

# BOA GENERAL REVIEW COVERSHEET

**CASE:** C15-2022-0071

**BOA DATE:** October 10<sup>th</sup>, 2022

**ADDRESS:** 2311 Lafayette Ave

**COUNCIL DISTRICT:** 9

**OWNER:** Daniel Mitchell

**AGENT:** Micah King (Husch Blackwell LLP)

**ZONING:** SF-3-NP (Upper Boggy Creek)

**LEGAL DESCRIPTION:** LOT 8 BLK 1 OLT 27-28&31 DIV C NOWLIN HEIGHTS

**VARIANCE REQUEST:** a) increase the total square footage of a Secondary Dwelling unit from the lesser of 1,100 sq. ft. or 0.15 FAR to 1,452 sq. ft. **and** b) increase the second floor square footage from 550 sq. ft. to 756 sq. ft.

**SUMMARY:** erect Secondary Dwelling Unit

**ISSUES:** narrow width of lot, 24 inch Heritage tree and critical root zones

	ZONING	LAND USES
<i>Site</i>	SF-3-NP	Single-Family
<i>North</i>	SF-3-NP	Single-Family
<i>South</i>	SF-3-NP	Single-Family
<i>East</i>	SF-3-NP	Single-Family
<i>West</i>	SF-3-NP	Single-Family

## **NEIGHBORHOOD ORGANIZATIONS:**

Austin Independent School District  
 Austin Lost and Found Pets  
 Austin Neighborhoods Council  
 Cherrywood Neighborhood Assn.  
 Concordia Neighborhood Association  
 Del Valle Community Coalition  
 Friends of Austin Neighborhoods  
 Homeless Neighborhood Association  
 Neighborhood Empowerment Foundation  
 Neighbors United for Progress  
 Preservation Austin  
 SELTexas  
 Sierra Club, Austin Regional Group  
 Upper Boggy Creek Neighborhood Planning Team



September 28, 2022

Micah King  
111 Congress Ave, Ste. 1400  
Austin, TX 78701

Property Description: LOT 8 BLK 1 OLT 27-28&31 DIV C NOWLIN HEIGHTS

**Re: C15-2022-0071**

Dear Micah,

Austin Energy (AE) has reviewed your application for the above referenced property, requesting that the Board of Adjustment consider variance requests from LDC Sections 25-2-774(C)(5)(a) and 25-2-774(C)(5)(b) at 2311 Lafayette Ave.

**Austin Energy does not oppose the request**, provided that any proposed or existing improvements follow Austin Energy's Clearance & Safety Criteria, the National Electric Safety Code, and OSHA requirements. Any removal or relocation of existing facilities will be at the owner's/applicant's expense.

Please use this link to be advised of our clearance and safety requirements which are additional conditions of the above review action:

[https://library.municode.com/tx/austin/codes/utilities\\_criteria\\_manual?nodeId=S1AUENDECR\\_1.10.0CLSARE](https://library.municode.com/tx/austin/codes/utilities_criteria_manual?nodeId=S1AUENDECR_1.10.0CLSARE)

If you require further information or have any questions regarding the above comments, please contact our office. Thank you for contacting Austin Energy.

**Cody Shook, Planner II**

Austin Energy  
Public Involvement | Real Estate Services  
2500 Montopolis Drive  
Austin, TX 78741  
(512) 322-6881  
[Cody.Shook@austinenergy.com](mailto:Cody.Shook@austinenergy.com)

**Micah J. King**

111 Congress Avenue, Suite 1400  
Austin, Texas 78701  
Direct: 512.370.3468

August 31, 2022

The Board of Adjustment  
c/o Elaine Ramirez  
Planner Senior and Board of Adjustment Liaison  
City of Austin Development Services Department  
6310 Wilhelmina Delco Drive  
Austin, Texas 78752

RE: Variance Request for Property Located at 2311 Lafayette Avenue (the “Property”)

Dear Elaine:

Please accept the attached variance request, whose approval would (i) facilitate the replacement of an existing, non-complying secondary unit with safe new housing, (ii) eliminate the existing rear unit’s setback encroachments, and (iii) facilitate the preservation of the front house, which was constructed in 1948 and which contributes to the neighborhood’s unique character. The proposed replacement unit would comply with all setback and cover limits and we are only requesting variances from:

§ 25-2-774(C)(5)(a), to increase the maximum size of the secondary unit from the lesser of 1,100 sq. ft. or 0.15 FAR (required) to 1,452 sq. ft. (requested); and

§ 25-2-774(C)(5)(b), to increase the maximum size on the second story of the secondary unit from 550 sq. ft. (required) to 756 sq. ft. (requested).

The variance is needed because the existing units are insufficient to meet the needs for safe, sound, and adequate living and home office space as the rear unit is a non-complying structure and has long been beyond what makes sense to repair, and the front house (which has only 948 sq. ft. of conditioned space) should be maintained to help preserve the area’s character (which is an area in which the original homes are being replaced with large, out-of-character homes) and the front house cannot be simply expanded in a meaningful way (i) to the front due to the front setback requirement, (ii) to the rear due to a Heritage Tree, ¼ and ½ Critical Root Zones (“CRZs”), and 10' separation requirements, or (iii) to the side due to the driveway, which provides the only possible accessible route to the rear unit.

The existing rear unit is a noncomplying structure because it is 1,168 sq. ft., and so there is decades-long, on-site precedent for a larger ADU than is allowed under current Code. The proposed replacement structure would be 1,452 sq. ft., and so approval would result in an ADU that is only 284 sq. ft. larger than the existing rear unit. A benefit of approval is that it would result in the the

Elaine Ramirez  
August 31, 2022  
Page 2

replacement of the rear unit with a structure that is compliant with the minimum side and rear setback requirements, which the existing rear unit currently violates.

Approval would also be consistent with City Council policy objectives. For example, in Resolution No. 20211209-064, Council resolved to initiate a Code amendment to permit ADUs on property zoned SF-1 and SF-2 with the substantial preservation of an existing single-family dwelling. While the subject Property is zoned SF-3, the resolution demonstrates Council's desire to incentivize the preservation of existing single-family dwellings, as we are proposing.

Approval would also be consistent with Resolution No. 20220609-062, in which Council resolved to initiate a Code amendment to regulate ADUs as an accessory use to a primary residential use (if such a Code amendment were ever approved without added restrictions, then under § 25-2-892 (which provides that, "The regulations applicable to a principal use apply to an accessory use"), then the requested variances would not even be necessary; alas, as history has shown, we cannot just wait on potential future code amendments, the ultimate contours of which are unknown, and so we respectfully request the Board's support to achieve the following benefits that Council sought to achieve in the above-referenced resolution:

*"ADUs provide housing units compatible with existing neighborhoods and add affordable housing options in neighborhoods throughout the City."*

*"ADUs can be used as a tool to support homeowners as they age in place and provides options to help homeowners afford their existing homes."*

Sincerely,



Micah King

Exhibits:

- A. Variance Application
- B. Property Location Map
- C. Survey
- D. Architectural Plans
- E. Site Calculations
- F. Site Photos
- G. Aerial View of Adjacent Lots



**Exhibit A:**

**Variance Application**



## 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 # **C15-2022-0071** ROW # **13012898** Tax # **0213100205**

### Section 1: Applicant Statement

Street Address: 2311 Lafayette Avenue, Austin, TX 78722

Subdivision Legal Description:

Nowlin Heights, Lot 8, Block 1

Lot(s): 8 Block(s): 1

Outlot: 27, 28, and 31 Division: C

Zoning District: SF-3-NP (**Upper Boggy Creek**) Council District: **9**

I/We Micah King (Husch Blackwell LLP) on behalf of myself/ourselves as  
authorized agent for Daniel Mitchell affirm that on  
Month August, Day 31, Year 2022, 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: Replacement of non-complying secondary residential structure.

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

- (A) LDC § 25-2-774(C)(5)(a), to increase the maximum size of a secondary unit from the lesser of 1,100 sq. ft. or 0.15 FAR (required) to 1,452 sq. ft. (requested); and
- (B) LDC § 25-2-774(C)(5)(b), to increase the maximum size on the second story of a secondary unit from 550 sq. ft. (required) to 756 sq. ft. (requested).

## 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:

The regulations unreasonably constrain the ability of the owner to have adequate, safe housing to meet their needs without demolishing and replacing the existing front house, which was constructed in 1948. Both existing houses are small and in a declining state, the rear unit has long been in such a poor state that rehabilitation makes no sense, and there is no way to have an updated house with adequate space for the owner and a home office without demolishing the front house, which would be contrary to the City Council's policy objective of leveraging ADU regulations to incentivize the preservation of primary single-family dwellings.

### Hardship

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

The hardship is unique to the property because it has two very old structures that are both legally noncomplying, a 3-story multifamily building is immediately to the rear of the property, and options for where to provide safe, adequate, new housing that will help the owner remain in place are constrained by the narrow width of the lot combined with the locations of the houses in relation to the required setbacks, driveway, 24" Heritage Tree, and Critical Root Zones.

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

The hardship is not general to the area because many nearby front houses have expanded in size or have room to expand without the buildable space being squeezed between a 25' front setback and a 24" Heritage Tree, or the original houses have been demolished. As such, for many nearby properties, there is no hardship or, if there was a hardship, it is no longer general to the area because the owner scraped the lot and built a new house larger than is requested.

**Area Character**

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

The variance will not alter the area's character as the rear unit is already non-complying due to its size and the property backs up to a 3-story apartment building, which looms over the unit. Approval would only enhance character by helping meet housing needs while helping to preserve the front house, which is a prime example of original architecture in the neighborhood, and will result in a new rear unit that advances the purpose of the zoning regulations by eliminating encroachments and benefiting adjacent neighbors with new open space.

**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: Micah King Date: 08/31/2022

Applicant Name (typed or printed): Micah King (Husch Blackwell LLP)

Applicant Mailing Address: 111 Congress Ave., Ste. 1400

City: Austin State: TX Zip: 78701

Phone (will be public information): (512) 370-3468

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: Daniel Mitchell Date: 9/6/2022

Owner Name (typed or printed): Daniel Mitchell

Owner Mailing Address: 2311 Lafayette Avenue

City: Austin State: TX Zip: 78722

Phone (will be public information): (512) 779-5225

Email (optional – will be public information):

**Section 5: Agent Information**

Agent Name: Micah King (Husch Blackwell LLP)

Agent Mailing Address: 111 Congress Ave., Ste. 1400

City: Austin State: TX Zip: 78701

Phone (will be public information): (512) 370-3468

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).

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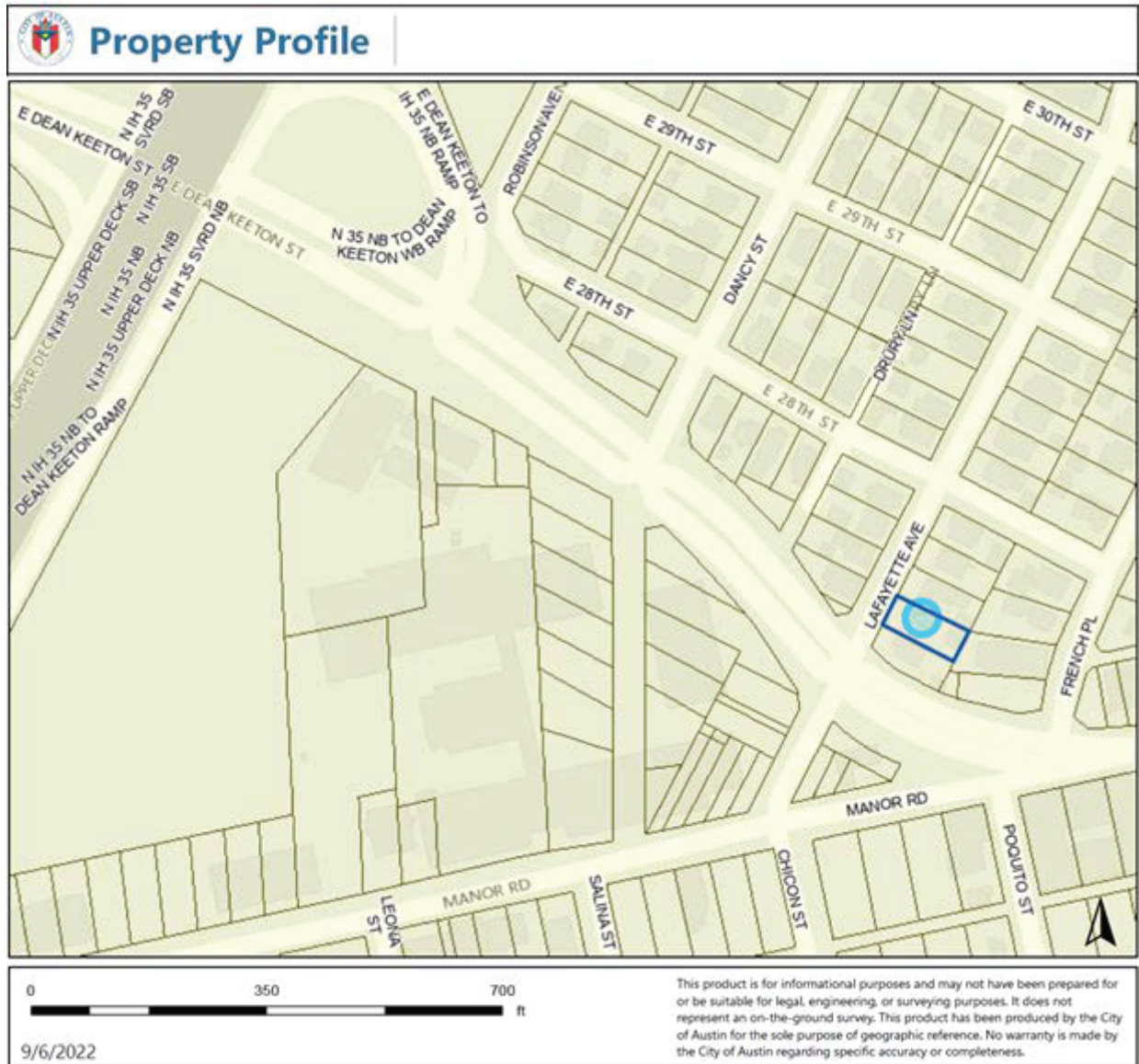


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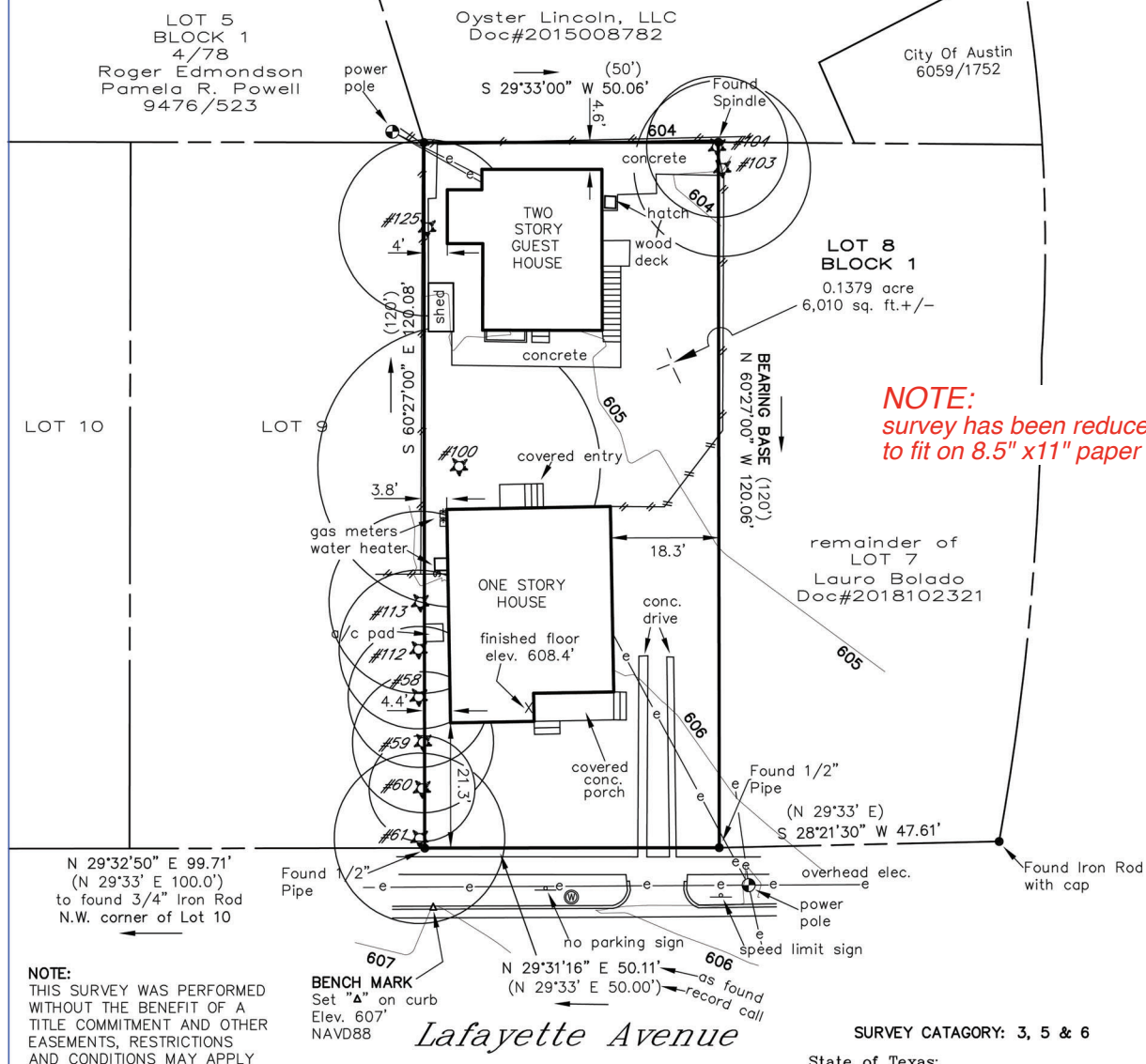
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**Exhibit B:****Property Location Map**

**Exhibit C:**

**Survey**

Waterloo Surveyors  
SURVEY PLAT

**NOTE:**  
THIS SURVEY WAS PERFORMED  
WITHOUT THE BENEFIT OF A  
TITLE COMMITMENT AND OTHER  
EASEMENTS, RESTRICTIONS  
AND CONDITIONS MAY APPLY

**NOTE:**  
THE ELEVATIONS SHOWN HEREON ARE  
NAVD88, BASED ON LOCAL NETWORK  
GPS OBSERVATION.

**NOTE:**  
THE TREE CIRCLES SHOWN HEREON HAVE  
ONE (1) FOOT RADIUS DRAWN FOR EVERY  
ONE (1) INCH OF MEASURED TRUNK DIAMETER  
AS MEASURED 4.5' FROM GROUND UP. MULTI-  
TRUNK TREES ARE DISPLAYED USING THE  
FOLLOWING FORMULA:  
SUM OF THE LARGEST TRUNK + 1/2 OF THE  
SUM OF SMALLER TRUNKS.

**ADDRESS:**  
2311 LAFAYETTE AVENUE, 78722

**LEGAL DESCRIPTION:**  
LOT EIGHT (8), BLOCK ONE (1), NOWLIN HEIGHTS,  
A SUBDIVISION IN TRAVIS COUNTY, TEXAS,  
ACCORDING TO THE MAP OR PLAT THEREOF  
RECORDED IN VOLUME 2, PAGE 237, PLAT  
RECORDS OF TRAVIS COUNTY, TEXAS.

**NOTE:**  
LOT 8 IS SUBJECT TO:  
RESTRICTIONS AND EASEMENT RIGHTS OF RECORD.

**TREE LIST**  
NO# SIZE TYPE

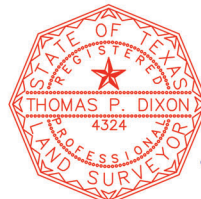
- #58, 5x5x5x4 Grape Myrtle
- #59, 5x5x5x4 Grape Myrtle
- #60, 4x4x4x2 Grape Myrtle
- #61, 5x5x4x4x2x2x2 Grape Myrtle
- #100, 24 Pecan
- #103, 15 Hackberry
- #104, 12 Pecan
- #112, 6x6x5x4 Grape Myrtle
- #113, 6x6x5x4x4 Grape Myrtle
- #125, 15 Hackberry

**NOTE**  
numbers are in inches

**LEGEND**

- WOOD FENCE
- OVERHEAD ELEC.
- POWER POLE
- WATER METER
- GAS METER

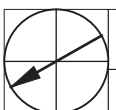
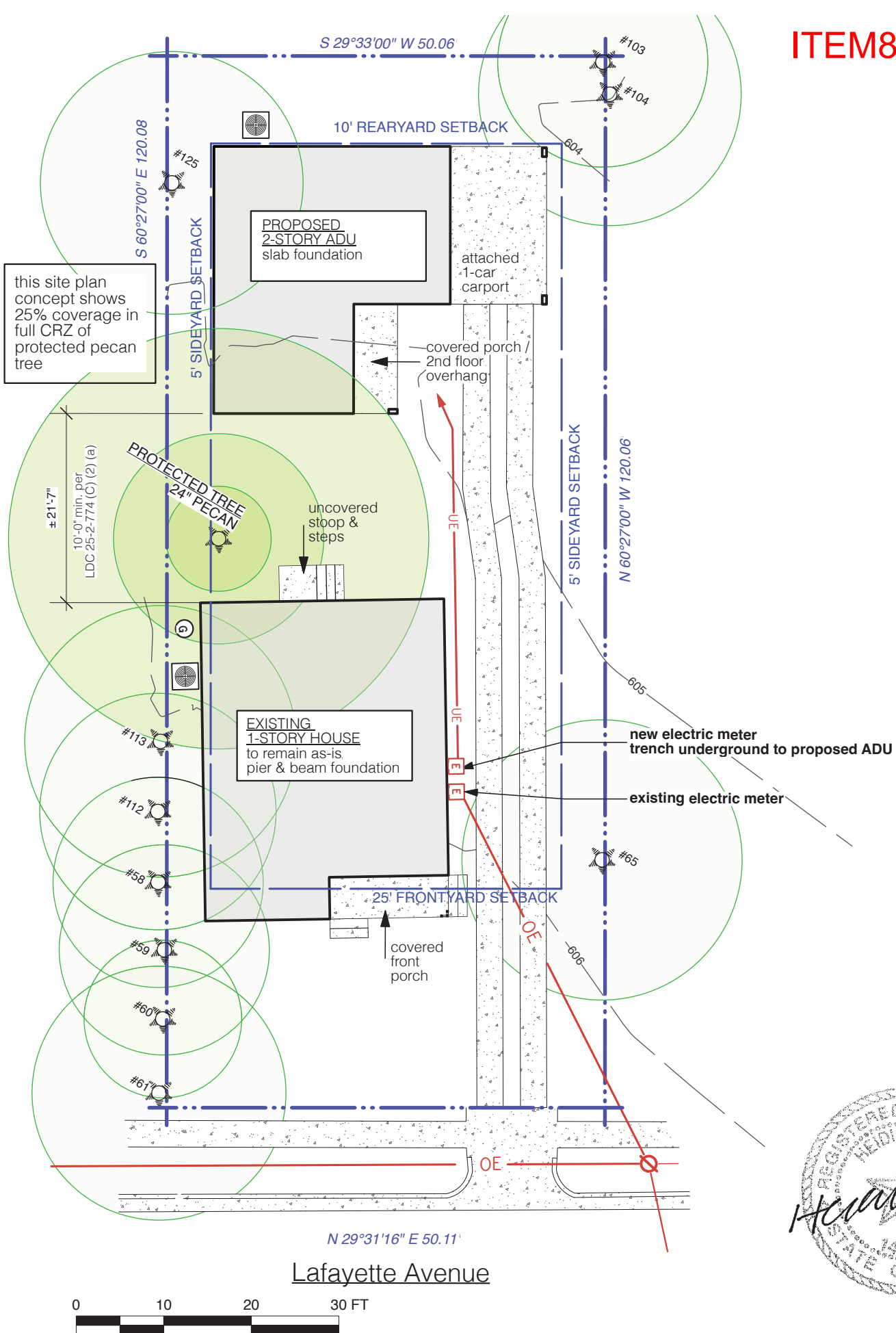
0 20 40  
SCALE 1"=20'





**Exhibit D:**

**Architectural Plans**



**2311 Lafayette Avenue SITE PLAN CONCEPT**  
FOR BOARD OF ADJUSTMENT REVIEW ONLY

HEIDI GOEBEL ARCHITECT  
ph. 512.454.9884  
heidigoebel@sbcglobal.net

**Exhibit E:**

**Site Calculations**

## 2311 Lafayette Avenue

zoning: SF-3 - NP [Cherrywood]  
 legal description: Lot 8, Block 1, Outlot 27 - 28 & 31, Division C, Nowlin Heights [vol. 32, page 237]  
 tax ID: 205223  
 geographic ID: 0213100205  
 lot size: 6,010  
 parking requirement: 2 spaces [site is in area of reduced parking]

## site calculations

	existing	to be removed	proposed	
<i>EXISTING HOUSE</i>				
1-story house:	948		948	[counted toward FAR calculation]
covered front porch:	64		64	[exempted from FAR calculation]
front porch steps:	20		20	
uncovered rear stoop & steps:	30		30	
AC pad:	9		9	
driveway strips:	100	(100)		
<i>EXISTING ADU</i>				
ground floor:	612	(612)		
2nd floor:	556	(556)		
uncovered wood stair:	60	(60)		
uncovered concrete:	640	(640)		
<i>PROPOSED ADU</i>				
ground floor:			696	[counted toward FAR calculation]
covered porch / second floor overhang:			60	[exempted from FAR calculation]
2nd floor:			756	[counted toward FAR calculation]
attached 1-car carport:			200	[exempted from FAR calculation]
AC pad:			9	
driveway strips:			552	
<b>building coverage</b>	<b>1624</b> (27.02%)		<b>1968</b> (32.75%)	
<i>allowable building coverage: 2,404 sf</i>				
<b>impervious coverage</b>	<b>2483</b> (41.31%)		<b>2588</b> (43.06%)	
<i>allowable impervious cover: 2,704 sf</i>				
<b>gross floor area</b>	<b>2116</b> (35.21%)		<b>2400</b> (39.93%)	
<i>allowable gross floor area: 2,404sf</i>				



08.02.2022

**Exhibit F:**

**Site Photos**

Photo of the Front House  
(To Be Preserved)

ITEM8/18





Photo of the Front House and Driveway  
(Which Provides Access to the Rear Unit)

ITEM8/19





Photo of the Rear Unit to Be Replaced  
(Which Currently Violates the Side and Rear Setbacks)

ITEM8/20





Photo of the Rear Unit  
With the 3-Story Apartment Building Immediately to the Rear

ITEM8/21





Photo of the Rear Unit  
With the 3-Story Apartment Building Immediately to the Rear

ITEM8/22





Photo of the Rear Unit  
With the 3-Story Apartment Building Immediately to the Rear

ITEM8/23





Photo of the Front House to the Left  
And the Rear Unit to the Right

ITEM8/24

Showing the Limited Space for Horizontal Expansion Due to the Heritage  
Tree, Critical Root Zone, Separation Requirements, and Lot Width



**Exhibit G:****Aerial View of Adjacent Lots**