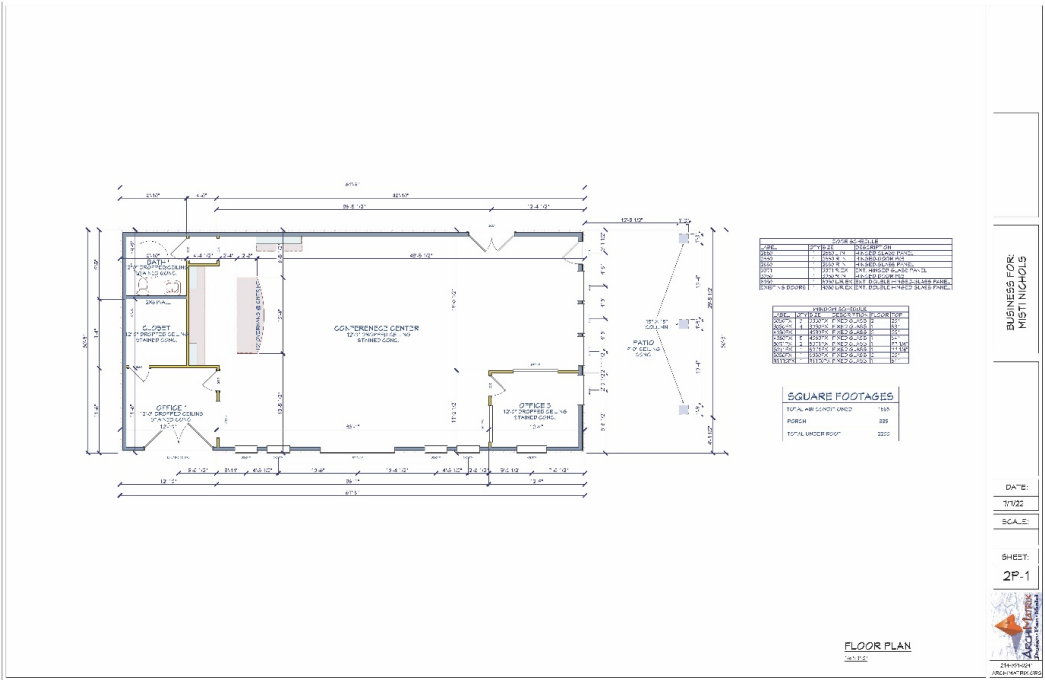
And not requiring 40 percent of the required landscaping to be placed in the front yard subject to the following conditions:

Conditions:

- Provide a landscape plan for city staff review and approval that conforms to the requirements of Section 6-10 Landscape Requirements except that landscaping consisting of at least two trees and shrubs and ground covers be provided in the remaining area between the sidewalk adjacent to the building and the street right of way within 30 days following Board of Adjustment action.
- Comply with the proposed site plan and elevations, except that the driveway providing access from the street to the parking stalls and maneuvering area shall be concrete, not gravel.



PROPOSED FLOOR PLAN



EXTERIOR ELEVATIONS AND ROOF PLAN

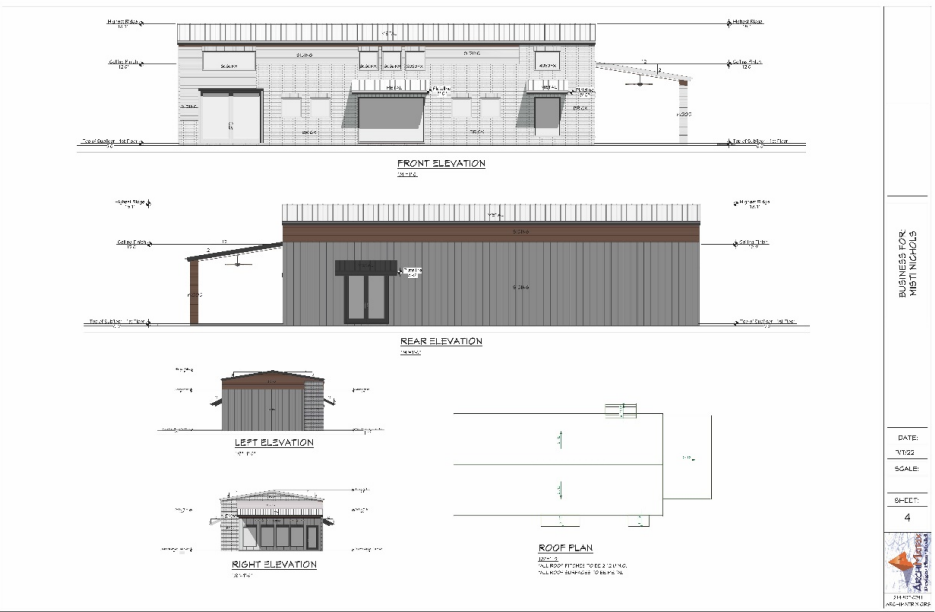


Photo of south side of building showing the adjacent residential use on commercially zoned property



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Google Earth photo of front of building March 2021



Sec. 2-6 Nonconforming buildings

Where a lawful building exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the building, such building may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. Structures existing prior to the effective date of this ordinance, which were conforming at that time, are considered to be nonconforming structures currently.
2. No such nonconforming building may be enlarged or altered in a way which increases its nonconformity, but any building or portion thereof may be altered to decrease its nonconformity or to comply with city building codes.
3. Should such nonconforming building or nonconforming portion of a building be destroyed by any means to an extent of more than 50 percent of its fair market value at the time of destruction, or 50 percent of the area of the structure, it shall not be reconstructed except in conformity with the provisions of this ordinance, or when approved by the board of adjustment, after public hearing thereon, when the board's findings, having due regard for the property rights of persons affected, were considered in the light of public welfare and the character of the area surrounding the nonconforming building and the conservation and protection of property.
4. Should such building be moved for any reason for any distance whatever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

5. All structures located on residentially zoned parcels, at the effective date of this ordinance, shall be deemed to be conforming, unless such structure is increased. In such case the minimum size of structure as contained in the zoning district herein shall apply.

Landscaping

C. Events causing compliance. Land uses not previously subject to landscaping requirements may be required to comply with this section upon the occurrence of one of the following events:

- * A change in zoning;
- * Requirement of landscaping as conditions of a specific use permit;
- * Issuance of a building permit; or
- * Loss of legal non-conforming status.

G. Locational criteria.

1. Not less than 40 percent of the total landscaping shall be located in the designated front yard.
2. In the LI Zoning District only the front yard 40 percent of the total 20 percent shall be required. The rear and side yard landscape requirements may be waived upon submittal of a landscape plan showing other requirements.
3. All landscape material shall comply with visibility requirements of the McLendon-Chisholm Subdivision Regulations.

Sec. 6-8 Screening and buffer requirement

A. Purpose. Standards set forth in this section are intended to encourage the appropriate use of land and conserve and protect the privacy and value of adjacent permitted uses. Regulations are prescribed for the location and type of various screening devices to be used when required in the various zoning districts or in this section in accordance with the following standards.

B. Generally.

1. When a boundary of a non-residential zoning district sides or backs upon an SF5, SF2.5, SF1.5, MH District, or a residential planned unit development a solid screening wall or fence of not less than six feet nor more than eight feet in height shall be erected on the property line separating these districts. The purpose of the screening wall or fence is to provide a visual barrier between the properties.

Zoning Map



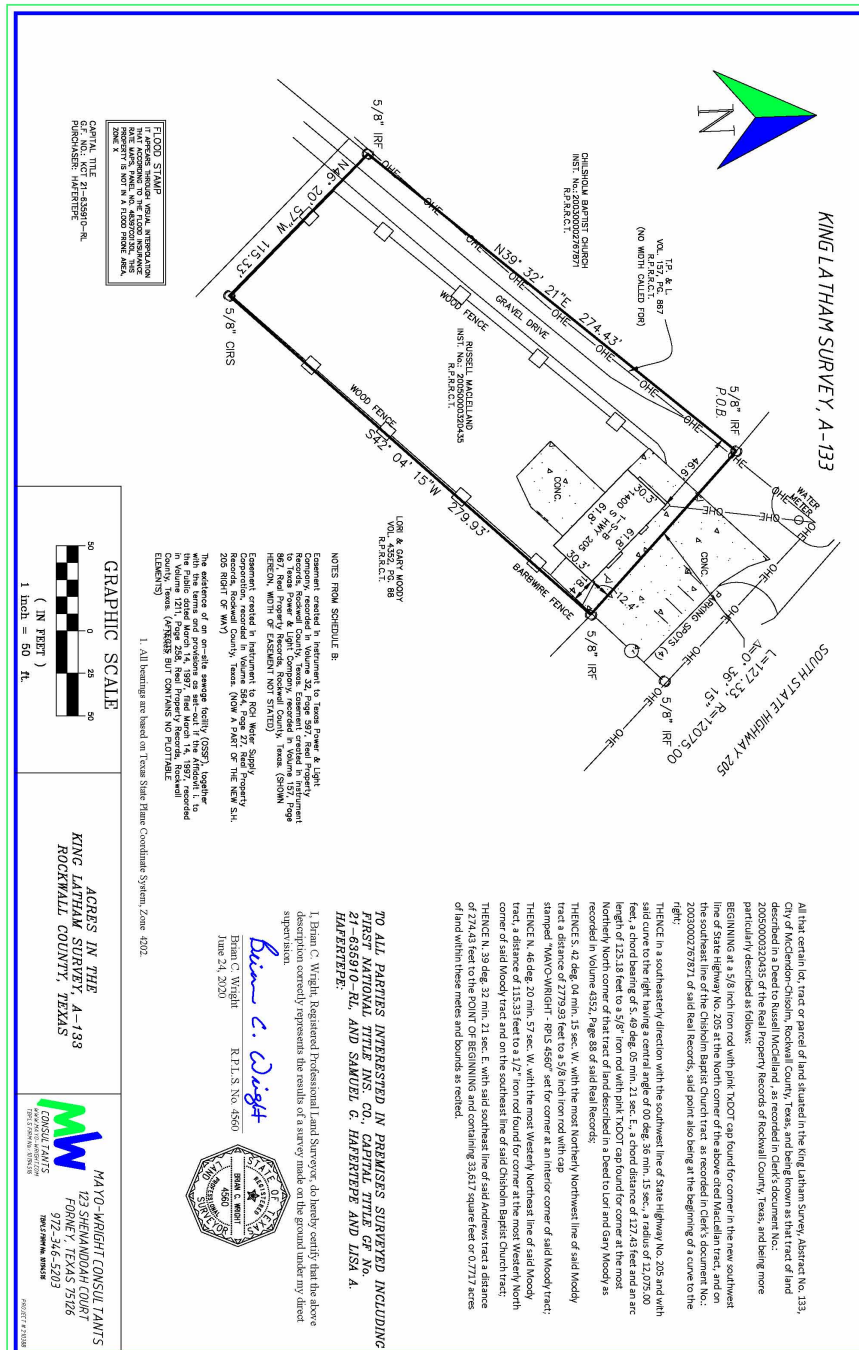
Zoning Requirements

GB - Zoning District Area Requirements	
Minimum Lot Area	10,000 sq. ft.
Minimum Lot Width	100 ft.
Minimum Lot Depth	100 ft.
Minimum Street Yard	20 ft. Front Street
	15 ft. Side Street
Minimum Side Yard	15 ft. abutting Non-Res
	25 ft abutting Res.
Minimum Rear Yard	20 ft. abutting Non-Res
	25 ft. abutting Res.
Maximum Lot Coverage	35 %
Maximum Building Height	35 ft.

Rockwall CAD aerial with subject property outlined in red



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Thoroughfares/streets:

The subject property fronts on SH 205. The required right of way for SH 205 100 to 150 feet. The State of Texas has acquired the required right of way adjacent to the subject property by fee simple acquisition. No additional right of way is required on the southwest side of SH 205 at this location. However, when the State acquired the necessary right of way, the front yard to less than 12 feet making the existing building non-conforming as related to the required 20 foot front yard setback.

Board of Adjustment Guidance

G. Variances. The board shall have the power to authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship and so that the spirit of this ordinance shall be observed and substantial justice done, including the following:

1. Permit a variance in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of the provisions due to an irregular shape of the lot or topographical or other conditions, provided such variance will not seriously affect any adjoining property or the general welfare.

2. Authorize, upon appeal, whenever a property owner can show that a strict application of the terms of this ordinance relating to the construction or alteration of buildings or structures will impose upon him unusual and practical difficulties or particular hardship, such variances from the strict application of the terms of this ordinance as are in harmony with its own general purpose and intent, but only when the board is satisfied that granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variance from the comprehensive plan as established by this ordinance and at the same time, the surrounding property will be properly protected.

3. The board shall have the power to hear and decide appeals where it is alleged there is error of law in any order, requirements, decision or determination made by the mayor or his/her designee in the enforcement of this ordinance. Except as otherwise provided herein, the board shall have, in addition, the following specific powers:

(a) To permit the erection and use of a building or the use of premises for railroads if such uses are in general conformance with the master plan and present no conflict or nuisance to adjacent properties.

(b) To permit a public utility or public service or structure in any district, or a public utility or public service building of a ground area and of a height at variance with those provided for in the district in which such public utility or public service building is permitted to be located, when found reasonably necessary for the public health, convenience, safety, or general welfare.

(c) To grant a permit for the extension of a use, height or area regulation into an adjoining district, where the boundary line of the district divides a lot in a single ownership on the effective date of this ordinance.

(d) To permit the reconstruction of a non-conforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent of more than 50 percent of its fair market value, where the board finds some compelling necessity requiring a continuance of the nonconforming use.

(e) To waive or reduce the parking and loading requirements in any of the districts, when (i) the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities; or (ii) when such regulations would impose an unreasonable hardship upon the use of the lot. The board shall not waive or reduce such requirements merely for the purpose of granting an advantage or a convenience.

(f) A written application for variance shall be submitted together with the required fee, accompanied by an accurate legal description, maps, site plans, drawings and any necessary data, demonstrating:

(g) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district;

(h) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;

(i) That the special conditions and circumstances do not result from the actions of the applicant;

(j) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings in the same district; and

(k) No non-conforming use of neighboring lands, structures, or buildings in the same district and no permitted use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.