

SUBJECT TRACT

PENDING CASE

ZONING BOUNDARY

## NOTIFICATIONS

CASE#: C15-2020-0020

LOCATION: 1401 E 3RD STREET

1" = 333'

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

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







## CITY OF AUSTIN

### Development Services Department

One Texas Center | Phone: 512.978.4000

505 Barton Springs Road, Austin, Texas 78704

G-1/76

## 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: 1401 E 3 ST, AUSTIN TEXAS 78702

Subdivision Legal Description:

W 35.6FT OF N138FT OF W193.4 OLT 20 DIVISION O

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

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

Zoning District: SF3

I/We JENNIFER HANLEN on behalf of myself/ourselves as  
authorized agent for OWNER - DURHAM TRADING PARTNERS XII LLC affirm that on  
Month March, Day 10, Year 2020, hereby apply for a hearing before the  
Board of Adjustment for consideration to (select appropriate option below):

☐ Erect ☐ Attach ☐ Complete ☐ Remodel ☒ Maintain ☐ Other: See Page 5

Type of Structure: SF RESIDENTIAL HOUSE ENCROACHING IN 2.77 FEET OF 5 FT SIDE SET

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

VARIANCE FROM 25-2-492 TO ALLOW A 2.77 ENCROACHMENT INTO THE REQUIRED 5' SIDE SETBACK FOR EXISTING SINGLE FAMILY RESIDENCE

## 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:

SF-3 ZONING PROMOTES SINGLE FAMILY USES. THIS LOT IS 4852 SF AND LOCATED AT THE SW CORNER OF NAVASOTA ST. AND EAST 3RD. THE STREET SIDE SETBACK ALONG NAVASOTA IS 15FT. THE CURRENT HOUSE IS PUSHED BETWEEN THE STREET SIDE SETBACK AND INTERIOR 5' SETBACK. A 1,985 SF HOUSE WAS PERMITTED BY COA. CONSTRUCTION OF THE HOUSE RESULTED IN A 2.77 FOOT SETBACK. THE HOUSE CAN NOT EXIST AS PERMITTED WITHOUT A VARIANCE.

### Hardship

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

THE 4,852 SF LOT IS A CORNER LOT. THE 15' STREET SIDE SETBACK REQUIRES 2,000 OF THE 4,852 SF LOT, ROUGHLY 40% OF THE LOT. THE REMAINING PORTION OF THE LOT HAS AN EXISTING SF RESIDENCE PERMITTED IN 2017. THE OWNER IS SEEKING A VARIANCE TO ALLOW THE 2.77 SETBACK ALONG THE 5' SIDE SETBACK.

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

THERE ARE NO KNOWN SITES WITH THIS ISSUE IN THE AREA.



## 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:

ALLOWING THE SF RESIDENCE TO REMAIN AS PERMITTED WILL NOT ALTER THE CHARACTER OF THE AREA, WILL NOT IMPAIR USE OF THE ADJACENT PROPERTY, NOR IMPAIR PURPOSE OF THE REGULATIONS. THERE ARE A VARIETY OF ZONING ISSUES FOUND THROUGHOUT EAST AUSTIN.

## 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:

N/A

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:

N/A

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

N/A

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

N/A



**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: [Signature] Date: 3/12/2020

Applicant Name (typed or printed): JENNIFER HANLEN

Applicant Mailing Address: 105 W RIVERSIDE, SUITE 225

City: AUSTIN State: TX Zip: 78704

Phone (will be public information): 512 212 7632

Email (optional – will be public information): [Redacted]

**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: [Signature] Date: 3/10/20

Owner Name (typed or printed): DURHAM TRADING PARTNERS XII, LLC

Owner Mailing Address: 920 E. DEAN KEETON ST

City: AUSTIN State: TX Zip: 78705

Phone (will be public information): 512 554 3647

Email (optional – will be public information): [Redacted]

**Section 5: Agent Information**

Agent Name: JENNIFER HANLEN

Agent Mailing Address: 105 W RIVERSIDE

City: AUSTIN State: TX Zip: 78704

Phone (will be public information): 512 212 7632

Email (optional – will be public information): [Redacted]

**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).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

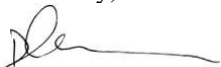
March 19, 2020

City of Austin c/o Elaine Ramirez  
City of Austin Board of Adjustments  
One Texas Center  
505 Barton Springs  
Austin, Texas 78704

**BOA request for 1401 E 3rd St. to allow a 2.77' setback in the required 5' side setback**

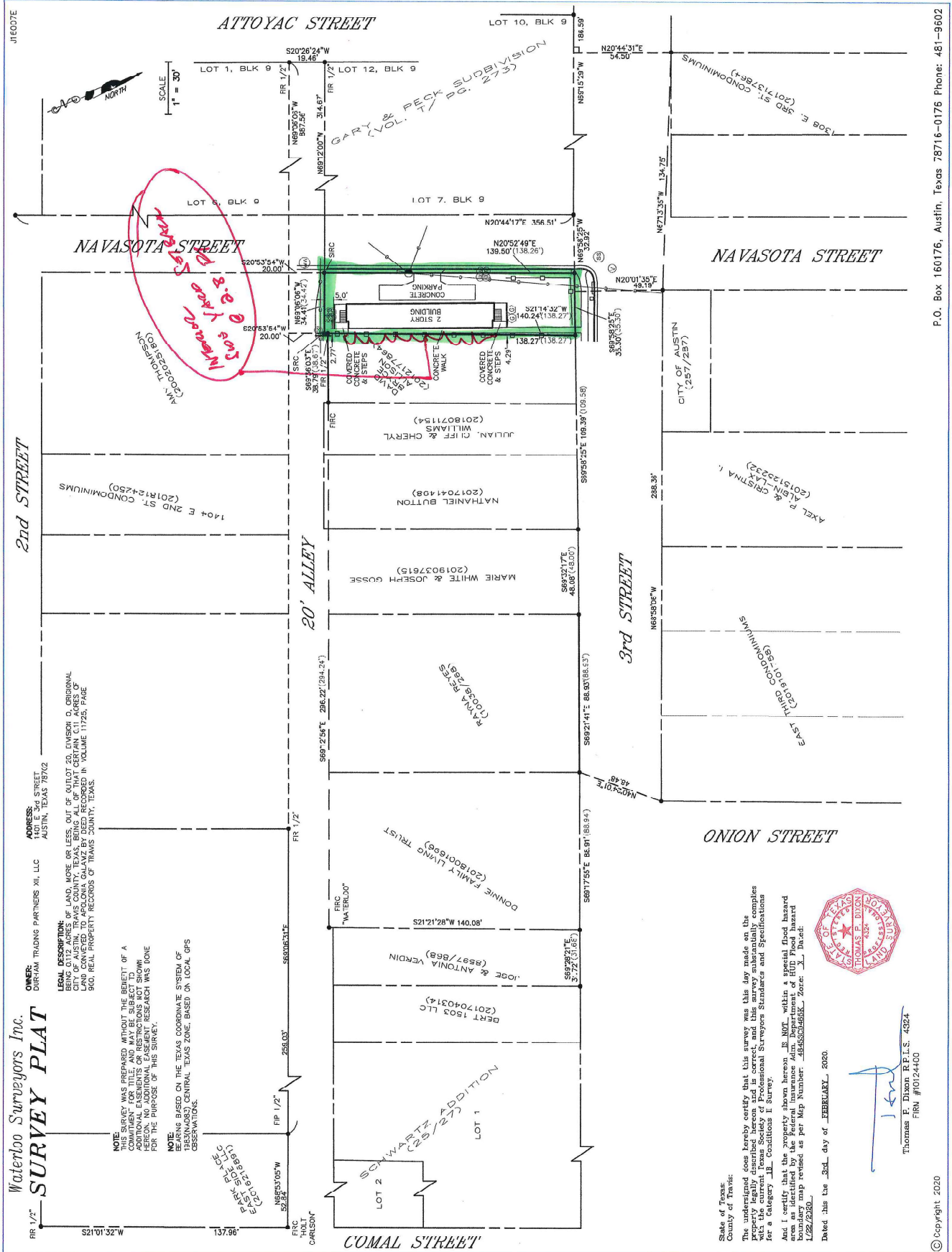
- Legal tract located at 1401 E. 3rd St. is 4,852 SF; has had on-site utility service since 1926.
- Original residence was demolished in 2017 and a new residential permit application was submitted to city of Austin.
- Application was approved by city of Austin; new single-family residence constructed in accordance with plans.
- The plot plan was accurate and was based on the accurate survey; however, an incorrect version of the survey was used to set the construction forms.
- A survey error based on confusing ROW widths in the adjacent alley created a 2.7' side yard setback during construction of the SFR & accessory apartment.
- This was not known until contractor called for final inspection and certificate of occupancy and preparation of the owner occupying the residence.
- Surveyor then surveyed entire block alley in order to understand where error was created.
- The intersection of the rear public alley and intersecting Navasota Street have varying widths. These intersecting ROWs allowed multiple opportunities for error.
- The new single-family residence has a varying encroachment into the 5' side yard setback, creating a side yard setback ranging from 2.77' to 4.0'.
- There are no known examples like this in the immediate area, but is probable in the larger east Austin geography.
- This small setback encroachment does not impair the intent of the zoning regulations, nor does it have any adverse impact on adjacent or surrounding properties.
- All inspections have passed except the building permit's final inspection. The Certificate of Occupancy can be granted if the variance is approved.

Sincerely,



David C. Cancialosi, Agent for Owner









## PUBLIC HEARING INFORMATION

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

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

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

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

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

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

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

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

**Case Number: C15-2020-0020**

**Contact: Elaine Ramirez, 512-974-2202**

**Public Hearing: Board of Adjustment, May 11<sup>th</sup>, 2020**

Susan Benz, Treasurer

*Your Name (please print)*

101 E 61st

*Your address(es) affected by this application*

Susan Benz

*Signature*

5/8/2020

*Date*

*Daytime Telephone: 512 220 9542*

*Comments: We are NOT in favor of granting this variance.*

*thank you.*

*This notice arrived less than a week prior to the BoA meeting. That is not enough time for Neighborhood Contact Teams to respond. The Applicant should come to our meetings to ask for support well in advance of going to the BoA.*

**If you use this form to comment, it must currently be returned via e-mail (as we do not have access to our mail due to social distancing):**

Elaine Ramirez

Scan & Email to: [elaine.ramirez@austintexas.gov](mailto:elaine.ramirez@austintexas.gov)

G-1/83



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

**Case Number: C15-2020-0020**

**Contact: Elaine Ramirez, 512-974-2202**

**Public Hearing: Board of Adjustment, May 11<sup>th</sup>, 2020**

DAVID BREARLEY  
Your Name (please print)

☐ I am in favor  
☒ I object

1308 E 2<sup>nd</sup> St. 78702  
Your address(es) affected by this application

[Signature]  
Signature

May 9, 2020  
Date

Daytime Telephone: 541-261-6545

Comments:

~~see details on subsequent pages~~  
see details on subsequent pages

**If you use this form to comment, it must currently be returned via e-mail (as we do not have access to our mail due to social distancing):**

Elaine Ramirez

Scan & Email to: [elaine.ramirez@austintexas.gov](mailto:elaine.ramirez@austintexas.gov)



RE: 1401 E 3<sup>rd</sup> Street Setback Variance Request  
CASE # C15-2020-0020

Board of Adjustment,

As a neighbor, I received notification regarding the side-setback variance request for 1401 E 3<sup>rd</sup> Street. I am writing to respectfully request that the board of adjustment **deny this request on a life safety basis.**

As sited, the building presents a hazard to persons and property. In addition to increasing the opportunity for fire propagation between structures, the limited side lot setback:

- Does not meet the accessibility and visitability requirements defined in section R320.7;
- Fails to ensure emergency fire egress via the two “accessible” ground-floor exits;
- Restricts first responder’s ability to engage a structure-involved fire at 1401 or 1403 E 2<sup>nd</sup> Street.

As you consider this variance request, please keep these measurements in mind:

- **82 inches.** At the northeast corner of the structure, the as-built clearance between 1401 E 3<sup>rd</sup> Street and the abutting historic structure at 1403 E 3<sup>rd</sup> Street is 82” (6’-10”). The City’s official side-lot setbacks call for 10’ of clearance; the as-built clearance is 68% of what is required.
- **43 inches.** As currently built, the width of the first-floor entrance sidewalk is 43”. Since the fence between properties is not on the lot line, this clearance is not guaranteed going forward.
- **18 inches.** The approximate distance that the existing fence built by Durham Trading Partners encroaches on the abutting property at 1403 E 3<sup>rd</sup> Street is 18”. Note that the existing sidewalk straddles over the lot line by approximately 10”.
- **33 inches.** If the abutting property owner ever moves the fence to the lot line, the width of the first-floor entrance sidewalk will be reduced to a non-ADA-compliant width of 33”.

Consider also the explanation in Permit Partner’s March 19<sup>th</sup> letter:

**“[Durham Partners used] an incorrect version of the survey...to set the construction forms.”**

The City’s development guidelines do not allow for this type of error. **Per the City’s published Residential Inspections flowchart, all pre-foundation development activities are predicated upon the completion a third-party form survey.** As a homeowner, I was able to negotiate City’s residential development process successfully. It is more than reasonable to expect a professional developer to do so.

While I am sympathetic to the fact that Durham Trading Partners has invested a lot of time and money in this project, one company’s financial concerns cannot take precedence over public safety. Approving this variance request retroactively will effectively permit an **inexcusable life safety hazard** to persist for decades. This not only sets a poor precedent but also exposes the City to increased risk and liability.

Sincerely,  
David Brearley

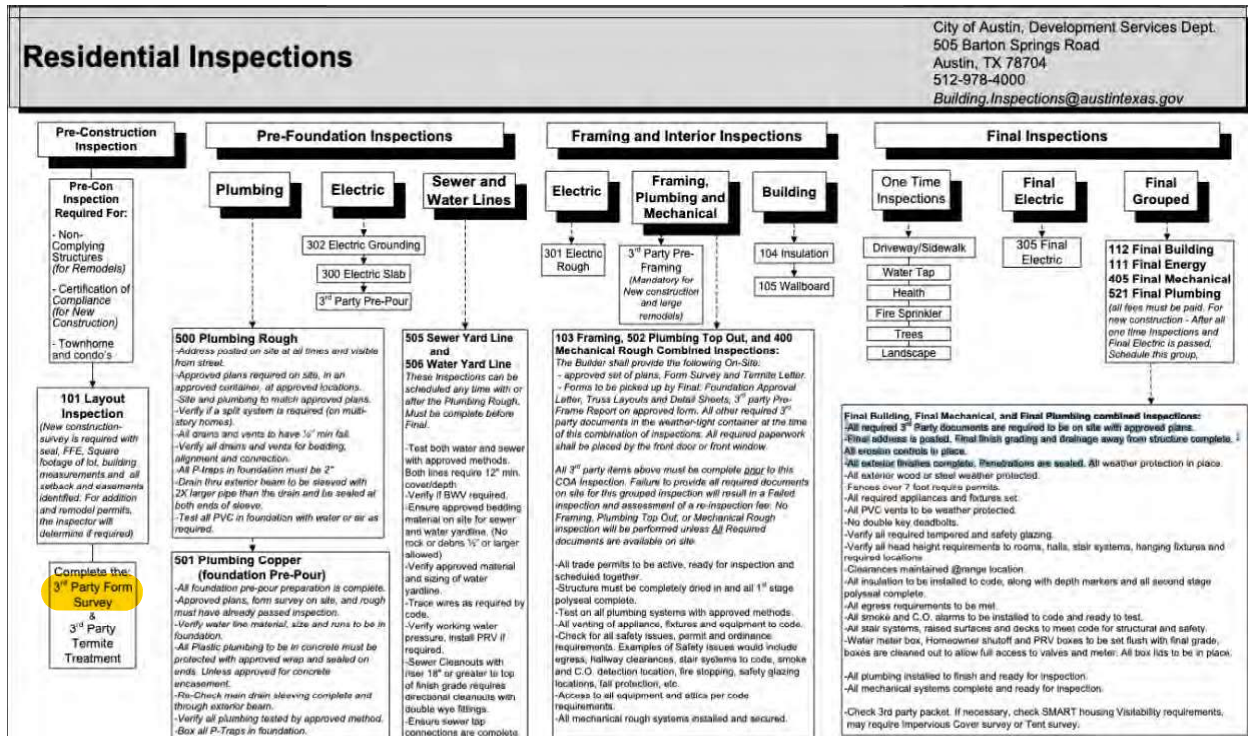
EXHIBITS

In practice, the as-built clearance is already quite tight and restricted. **If the abutting property owner ever moves the fence to the property line—as is common during redevelopment activities—the sidewalk clearance will decrease from the existing 43" to a non-ADA-compliant width of 33" (2.78 feet).**





## EXHIBITS



The City of Austin's published Residential Inspection flowchart clearly indicates that a 3<sup>rd</sup> Party Form Survey is a prerequisite to any pre-foundation construction activities. This process ensures that a licensed surveyor has confirmed and verified the foundation form locations *before* the developer sets anything is set in stone.

Permit Partner's March 19<sup>th</sup> statement indicates that:

"the plot plan was accurate and was based on an accurate survey"

If so, the only explanation for a side lot setback error is that Durham Trading Partners failed to retain its 3<sup>rd</sup> party professional, Waterloo Surveyors, to visit the site to conduct a form survey. While that oversight is unfortunate, it does not merit a variance. The BOA should not reward bad actors.

## EXHIBITS

A member of the East Cesar Chavez Planning Team brought the questionable side-lot setback at 1401 E 3<sup>rd</sup> Street to Durham Trading Partner's attention as early as Q1 2018. City staff were also informed, per this email record:

**From:** Thompson, Jeffrey - BC

**Sent:** Friday, March 02, 2018 9:59 AM

**To:** Johns, Renee <[Renee.Johns@austintexas.gov](mailto:Renee.Johns@austintexas.gov)>; Olsen, Dillon <[Dillon.Olsen@austintexas.gov](mailto:Dillon.Olsen@austintexas.gov)>

**Subject:** Re: [1401 E 3rd Street](#)

But the foundation is easily less than 5 ft from the property line. Here is a picture of the actual building.

Jeff Thompson  
District 3  
Planning Commissioner

Office: [512-314-1830](tel:512-314-1830)





**From:** Johns, Renee  
**Sent:** Thursday, March 1, 2018 3:41:33 PM  
**To:** Thompson, Jeffrey - BC; Olsen, Dillon  
**Subject:** RE: [1401 E 3rd Street](#)

Jeffrey,

This is an approved plan and there is a projection into the 5 foot setback. This is a common concern, but the code does allow for eaves and other incidentals to project 2 ft. into any setback, LDC 25-2-513 B. If you look at sheet A201, you can see the elevation view of the proposed residence. On this elevation, you can see the footprint of the building stops at the 5 ft. setback and the eaves project into the setback. Again this is an allowed and common design.

I hope this answers your question.

**Renee Johns**

*Planner Senior – Expedited Review*

City of Austin Development Services Department

One Texas Center, 505 Barton Springs Road, [7th Floor](#)

[Office: 512.974.2260](#)

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**From:** Thompson, Jeffrey - BC  
**Sent:** Thursday, March 01, 2018 3:08 PM  
**To:** Johns, Renee <[Renee.Johns@austintexas.gov](mailto:Renee.Johns@austintexas.gov)>; Olsen, Dillon <[Dillon.Olsen@austintexas.gov](mailto:Dillon.Olsen@austintexas.gov)>  
**Subject:** 1401 E 3rd Street

Hi Dillon,

I'm looking into a case on behalf of a district 3 constituent. She is concerned that the house being built at 1401 E 3rd does not have a 5 foot side setback.

Looking at the plan (2017-043148 PR), it clearly shows that the house encroaches on the 5 foot set back line. Can you tell me if this is in fact an approved plan and if so can you please explain why?

Thank you so much for your time.

Jeff Thompson  
District 3  
Planning Commissioner

Office: [512-314-1830](#)

**From:** Bryce Allison  
**To:** [Ramirez, Elaine](#)  
**Subject:** C15-2020-0020  
**Date:** Friday, May 08, 2020 6:32:26 PM

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\*\*\* External Email - Exercise Caution \*\*\*

Dear Elaine,

I just received notice in the mail about case C15-2020-0020.

1401 E 3rd St is requesting a variance on the interior setback from 5 to 2.77 feet. I own the property adjacent at 1403 E 3rd St.

I am **against** granting this variance. I have been extremely concerned about this as it puts the neighboring property way too close to my own and will devalue my property and privacy.

I am also concerned that the property appears to be a multi-tenant property when it is described and zoned as a single family residence. Can you shed any light on this?

I would like to have the opportunity to speak at the meeting on May 11.

Thank you,  
Bryce Allison  
512-522-2792

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**From:** Amy Thompson  
**To:** [Ramirez, Elaine](#)  
**Cc:** [REDACTED]  
**Subject:** BOA Case # C15-2020-0020 \_ Resident Objection  
**Date:** Monday, May 11, 2020 12:20:13 AM  
**Attachments:** [Case Number C15-2020-0020 Public Comment Objection Thompson.pdf](#)  
[1401 E 3RD ST Site Plan.pdf](#)

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\*\*\* External Email - Exercise Caution \*\*\*

Dear Ms. Ramirez,

Attached please find my public comments and related documentation to support my STRONG OBJECTION to the request for set back incursion in BOA Case # C15-2020-0020 .

This case raises public safety as well as social equity concerns. As such, I appreciate the board's attention to neighbor input.

Should you have any questions or concerns, please do not hesitate to contact me.

Thank you,  
Amy Thompson  
512-659-7666  
1402 E. 2nd St.  
Austin, Texas 78702

**CAUTION:** This email was received at the City of Austin, from an EXTERNAL source. Please use caution when clicking links or opening attachments. If you believe this to be a malicious and/or phishing email, please forward this email to [CSIRT@austintexas.gov](mailto:CSIRT@austintexas.gov).

Public Comment Re: Case Number C15-2020-0020 (1401 East 3<sup>rd</sup> St.)

Submitted by: Amy Thompson, Adjacent Property owner at 1402 East 2<sup>nd</sup> St.; tel: 512-659-7666

Position: I **STRONGLY OBJECT** to the proposed variance (see comments below)

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As an adjacent neighbor to this property I am opposed to the requested variance for set back requirements at this property for the following reasons:

- 1) **Health and Safety Concerns**
- 2) **Social Equity Concerns**

As the homeowner immediately to the south of this property, I have an immediate interest in **the Health and Safety Concerns** associated with new structure that is being built in violation of City codes designed to prevent the spread of house fires. As a resident, I first alerted the City to my concerns about this set back violation on January 20<sup>th</sup>, 2018, in a letter to my planning commission district representative, Jeff Thompson. At that point the foundation for the property had been staked out, but not poured. I sent Jeff a pictured of the clear violation of the minimum 5 foot setback and he in turn pulled the site plan and contacted City staff.



The site plan (attached) confirmed that the plan was approved in violation of the code, but no immediate justification was apparent. Once the foundation was poured in violation of the code, I sent another inquiry. The response by City staff to this inquiry was dismissive, despite the clear violation and



threat to the health and safety of adjacent property owners. I understand Commission Thompson pursued the inquiry further, but I was never informed of the results, and have been frustrated and concerned by the situation ever since.

In 2017, an historic structure stood at this property. The property had been recommended for preservation by the City's survey of Historic East Austin and the neighborhood strongly supported its preservation. The developers seeking its demolition argued repeatedly that the building had to be demolished for health and safety reasons, based primarily on its grandfathered location within the 5' side setback. The developers argued strongly, and apparently convincingly, before the City Planning Commission that the health and safety of the neighboring properties was of greater community importance than the structure's value as a contributing structure to the disappearing history of East Austin's minority/ working class communities. For the planning department to turn a blind eye to the set-back violation included in the new site plans within months of the much loved historic structure's destruction, was a slap in the face to neighboring property owners and the community as a whole. It reflects a callous preference for the promotion of development and support of commercial developers in East Austin neighborhoods regardless of the impact on residential property owner's needs and shared community values. Supporting developer's profit margins simply can not be valued above the health and safety of residents, let alone the preservation of communal goods. City staff's support of this set-back violation raises **Social Equity Issues**, and should not be allowed to continue.

Any financial impact that this will have on the property's current owner, however regrettable, cannot take precedence over public safety. Moreover, it cannot be prioritized without calling attention to the historic inequities in the application of City's planning code.

It is unlikely that the current developers acquired this property without understanding the setback violation in place and its potential financial impact to completing construction on the site. However, even if that is the case, and that it is somehow staff's fault that the site plan erroneously approved the site plan violation – that is no reason to allow an exception. The City planning department often changes its interpretation and support of site plans during the construction process and very often resulting in significant expense to residential property owners. I have personally suffered a significant comparably financial hardship and know of other residents in the neighborhood who have as well. Yet, while I know of no case in which financial hardship was successfully argued to facilitate approval of a requested variance for a residential property in our neighborhood – I can site several incidents in which financial hardship was explicitly discussed and considered in the weighing of the impact of a request made by developers. This bias in the application of city code is an equality issue. The physical safety and financial security of individuals and families should not be weighed less than the profit margin of commercial investors.

Please feel free to contact me for further information or documentation if needed.

Thank you for your attention to this case.

Amy Thompson