

**CITY OF AUSTIN
Board of Adjustment
Decision Sheet**

DATE: Monday, May 8, 2017

CASE NUMBER: C15-2017-0008

____ Brooke Bailey
____ William Burkhardt
____ Eric Goff
____ Melissa Hawthorne
____ Bryan King
____ Don Leighton-Burwell
____ Rahm McDaniel
____ Veronica Rivera
____ James Valadez
____ Michael Von Ohlen
____ Kelly Blume (Alternate)
____ Martha Gonzalez (Alternate)
____ Pim Mayo (Alternate)

OWNER/APPLICANT: Patricia and William Schaub

ADDRESS: 804 WINFLO DR

VARIANCE REQUESTED: The applicant has requested variance(s) to Section 25-2-492 (D) (*Site Development Regulations*) to decrease the minimum lot size for a multi-family residential use from 8,000 square feet (required) to 7,353.87 square feet (requested, existing in order to erect 3 residential units in one structure in a "MF-3-NP", Multifamily Residence Medium Density zoning district. (Old West Austin)

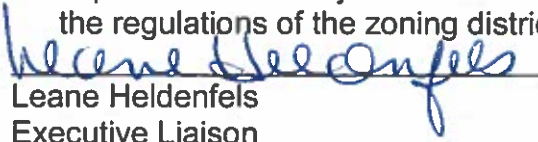
Note: Section 25-2-943 of the Land Development Code permits Substandard Lots for single family use if configured prior to March 14, 1946. The subject lot was configured in 1948 and proposes a multifamily use, therefore the substandard lot section of the Code does not apply. Further, the Old West Austin Neighborhood Plan only provides small lot amnesty for single family use.

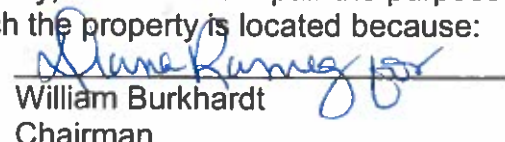
BOARD'S DECISION: The public hearing was closed on Board Member Michael Von Ohlen motion to Postpone to May 8, 2017, Board Member Melissa Hawthorne second on a 11-0 vote; POSTPONED TO MAY 8, 2017. May 8, 2017 POSTPONED TO JUNE 12, 2017 BY APPLICANT

FINDING:

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:
(b) The hardship is not general to the area in which the property is located because:

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


Leane Heldenfels
Executive Liaison


William Burkhardt
Chairman



CITY OF AUSTIN

Development Services Department

One Texas Center | Phone: 512.978.4000

505 Barton Springs Road, Austin, Texas 78704

Board of Adjustment General/Parking Variance Application

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

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

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

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

For Office Use Only

Case # _____ ROW # _____ Tax # _____

Section 1: Applicant Statement

Street Address: _____

Subdivision Legal Description:

Lot(s): _____ Block(s): _____

Outlot: _____ Division: _____

Zoning District: _____

I/We _____ on behalf of myself/ourselves as
authorized agent for _____ affirm that on
Month _____, Day _____, Year _____, hereby apply for a hearing before the
Board of Adjustment for consideration to (select appropriate option below):

☐ Erect ☐ Attach ☐ Complete ☐ Remodel ☐ Maintain ☐ Other: _____

Type of Structure: _____

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

Section 2: Variance Findings

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

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

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

Reasonable Use

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

Hardship

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

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

Area Character

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

Parking (additional criteria for parking variances only)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed in the City of Austin Land Development Code Chapter 25-6, Appendix A with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

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

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

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

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

Section 3: Applicant Certificate

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

Applicant Signature: _____ Date: _____

Applicant Name (typed or printed): _____

Applicant Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone (will be public information): _____

Email (optional – will be public information): _____

Section 4: Owner Certificate

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

Owner Signature: _____ Date: _____

Owner Name (typed or printed): _____

Owner Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone (will be public information): _____

Email (optional – will be public information): _____

Section 5: Agent Information

Agent Name: _____

Agent Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone (will be public information): _____

Email (optional – will be public information): _____

Section 6: Additional Space (if applicable)

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

Mike McHone
Real Estate

Board of Adjustments
City of Austin
C/O Leane Heldenfels
505 Barton Springs Rd.
Austin, TX 78704

May 30, 2017
Re: 804 Winflo; C15-2017-0008

Dear Members of the BOA;

I have updated the hardships as requested. I have also attempted to give you all the important support information for this case.

As you recall this case was initiated after the owner and his design team had met with DAC and received the ok to proceed with the design. They submitted plans for site plan review. Only after the second round of comments did staff raise the issue of the lot being too small for a triplex. The triplex was by this point fully designed as it was in a NP and needed to comply with compatibility, drainage, and onsite parking.

Given this situation the owner who is also a neighbor met with his immediate neighbors and the NA explaining his unique situation and that COA staff was requiring him to go to the BOA for a lot size variance of 646 sq ft. Several of his neighbors signed a petition in support. The NA at their meetings voted to oppose the BOA Variance Request.

I have attached a photograph showing the curve and topography of Winflo Street and of the lot. Included are a zoning map and a survey showing the zoning and lot shape and how a slight adjustment in the north lot line would have created an 8000 sq ft lot (806 Winflo has 8876 sq/ft).

I have also included the various zoning regulations that have affected 804:

Originally: Chapter 45-zoned B-2nd H&A required 7000 sq ft for a triplex

Chapter 13-2A changed to MF section 5800 & 5830 allowed for flexibility and redevelopment of legally platted lots and any "residential use"

Chapter 25 until 2003; 25-2-943 (A) & (B); substandard as to size can be used for any "residential use" if allowed in the zoning district.

1904 Guadalupe "On the Drag" • ph: 512-481-9111 • fax: 512-481-1002 •
mchone1234@sbcglobal.net
mailing address: P.O. Box 8142, Austin, TX, 78713

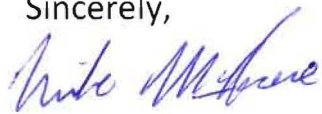
Chapter 25 2013 version; 25-2-942; inserted “single family” before “residential use” they by creating the existing situation.

The Board asked if this Variance would violate the NA FLUM. I have attached the printout index of all the NPs and their FLUM. You will see that Old West Austin NP is the only one without a FLUM.

Our research shows several properties that have been developed as multifamily that are less than the current minimum requirement.

I hope this is helpful and I look forward to presenting this case to you in June.

Sincerely,



Mike McHone

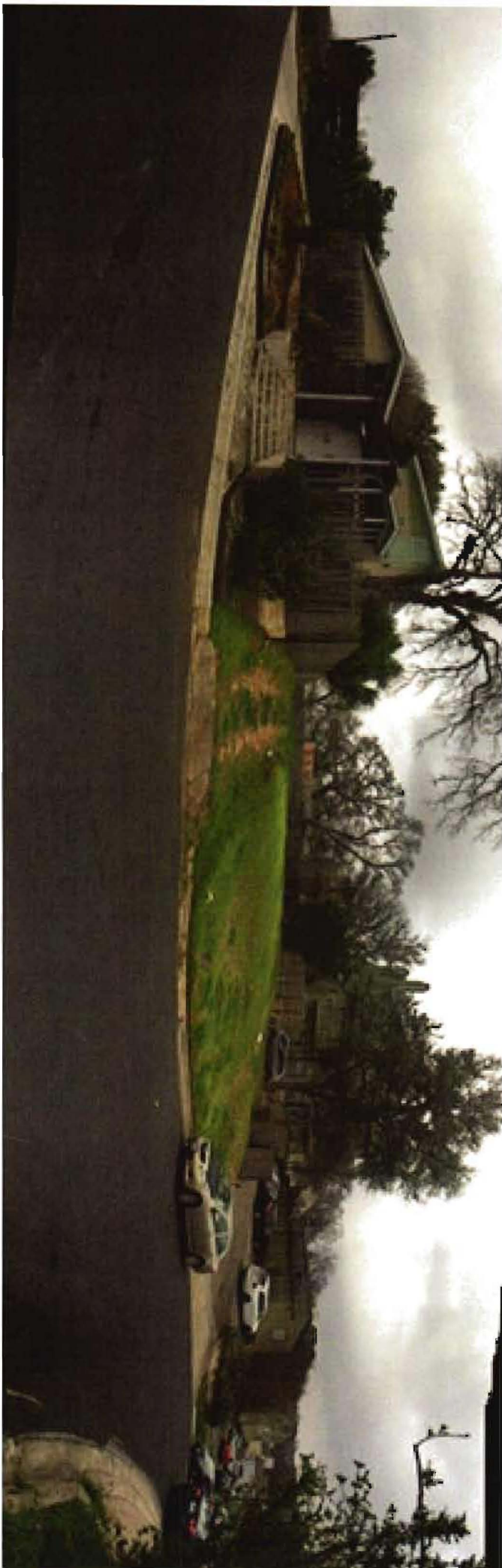
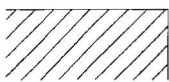
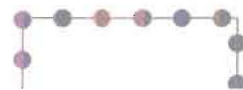


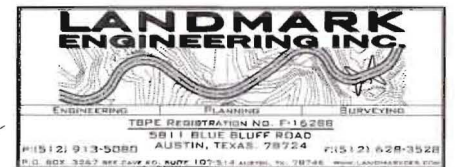
Exhibit 6



Overlay Districts



Pending Zoning Cases



MIKE McHONE

L01/12

EXHIBIT 3
PAGE 1 OF 4

ZONING ORDINANCE

CHAPTER 45

AUSTIN CITY CODE



NOVEMBER 1972

§ 45-34

AUSTIN CITY CODE

§ 45-34

	Area Per Unit	Minimum Lot Area
One-family detached unit	5,750	5,750
One-family attached unit in "A" Residence (Townhouse)*	3,500	3,500
One-family attached unit in "BB" or less restricted Use District (Townhouse)*	2,500	2,500
Two-family unit	3,500	7,000
Three-family unit	2,667	8,000

<u>Apartment House or Apartment Hotel</u>					
Use	1	Each Additional	Hotel or Motel Unit	Dormitory	
District Efficiency Bedroom		Bedroom			(per person)
BB	1,600	1,800	200	1,600*	200*
B, O, LR & GR	800	950	150	800	150
C, C-2, DL*, D & E	650	700	100	650	150

* See provisions concerning use in appropriate use district regulations. The minimum lot area requirements for apartment, apartment hotels, hotels, or motels and dormitories shall be:

BB	8,000
B or less restricted	6,000

(6-20-68.)

(c) Business and industrial buildings:

(1) YARDS:

A. Front and side streets. All buildings shall be set back from the front street at least twenty-five feet for the building line, and shall be set back from the side street at least ten feet for the building line, and the requirements of subsection (k) of section 45-33 shall also apply for buildings constructed on any property in an "O" office district or less restricted district when immediately adjoining property in a "B" residence district or more restricted district.

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ZONING

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b. Side yard and rear yard. No side yard shall be required, but if a side yard be provided it shall have a minimum width of three feet. The minimum depth of rear yards shall be five feet.

c. Coverage. The combined area of the side yards and the rear yard shall be not less than forty-five percent of the total area of the lot behind and to the rear of the front setback lines.

d. Accessory buildings. An accessory building shall observe the same regulations as prescribed for the principal building.

(2) LOT AREA. All lots for business and industrial buildings shall conform to the requirements of chapter 41. (7-17-41; Ord. No. 680620-I, pts. 3, 4,; Ord. No. 681121-B, pts. 8, 9.)

Sec. 45-35. SAME--SECOND HEIGHT AND AREA DISTRICT.

In the second height and area district, for buildings erected or structurally altered, the height of buildings, the minimum dimensions of yards and courts and the minimum lot and lot area per family shall be as follows:

(a) General provisions:

(1) HEIGHT. No building shall exceed sixty feet in height.

(2) COURTS. The least dimension of an inner court shall be not less than six feet, nor less than two and one-half inches for each foot of height of such court, nor shall its area be less than twice the square of its required least dimension.

(3) OFF-STREET PARKING. Space for off-street parking shall be provided as described in section 45-30.

(4) USES SUBJECT TO CONDITIONS. Where uses enumerated in any use district are conditioned upon special height, yard, open space or coverage requirements, and are to be constructed in a second height and area district, the special requirements shall apply unless the requirements of this district are more restrictive.

(b) Residential buildings:

(1) YARDS:

a. Front and side streets. Except as provided in subsection (d) of this section, all buildings shall set back from the front street twenty-five feet for the building line, and the front line of any porch shall set back from the front street fifteen feet; buildings shall set back from the side street ten feet for the building line, and porches shall set back from the side street four feet.

b. Side yard and rear yard. There shall be a rear yard, and a side yard on each side of the building. A rear

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yard shall be not less than five feet in depth, and the total width of side yards shall be not less than thirty percent of the total width of the lot; except that the total width of side yards shall not be required to be more than fifteen feet, and that the least side yard shall be not less than five feet wide; provided, however, that in "A" and less restricted use districts where a lot is sixty feet or less in width at the building line thereof, the total width of side yards shall be not less than ten feet and each side yard shall be not less than five feet in width. (Ord. No. 700402-E.)

c. Coverage. The combined area of the rear yard and the side yards shall be not less than forty-five percent of the total area of the lot behind and to the rear of the front setback lines.

d. Accessory buildings. A private garage, private stable, poultry shed, storage room or other accessory buildings, where the principal use is a dwelling, shall be so located and placed on a lot that no part thereof shall be a lesser distance from the front property line than seventy-five percent of the mean depth of the lot measured from the front property line to the rear property line; provided, that in no case shall the distance from the front property line be required to be greater than ninety feet, and a setback line for any such accessory building of not less than twenty feet from any side street line, and twenty-five feet from any rear street line on through lots; that on both sides of and parallel to any side street, the setback distance from the side street for any such accessory building shall be not less than ten feet; and that in no case shall the building be less than five feet from any property line.

(2) Area per unit and minimum lot area. In the second height and area district, the area per dwelling unit, hotel or motel unit and person per dormitory unit, and the minimum lot area, in square feet, shall be in conformity with the minimum requirements as specified in the following schedule and provisions:

	Area Per Unit	Minimum Lot Area
One-family detached unit	5,750	5,750
One-family attached unit in "A" residence (Town house)*	3,500	3,500
One-family attached unit in "BB" or less restricted use district (Town house)*	2,500	2,500
Two-family unit	3,000	6,000
Three-family unit	2,334	7,000

5800 NONCONFORMING DEVELOPMENT

5805 TITLE AND PURPOSE

Sections 5800 through 5899 shall be known as the Nonconforming Development Provisions. The purposes of these provisions are:

- a. To assure reasonable opportunity for use of legally created lots which do not meet current minimum requirements for the district in which they are located.
- b. To assure reasonable opportunity for use, maintenance, and improvement of legally constructed buildings, structures, and site development features which do not comply with current minimum requirements for the district in which they are located.
- c. To assure reasonable opportunity for continuation of legally established uses which do not conform to current use regulations for the district in which they are located.
- d. To limit continuation and expansion and encourage eventual replacement of nonconforming uses having potentially undesirable impacts on surrounding conforming uses.

5815 RESTRICTIONS ADDITIVE

Regulations applicable to a nonconforming use are in addition to regulations applicable to a noncomplying structure, and in event of any conflict the most restrictive provision shall apply.

5820 DETERMINATION OF VALUE

The value of structures for purposes of these Nonconforming Development Provisions shall be determined by the Building Official in accordance with the valuations established by the Central Appraisal District for property tax purposes.

5830 SUBSTANDARD LOT: RESIDENTIAL USE

A substandard lot meeting the following requirements may be used for any residential use allowed by these Zoning Regulations within the district in which the substandard lot is located.

- a. A substandard lot of record on March 14, 1946, shall have a minimum site area of 4,000 square feet, and shall meet one of the following requirements for access:
 1. Such lot shall have a minimum width of 33 feet at the street or at the building line, or

AUSTIN, TEXAS
CODE OF ORDINANCES
VOLUME II

Through September 30, 2003

AMERICAN LEGAL PUBLISHING CORPORATION

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*in open more than 100 feet
will give that is*

- (F) Unless further limited by the requirements of this division, a temporary use may continue for not more than one year. An applicant must file a new application to continue a temporary use beyond that period.

Source: Sections 13-2-324 and 13-2-325.

§ 25-2-923 DETERMINATIONS.

The building official may permit a temporary use after determining that the temporary use:

- (1) will not impair the normal, safe, and effective operation of a permanent use on the same site;
- (2) will be compatible with nearby uses;
- (3) will not adversely affect public health, safety, or convenience;
- (4) will not create a traffic hazard or congestion; and
- (5) will not interrupt or interfere with the normal conduct of uses and activities in the vicinity.

Source: Section 13-2-323.

§ 25-2-924 CONDITIONS OF APPROVAL.

The building official may condition the approval of a temporary use on compliance with additional requirements that the building official determines are necessary to ensure land use compatibility and minimize adverse effects on nearby uses, including requirements for hours of operation, frequency of use, parking, traffic circulation, screening, enclosure, site restoration, and cleanup.

Source: Section 13-2-322(b).

§ 25-2-925 SITE RESTORATION.

On termination of a temporary use, the person engaging in the temporary use shall remove all

debris, litter, and other evidence of the use from the site.

Source: Section 13-2-322(a).

ARTICLE 7: NONCONFORMING USES

§ 25-2-941 NONCONFORMING USE DEFINED.

NONCONFORMING USE means a land use that does not conform to current use regulations, but did conform to the use regulations in effect at the time the use was established.

Source: Section 13-2-331.

§ 25-2-942 USES CONFORMING ON MARCH 1, 1984.

The use of a building, structure, or property that conformed with the zoning regulations in effect on March 1, 1984 is a conforming use notwithstanding the requirements of this chapter.

Source: Section 13-2-340.

§ 25-2-943 SUBSTANDARD LOT.

(A) A substandard lot may be used for a nonresidential use that is permitted in the zoning district in which the lot is located if, except for minimum lot area, the use and development complies with the requirements of this title.

(B) A substandard lot may be used for a residential use that is permitted in the zoning district in which the lot is located if the lot complies with the requirements of this subsection.

- (1) A substandard lot recorded in the county real property records before March 15, 1946 must:

- (a) have an area of not less than 4,000 square feet; and

THE CODE OF THE CITY OF AUSTIN, TEXAS

VOLUME III

Through May 2013

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- (3) will not adversely affect public health, safety, or convenience;
- (4) will not create a traffic hazard or congestion; and
- (5) will not interrupt or interfere with the normal conduct of uses and activities in the vicinity.

Source: Section 13-2-323; Ord. 990225-70; Ord. 031211-11.

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The building official may condition the approval of a temporary use on compliance with additional requirements that the building official determines are necessary to ensure land use compatibility and minimize adverse effects on nearby uses, including requirements for hours of operation, frequency of use, parking, traffic circulation, screening, enclosure, site restoration, and cleanup.

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On termination of a temporary use, the person engaging in the temporary use shall remove all debris, litter, and other evidence of the use from the site.

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NONCONFORMING USE means a land use that does not conform to current use regulations, but did conform to the use regulations in effect at the time the use was established.

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Source: Section 13-2-340; Ord. 990225-70; Ord. 031211-11.

§ 25-2-943 SUBSTANDARD LOT.

(A) A substandard lot may be used for a nonresidential use that is permitted in the zoning district in which the lot is located if, except for minimum lot area, the use and development complies with the requirements of this title.

(B) A substandard lot may be used for a single-family residential use if the use is permitted in the zoning district in which the lot is located and the lot complies with the requirements of this subsection.

(1) A substandard lot recorded in the county real property records before March 15, 1946 must:

- (a) have an area of not less than 4,000 square feet; and
- (b) be not less than 33 feet wide at the street or at the building line, or

Mike L1

L01/21

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Department » Planning And Zoning » Plans » Adopted Neighborhood Planning Areas



ADOPTED NEIGHBORHOOD PLANNING AREAS

Click on the [Official Map of Neighborhood Planning Areas](#) or the [ArcGIS Map](#) to see adopted neighborhood planning areas.

Neighborhood Planning provides an opportunity for citizens to take a proactive role in the planning process and decide how their neighborhoods will move into the future.

The chart below contains links to all City of Austin Neighborhood Plans, Future Land Use Maps (FLUMS)*, related plan amendments (ordinance numbers), Contact Team information, and Implementation Plans.* [What is a FLUM?](#)

Each year, one third of neighborhood plan areas are asked to prioritize their top neighborhood plan recommendations. For the 2013 prioritization process, maps of neighborhood plan recommendations eligible to be funded through the Capital Improvement Program (CIP) were created for participating areas. Maps are located under the Implementation Charts and are labeled as **CIP Recommendation Map**. Maps for all neighborhood plan areas will be coming soon.

The [Infill Options Map](#) for Neighborhood Planning Areas shows which infill options are available in adopted neighborhood planning areas on a (planning) area-wide, subdistrict, or parcel basis. Download the [Design Tools Map](#) to see the Impervious Cover/Parking Placement, Garage Placement, and Front Porch design tools that are available subdistrict or area-wide. The [Infill Options & Design Tools booklet](#) contains summary charts of infill options/design tools for adopted neighborhood plans and explanation of each infill option and design tool.

For information about Mobile Food Establishments, click this [link](#).

Neighborhood Plan	Future Land Use Map	Plan Adoption and Amendments	Contact Team Bylaws (PDF format)	Contact Team	Neighborhood Plan Recommendations
Bouldin Creek	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
Brentwood/Highland Combined	FLUM	Cases	Brentwood Bylaws Highland Bylaws	Brentwood Contact Team Highland Contact Team	Implementation Chart
Central Austin Combined (Hancock, North University, West University)	FLUM UNO Overlay Information	Cases	Bylaws	(CANPAC) Contact Team	Implementation Chart
Central East Austin (OCEAN)	FLUM	Cases	Bylaws		Implementation Chart

				(OCEAN) Contact Team	
Central West Austin Combined (West Austin Neighborhood Group (WANG), Windsor Road)	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
Chestnut	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
Crestview/Wooten Combined	FLUM	Cases	Crestview Bylaws Wooten Bylaws	Crestview Contact Team Wooten Contact Team	Implementation Chart
Dawson	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
East Cesar Chavez	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
East MLK Combined (MLK, MLK-183, Pecan Springs/Springdale)	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
East Riverside/Oltorf Combined (Parker Lane, Pleasant Valley, Riverside) (EROCC)	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
Govalle/Johnston Terrace	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
Greater South River City (South River City, St. Edwards)	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
Heritage Hills/Windsor Hills	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
Holly	FLUM	Cases			Implementation Chart
Hyde Park		Cases	Bylaws	Contact Team	Implementation Chart
Montopolis	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
North Austin Civic Association (NACA)	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
North Burnet/Gateway (Master Plan)	FLUM	Cases	North Burnet/Gateway Regulating Plan		
North Lamar Combined (Georgian Acres, North Lamar)	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
North Loop	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
Oak Hill Combined (East Oak Hill, West Oak Hill)	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
Old West Austin	N/A	Cases	Bylaws	Contact Team	Implementation Chart

Rosewood	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
South Austin Combined (Westgate, South Manchaca, Garrison Park)	FLUM	Cases	South Manchaca Bylaws	South Manchaca Contact Team	Implementation Chart
South Congress Combined (East Congress, Sweetbriar, West Congress)	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
St. John/Coronado Hills Combined	FLUM	Cases	St. John Bylaws Coronado Hills Bylaws	St. John Contact Team Coronado Hills Contact Team	Implementation Chart
Southeast Combined (Franklin Park, McKinney, Southeast)	FLUM	Cases	Bylaws	Contact Team	Implementation Chart
University Hills/Windsor Park	FLUM	Cases	University Hills Bylaws Windsor Park Bylaws	University Hills Contact Team Windsor Park Contact Team	Implementation Chart
Upper Boggy Creek Future Neighborhood Plans	FLUM	Cases	Bylaws	Contact Team	Implementation Chart

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