



June 12, 2020

Board Members,

Let me start by saying thank you for volunteering your time to the Zoning Board of Adjustment. Working through this pandemic has been an adjustment for everyone, but your continued dedication to the community is appreciated, and we thank you for your patience as we adjust to having a virtual public meeting.

We will continue to send printed packets in the mail as well as via e-mail. Our goal is to get the information to you a week in advance of the meeting, so if you have questions on any of the agenda items we can address those ahead of time. We ask that you send any questions on agenda items to [planninginfo@sanmarcostx.gov](mailto:planninginfo@sanmarcostx.gov), no later than 8 a.m. on Wednesday, June 17, 2020, and staff will provide a response to those questions during their presentation.

We realize a virtual meeting on Zoom comes with its challenges. Remember we are streamed live, so here's a few tips to keep in mind:

- Find a space that is quiet, and that has good lighting
- Do a test meeting with family or friends to see if you like your set-up, and test your technology

Unfortunately, we will not be able to troubleshoot any technical difficulties during the meeting. If you have any questions or concerns, please don't hesitate to reach out to staff before the meeting.

Sincerely,

Shavon Caldwell  
City of San Marcos



## REGULAR MEETING OF THE SAN MARCOS ZONING BOARD OF ADJUSTMENTS

Thursday, June 18, 2020 5:45 P.M.

Due to COVID-19, this will be a virtual meeting. For more information on how to observe the virtual meeting, please visit: <http://sanmarcostx.gov/1119/Zoning-Board-of-Adjustments>.

**Michael Nolen, Chair**  
**Wayman Jones, Member**  
**Tom Rowe, Member**  
**Floyd Akers, Alternate**

**Gloria Fortin, Vice Chair**  
**Gary Pack, Member**  
**Nicholas Costilla, Member**  
**Chana Temple, Alternate**

### AGENDA

1. Call to order.
2. Roll call.
3. Chairperson's Opening Remarks.
4. **Citizen Comment Period.** *Persons wishing to comment during the citizen comment period must submit their written comments to [planninginfo@sanmarcos.gov](mailto:planninginfo@sanmarcos.gov) no later than 1:00 pm on the day of the meeting. Timely submitted comments will be read aloud during the citizen comment portion of the meeting. Comments shall have a time limit of three minutes each. Any threatening, defamatory, or other similar comments prohibited by Chapter 2 of the San Marcos City Code will not be read.*
5. Consider approval of the minutes of the **ZBOA Regular Meeting of May 21, 2020.**
6. **VR-20-04** *Hold a public hearing and consider a request by Case Whitson, on behalf of Aqua 16 Apartments for a variance to Section 7.2.6.2(G) regarding fence height; a variance to Section 9.4.3.3(H)(3) regarding Multifamily fence articulation; and a variance to Section 7.2.6.2(B) regarding vehicle access gate setbacks, located at 1640 Aquarena Springs Drive (M. Johnson).*
7. **Question and Answer Session with Press and Public.** *This is an opportunity for the Press and Public to ask questions related to items on this agenda.*
8. **Adjourn.**

**NOTE:** *The Zoning Board of Adjustments may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Zoning Board of Adjustments may also publicly discuss an item listed on the agenda for Executive Session.*

*The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA*

*Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 512-393-8074 or sent by e-mail to [ADArequest@sanmarcostx.gov](mailto:ADArequest@sanmarcostx.gov)*



**ZONING BOARD OF ADJUSTMENTS  
REGULAR MEETING MINUTES  
THURSDAY, May 21, 2020**

**Due to COVID-19 the Zoning Board of Adjustments convened via a virtual meeting. To view the meeting please go to <https://www.sanmarcostx.gov/3121/Zoning-Board-of-Adjustments-ZBOA-VideosA>**

**Chair Nolen called the Board Meeting to order at 5:56 p.m.**

Board Members in Attendance:  
Michael Nolen, Chair  
Gloria Fortin, Vice Chair  
Gary Pack, Member  
Nicholas Costilla, Member  
Chana Temple, Alternate

Board Members Absent:  
Wayman Jones, Member  
Floyd Akers, Alternate

Staff in Attendance:  
Sam Aguirre, Assistant City Attorney  
Amanda Hernandez, Development Services Manager  
Shavon Caldwell, Planner  
Will Parrish, Planner

**1. Call to order**

With a quorum present, the Regular Meeting of the San Marcos Zoning Board of Adjustments was called to order by Chair Nolen at 5:56 p.m.

**2. Roll Call**

**3. Chairperson's Opening Remarks**

Chair Nolen welcomed the audience.

**4. Citizen Comment Period**

Chair Nolen opened the citizen comment period. No one spoke.

**5. Consider approval of the minutes of the ZBOA Regular Meeting of September 19, 2019**

**MOTION:** Member Gary Pack made a motion to **approve** the minutes. The motion was seconded by Member Nicholas Costilla. Following a voice vote, the motion **passed 5-0**.

6. **Consider approval of the minutes of the ZBOA Regular Meeting of January 16, 2020**

**MOTION:** Member Gary Pack made a motion to **approve** the minutes. The motion was seconded by Chair Michael Nolen. Following a voice vote, the motion **passed 5-0**.

7. **VR-20-02 Hold a public hearing and consider a request by Steven Dworkin, on behalf of the San Marcos Premium Outlets L.P., for a variance to Section 7.3.3.2.4.a.1 of the San Marcos Development Code requiring a maximum sign height of 42'6", and a variance to Section 7.3.3.2.5.a.1 of the San Marcos Development Code requiring a maximum sign area of 260 square feet, in order to permit an on-premises freestanding sign with a height of 66'6" and a total area of 500 square feet, located at 3939 South Interstate Highway 35.**

Chair Nolen opened the public hearing.

Shavon Caldwell, Planner, presented the staff report.

John P. Dionis, Applicant, presented the request.

**MAIN MOTION:** Chair Michael Nolen made a motion to **approve** the request. The motion was seconded by Member Gary Pack. Following a roll call vote, the motion **failed** 3-2.

**MAIN MOTION:** Chair Michael Nolen made a motion to **approve** the request with the condition that the five 10'x4' tenant panels below the primary sign panel, totaling 200 square feet, not be allowed. The motion was seconded by Vice Chair Gloria Fortin. Following a roll call vote, the motion **passed** 5-0.

8. **VR-20-03 Hold a public hearing and consider a request by Jerimi Henry, on behalf of the City of San Marcos, for a variance to Section 7.1.1.3 of the San Marcos Development Code regarding parking in excess of 150% of the minimum standard, a variance to Section 7.1.4.3 of the San Marcos Development Code regarding parking lot landscaping, and a variance to Section 7.2.6.2(G) of the San Marcos Development Code regarding fence height, located at the intersection of Loop 110 and Highway 123.**

Chair Nolen opened the public hearing.

Will Parrish, Planner, presented the staff report.

Jerimi Henry, Applicant, presented the request.

**MAIN MOTION:** Vice Chair Gloria Fortin made a motion to **approve** the variance to Section 7.1.1.3 of the San Marcos Development Code with the condition that solar arrays be installed on the Utility and Warehouse Buildings and shade structures be constructed over 130 of the 664 proposed parking spaces as per the staff report. The motion was seconded by Member Gary Pack. Following a roll call vote, the motion **passed** 4-1.

**MAIN MOTION:** Vice Chair Gloria Fortin made a motion to **approve** the variance to Section 7.1.4.3 of the San Marcos Development Code. The motion was seconded by Member Gary Pack. Following a roll call vote, the motion **passed** 5-0.

**MAIN MOTION:** Member Gary Pack made a motion to approve the variance to Section 7.2.6.2 of the San Marcos Development Code. The motion was seconded by Vice Chair Gloria Fortin. Following a roll call vote, the motion passed 5-0.

**9. Question and Answer Session with Press and Public.**

There were no questions from the Press or Public

**10. ADJOURN**

Chair Nolen adjourned the meeting at 7:20 p.m. on Thursday May 21, 2020 without objection.

\_\_\_\_\_  
Michael Nolen, Chair

ATTEST:

\_\_\_\_\_  
Shavon Caldwell, Recording Secretary

# VR-20-04 Fence Variance Aqua 16 Apartments



## Applicant Information:

**Applicant:** Casey Whitson  
22623 Two Lakes Dr.  
Tomball, TX 77375

**Property Owner:** 1640 Aquarena, LLC  
10200 Richmond Ave. #272  
Houston, TX 77042

**Applicant's Request:** The applicant is requesting three variances for a proposed perimeter fence with access gates to the apartment complex.

1. A variance to Section 7.2.6.2(G), which would allow a 6 foot tall fence within the first layer of the property.
2. A variance to Section 9.4.3.3(H)(3), which would waive the requirement for Multifamily fences to be articulated every 25 feet with either a 4 inch caliper tree or, a masonry column.
3. A variance to Section 7.2.6.2 (B), which would allow three access gates to be located within the required 25 foot setback.

**Notification:** Personal notification mailed on June 4, 2020 to all property owners within 400 feet of subject property.

**Citizen Response:** None as of Staff Report date

## Subject Property:

**Location:** Near the intersection of Aquarena Springs Drive and IH-35

**Legal Description:** Approximately 6.0 acres, more or less, out of the J.M. Veramendi Survey, Hays County

**Frontage On:** Southbound IH-35 Frontage Road, Aquarena Springs Drive, & Jackson Lane

**Neighborhood:** Millview West

**Existing Zoning:** MF-24, Multifamily

**Preferred Scenario Designation:** Midtown

**Utilities:** Adequate

**Existing Use of Property:** Apartments

**Surrounding Area:**

<b>Proximity</b>	<b>Current Zoning</b>	<b>Existing Land Use</b>
N of Property	MF-18	Multifamily
E of Property	GC, MF-18, VMU	Motel, Multifamily, Vacant
S of Property	GC	Office
W of Property	GC	Motel, Restaurant

**Case Summary:**

Currently, the Aqua 16 Apartments has unrestricted access from three driveways along Jackson Lane, and one driveway along Aquarena Springs Drive.

The applicant is requesting the variances in order to provide additional security for its residents. According to the applicant, the variances are being requested to mitigate crime and prevent the public from using an internal driveway as a passage between Jackson lane and Aquarena Springs Drive.

The applicant has stated that the variances are necessary to provide a safe environment for its residents, and if granted, will ultimately allow reinvestment to the property with additional amenities such as a playground, pool, outdoor kitchens, and dog park.

**Request #1: Fence Height and Location**

*The applicant is requesting to waive the requirement that fences located within the 1<sup>st</sup> layer be limited to 4 feet in height. Section 7.2.6.2(G) of the San Marcos Development Code states that fences located within the 1<sup>st</sup> layer, which is the space between the property line and the front face of the primary buildings, is limited to 4 feet in height and be 50% open.*

*The applicant has stated that this requirement does not provide the proper amount of security for residents and their vehicles along Jackson Lane and IH 35 Frontage Road. The applicant is proposing a six (6) foot tall wrought iron fence, which will meet the 50% open requirement, located at the property line along Jackson Lane and IH 35 Frontage Road in front of each building.*

**Relevant Code Requirements**

**Section 7.2.6.2(G)(1) Fences and Walls Adjacent to a Street, Park, or Greenway**

- A. A fence or wall located within the first layer along a primary frontage shall be 48 inches in height and 50% open.

**Planning Department Analysis**

The location of the parking is nonconforming and located in front of the apartment buildings. Existing parking abuts Jackson Lane and IH 35 Frontage. All fencing proposed within the first layer of the property between the property line and the front of each building shall be no greater than 4 feet tall, and must be constructed of a material that maintains 50% visibility. The property abutting the subject property to the north, "Park North" Condominiums, has a 5 foot unarticulated wrought iron fence in a similar location to the applicant's request.

<b>San Marcos Development Code Standards</b>	<b>Applicant's Request</b>
<i>Fences located within the first layer may not exceed 4 feet in height.</i>	<i>Fence located on the property line along Jackson Lane 6 feet in height.</i>

The Land Development Code has established criteria for approval that should be considered in the decision of a variance petition. **Section 2.8.2.4 Criteria for Approval** states that *in deciding the variance petition, the decision-maker shall apply the following criteria:*

- (1) There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Land Development Code to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;  
*Findings: There are no special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the subject property which would make adherence with the required standards a hardship. The strict application of this provision would not deprive the petitioner of the reasonable and beneficial use of the land as it is entitled for Multifamily uses.*
- (2) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;  
*Findings: Staff finds that there are no special circumstances or conditions causing the hardship that affect the property nor the properties in the vicinity of the petitioner's land. The neighboring property to the north, "Park North" Condominiums, has a similar style fence in a similar location as requested by the applicant.*
- (3) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;  
*Findings: The variance is not necessary for the preservation and enjoyment of the property. The property is entitled for Multifamily uses.*
- (4) Granting the variance petition will not be detrimental of the public health, safety or welfare, or injurious to other property within the area;  
*Findings: Staff finds that granting the variance request will not be detrimental of the public health, safety or welfare, or injurious to other property within the area.*
- (5) Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property;  
*Findings: Staff finds that granting the variance request will not prevent the orderly use and enjoyment of other land or adversely affect the rights of owners or residents of surrounding property.*

- (6) Granting the variance petition is consistent with any special criteria applicable to varying particular standards, as set forth in Chapter 4 through 7 of the San Marcos Development Code;  
*Findings: There are no special criteria. If granted, this request will meet all applicable requirements of the San Marcos Land Development Code other than the requested variances.*
- (7) The hardship or inequity suffered by the petitioner is not caused wholly or in substantial part by the petitioner;  
*Findings: The hardship is caused by the request for additional security for residents and associated vehicle parking.*
- (8) The request for a variance is not based exclusively on the petitioner’s desire for increased financial gain from the property, or to reduce an existing financial hardship;  
*Findings: The request is not based exclusively on financial gain or loss from the property.*
- (9) The degree of variance requested is the minimum amount necessary to meet the needs of the proponent and to meet the conditions of this Section;  
*Findings: The degree of variance requested is the minimum amount necessary to meet the needs of the applicant and their desire to provide additional security to the existing site.*

**Request #2: Multifamily Fence Articulation**

The applicant is requesting to waive the Multifamily fence articulation requirement for the proposed wrought iron fence. Section 9.4.3.3(H)(3) of the San Marcos Development Code states wrought iron-style fences shall be articulated at a maximum of every 25 feet with either a combination of shrubs matching the height of the fence and a 4” caliper tree, or masonry columns.

**Relevant Code Requirements**  
**Section 9.4.3.3(H) Fencing and Screening**

H. The intent is to coordinate the design and location of fences to maximize interrelationship of buildings, public streets and open space while avoiding long, unarticulated fences that hinder connectivity.

- 3. Wrought iron-style fences shall be articulated at a maximum of every 25 feet with the following:
  - a. A combination of shrubs matching the height of the fence and a 4” caliper tree, or
  - b. Masonry columns.

**Planning Department Analysis**

<b>San Marcos Development Code Standards</b>	<b>Applicant’s Request</b>
Wrought iron-style fences shall be articulated at a maximum of every 25 feet with the following. a. A combination of shrubs matching the height of the fence and a 4” caliper tree, or b. Masonry columns	A waiver to this standard to match the aesthetics of the existing wrought iron fencing at the “Park North” Condominiums along Jackson Lane.

The Land Development Code has established criteria for approval that should be considered in the decision of a variance petition. **Section 2.8.2.4 Criteria for Approval** states that in deciding the variance petition, the decision-maker shall apply the following criteria:

- (1) *There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Land Development Code to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;*  
*Findings:* *There are no special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the subject property which would make adherence with the required standards a hardship. The strict application of this provision would not deprive the petitioner of the reasonable and beneficial use of the land.*
- (2) *The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;*  
*Findings:* *Staff finds that there are no special circumstances or conditions causing the hardship that affect the property nor the properties in the vicinity of the petitioner's land.*
- (3) *The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;*  
*Findings:* *The variance is not necessary for the preservation and enjoyment of the property.*
- (4) *Granting the variance petition will not be detrimental of the public health, safety or welfare, or injurious to other property within the area;*  
*Findings:* *Staff finds that granting the variance request will not be detrimental of the public health, safety or welfare, or injurious to other property within the area.*
- (5) *Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property;*  
*Findings:* *Staff finds that granting the variance request will not prevent the orderly use and enjoyment of other land or adversely affect the rights of owners or residents of surrounding property.*
- (6) *Granting the variance petition is consistent with any special criteria applicable to varying particular standards, as set forth in Chapter 4 through 7 of the San Marcos Development Code;*  
*Findings:* *There are no special criteria. If granted, this request will meet all applicable requirements of the San Marcos Land Development Code other than the requested variances.*
- (7) *The hardship or inequity suffered by the petitioner is not caused wholly or in substantial part by the petitioner;*  
*Findings:* *The hardship is caused by the applicants desire to match surrounding fences.*
- (8) *The request for a variance is not based exclusively on the petitioner's desire for increased financial gain from the property, or to reduce an existing financial hardship;*  
*Findings:* *The request is based on the applicants desire to match surrounding fences.*
- (9) *The degree of variance requested is the minimum amount necessary to meet the needs of the proponent and to meet the conditions of this Section;*  
*Findings:* *The degree of variance requested is not the minimum necessary to meet the needs of this section. There is adequate space to provide additional plantings or masonry columns every 25 feet.*

**Request #3: Gates for Vehicular Access**

A variance to Section 7.2.6.2 (B), which would allow three access gates to be located within the required 25 foot setback. The applicant is requesting to waive the requirement for access gates to be setback a minimum of 25 feet to allow the gates with a 0 foot setback.

The applicant has stated that this requirement does not provide adequate security to the existing parking lot. The applicant is proposing to vary from this requirement with three access gates along Jackson Lane for emergency use only, with the intent to only allow emergency response access and ultimately direct ingress and egress from Aquarena Springs Drive.

**Relevant Code Requirements**

**Section 7.2.6.2(B) Gates for Vehicular Access**

- B. Gates designed for vehicular access shall be set back from the property line a minimum of 25 feet except where access is provided to a structured parking garage.

**Planning Department Analysis**

The proposed gates are intended to direct all ingress and egress to and from the subject property onto Aquarena Springs Drive. Aquarena Springs Drive is a TxDOT road with a median that prevents westbound traffic from accessing the site.

<b>San Marcos Development Code Standards</b>	<b>Applicant's Request</b>
<i>Gates designed for vehicular access shall be set back from the property line a minimum of 25 feet except where access is provided to a structured parking garage</i>	<i>Gates are proposed with a 0 ft. setback to restrict vehicle access to emergency response only on Jackson Lane, and direct ingress and egress from Aquarena Drive.</i>

The Land Development Code has established criteria for approval that should be considered in the decision of a variance petition. **Section 2.8.2.4 Criteria for Approval** states that in deciding the variance petition, the decision-maker shall apply the following criteria:

- (1) *There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Land Development Code to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;*  
*Findings:* *There are no special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the subject property which would make adherence with the required standards a hardship. The strict application of this provision would not deprive the petitioner of the reasonable and beneficial use of the land.*
- (2) *The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner's land;*  
*Findings:* *Staff finds that there are no special circumstances or conditions causing the hardship that affect the property nor the properties in the vicinity of the petitioner's land.*

- (3) *The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;*  
Findings: *The variance is not necessary for the preservation and enjoyment of the property.*
- (4) *Granting the variance petition will not be detrimental of the public health, safety or welfare, or injurious to other property within the area;*  
Findings: *Staff finds that granting the variance request may compromise the safety of the public. While perimeter fences may provide a sense of perceived security to its residents, it is more difficult for first responders to respond to emergencies when direct access is restricted.*
- (5) *Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property;*  
Findings: *Staff finds that granting the variance request will not prevent the orderly use and enjoyment of other land or adversely affect the rights of owners or residents of surrounding property.*
- (6) *Granting the variance petition is consistent with any special criteria applicable to varying particular standards, as set forth in Chapter 4 through 7 of the San Marcos Development Code;*  
Findings: *There are no special criteria. If granted, this request will meet all applicable requirements of the San Marcos Land Development Code other than the requested variances.*
- (7) *The hardship or inequity suffered by the petitioner is not caused wholly or in substantial part by the petitioner;*  
Findings: *The hardship is caused by the applicants desire to provide additional security for its residents.*
- (8) *The request for a variance is not based exclusively on the petitioner's desire for increased financial gain from the property, or to reduce an existing financial hardship;*  
Findings: *The request is based on the desire to provide additional security to its residents.*
- (9) *The degree of variance requested is the minimum amount necessary to meet the needs of the proponent and to meet the conditions of this Section;*  
Findings: *The degree of variance requested is the minimum amount necessary to provide additional security to the parking lot.*

**Prepared by:**  
**Matt Johnson, AICP**

Senior Planning Technician

June 11, 2020

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**Name**

**Title**

**Date**

# VR-20-04 Aerial Map Mult-Family Apartment Fencing — 1640 Aquarena Springs



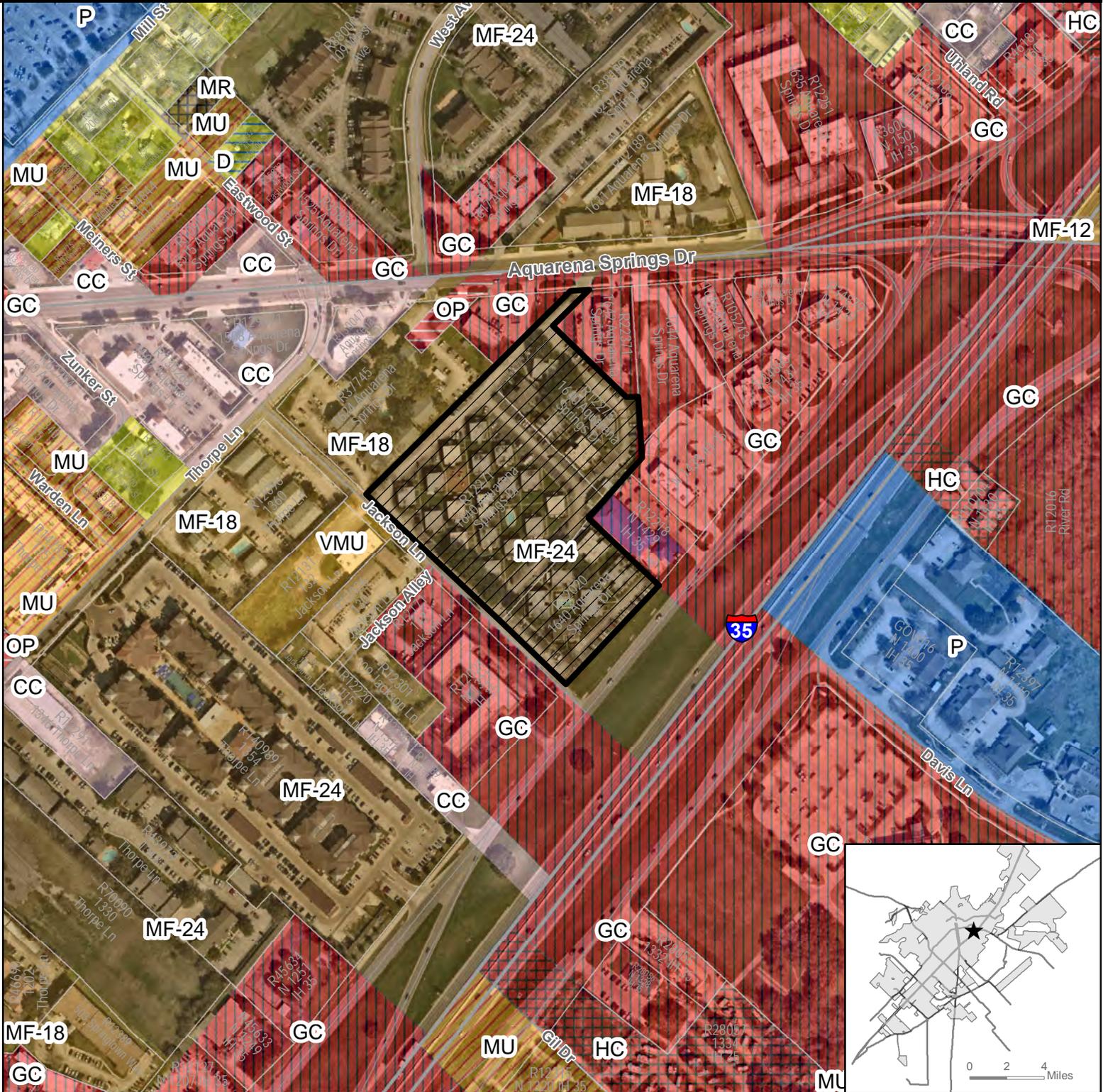
- Subject Property**
- Parcel**
- City Limit**

0 200 400 800 Feet

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.

Map Date: 6/4/2020

# VR-20-04 Zoning Map Mult-Family Apartment Fencing — 1640 Aquarena Springs



**Legend**

- Subject Property**
- Parcel**
- City Limit**

0 200 400 800 Feet

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.

Map Date: 6/4/2020

# VR-20-04 400' Notification Buffer Mult-Family Apartment Fencing — 1640 Aquarena Springs



- ★ Site Location
-  Subject Property
-  400' Buffer
-  Parcel
-  City Limit



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.

Map Date: 6/2/2020

**SURVEYOR'S NOTES**

1. FENCES MEASURED.
2. BEARINGS, DISTANCES AND AREAS IN PARENTHESES ARE FROM RECORD INFORMATION.
3. ACCORDING TO SCALING FROM THE CURRENT F.E.M.A. FLOOD INSURANCE RATE MAP NO. 48209C0383F, DATED SEPTEMBER 2, 2005, THIS TRACT LIES WITHIN ZONE X. (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN).
4. THIS SURVEY WAS DONE IN CONJUNCTION WITH TITLE COMMITMENT G.F. NO. 01247-239 DATED AUGUST 29, 2013 PROVIDED BY STEWART TITLE GUARANTY COMPANY. THIS SURVEYOR DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENTS. THEREFORE, CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.
5. THE WORD "CERTIFY" OR "CERTIFICATE" AS SHOWN AND USED HEREON MEANS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING THE FACTS OF THE SURVEY AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED.
6. THIS SURVEY PLAT WAS PREPARED IN CONJUNCTION WITH A LAND DESCRIPTION DATED NOVEMBER 29, 2012 PREPARED BY BYRN & ASSOCIATES, INC., OF SAN MARCOS, TEXAS.
7. THERE ARE 287 REGULAR PARKING SPACES AND 1 HANDICAPPED PARKING SPACE.

**ZONING REQUIREMENTS**

ACCORDING TO THE CITY OF SAN MARCOS 2010 PLANNING AND ZONING ATLAS AND CITY OF SAN MARCOS PERSONNEL THIS TRACT IS ZONED "MF-24" MULTIPLE-FAMILY RESIDENTIAL DISTRICT AND IS SUBJECT TO THE FOLLOWING RESTRICTIONS:

"MF-24"  
MINIMUM FRONT YARD SETBACK - 25'  
MINIMUM SIDE YARD SETBACK (INTERIOR) - 10'  
MINIMUM SIDE YARD SETBACK (CORNER) - 10'  
MINIMUM REAR YARD SETBACK - 10'  
BUILDING HEIGHT, MAXIMUM FEET - 45'  
NO FLOOR SPACE AREA RESTRICTION WAS IDENTIFIED

BECAUSE THERE MAY BE A NEED FOR INTERPRETATION OF THE APPLICABLE ZONING CODES, WE REFER YOU TO THE CITY OF SAN MARCOS PLANNING DEPARTMENT:  
630 E. HOPKINS  
SAN MARCOS, TX 78666  
512-393-6230

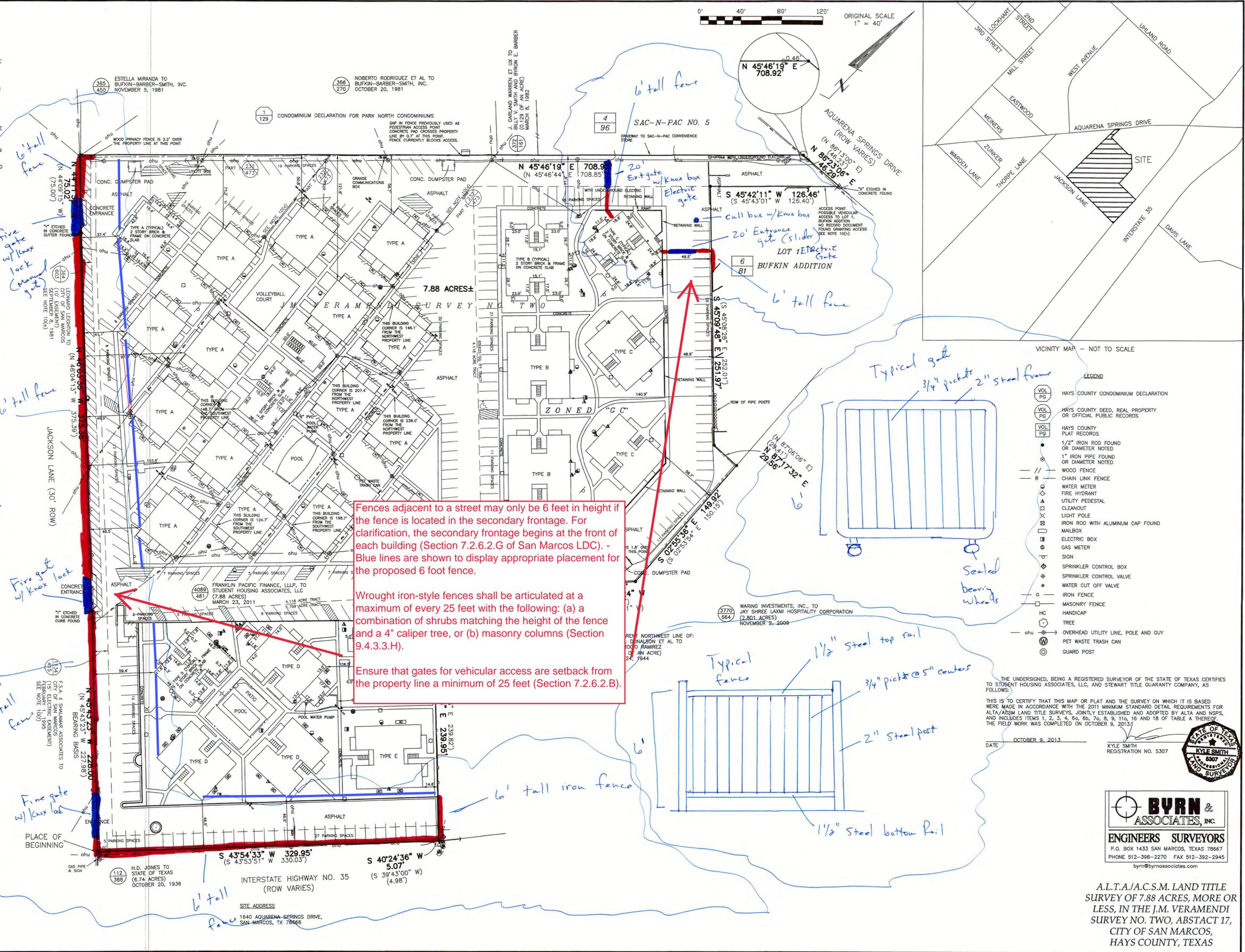
**NOTES CORRESPONDING TO SCHEDULE B**

- 10(a) NON SURVEY RELATED ITEM.
- 10(b) THE TRANSMISSION LINE EASEMENT IN FAVOR OF TEXAS POWER & LIGHT COMPANY RECORDED IN VOLUME 94, PAGE 460 OF THE HAYS COUNTY DEED RECORDS MAY AFFECT THIS TRACT. HOWEVER, THERE IS NO EVIDENCE OF THE SAN MARCOS-KYLE TRANSMISSION LINE CROSSING THIS TRACT.
- 10(c) THE GUY EASEMENT IN FAVOR OF TEXAS POWER & LIGHT COMPANY RECORDED IN VOLUME 109, PAGE 311 OF THE HAYS COUNTY DEED RECORDS MAY AFFECT THIS TRACT. HOWEVER, THERE IS NO EVIDENCE OF THE SAN MARCOS-KYLE TRANSMISSION LINE CROSSING THIS TRACT.
- 10(d) TRANSMISSION LINE EASEMENT IN FAVOR OF THE LOWER COLORADO RIVER AUTHORITY RECORDED IN VOLUME 232, PAGE 473, OF THE HAYS COUNTY DEED RECORDS, AFFECTS SUBJECT TRACT AND IS APPROXIMATELY PLOTTED HEREON. DISTANCES PROVIDED IN THE DEED ARE APPROXIMATE. THE LOCATION SHOWN IS BASED ON EXISTING UTILITIES OR UTILITIES THAT EXISTED DURING PREVIOUS SURVEYS.
- 10(e) RIGHT OF WAY EASEMENT IN FAVOR OF THE CITY OF SAN MARCOS RECORDED IN VOLUME 364, PAGE 603, OF THE HAYS COUNTY DEED RECORDS, AFFECTS SUBJECT TRACT AND IS PLOTTED HEREON.
- 10(f) ELECTRIC UTILITY EASEMENT IN FAVOR OF THE CITY OF SAN MARCOS RECORDED IN VOLUME 1134, PAGE 415 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS, AFFECTS SUBJECT TRACT AND IS PLOTTED HEREON.
- 10(g) EASEMENT TO TIME WARNER CABLE RECORDED IN VOLUME 2333, PAGE 551 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS AFFECTS THE 4.118 ACRE TRACT SHOWN HEREON.
- 10(h) POSSIBLE USE BY THIRD PARTIES AS ACCESS TO BUFKIN ADDITION ALONG THE MOST EASTERLY PROPERTY LINE, AS SET FORTH IN DEEDS RECORDED IN VOLUME 1795, PAGE 437, VOLUME 1795, PAGE 443, VOLUME 1795, PAGE 449, VOLUME 1795, PAGE 455, VOLUME 1795, PAGE 461, VOLUME 1795, PAGE 468, VOLUME 1795, PAGE 474, VOLUME 1795, PAGE 480 AND VOLUME 1795, PAGE 486 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS, AFFECTS SUBJECT TRACT AND IS SHOWN HEREON.
- 10(i) EASEMENT AND MEMORANDUM OF AGREEMENT BY SHALAMAR PROPERTIES, LTD. TO TIME WARNER ENTERTAINMENT ADVANCE/HOUSE PARTNERSHIP RECORDED IN VOLUME 3588, PAGE 825 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS, AFFECTS THE 4.118 ACRE TRACT AND THE 1.799 ACRE TRACT SHOWN HEREON.
- 10(j) UNPLOTTABLE ITEM.
- 10(k) NON SURVEY RELATED ITEM.
- 10(l) NON SURVEY RELATED ITEM.
- 10(m) NON SURVEY RELATED ITEM.

**ENCROACHMENTS LIST**

- WOOD PRIVACY FENCE IS 2.2' OVER THE PROPERTY LINE (NEAR WEST CORNER OF PROPERTY).
- CONCRETE PAD CROSSES PROPERTY LINE BY 0.7' (ALONG NORTHWEST LINE).
- WOOD PRIVACY FENCE IS 1.8' OVER THE PROPERTY LINE (NEAR THE NORTH CORNER OF LOT 1, HOMEPLACE INN ADDITION).
- WOOD PRIVACY FENCE IS 6.6' OVER PROPERTY LINE AT NORTH CORNER OF REMAINING PORTION OF RAMIREZ TRACT.

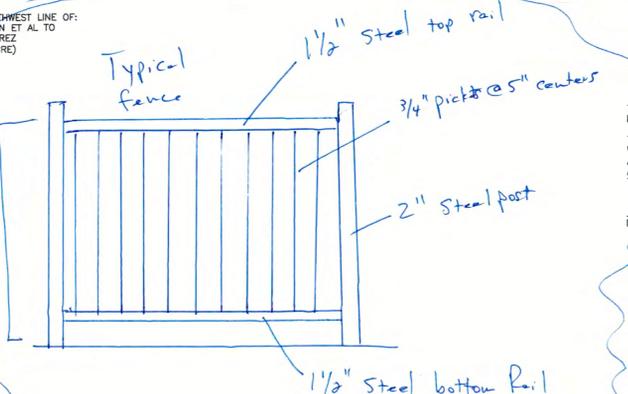
REVISED OCTOBER 9, 2013  
CLIENT: STUDENT HOUSING ASSOCIATES, LLC  
DATE: FEBRUARY 3, 2011  
OFFICE: PAYNE, K. SMITH  
CREW: C. SMITH, HADEN  
FB/PG: 687/47, 696/71, 717/61  
PLAT NO. 26523-11-d



Fences adjacent to a street may only be 6 feet in height if the fence is located in the secondary frontage. For clarification, the secondary frontage begins at the front of each building (Section 7.2.6.2.G of San Marcos LDC). - Blue lines are shown to display appropriate placement for the proposed 6 foot fence.

Wrought iron-style fences shall be articulated at a maximum of every 25 feet with the following: (a) a combination of shrubs matching the height of the fence and a 4" caliper tree, or (b) masonry columns (Section 9.4.3.3.H).

Ensure that gates for vehicular access are setback from the property line a minimum of 25 feet (Section 7.2.6.2.B).



- LEGEND**
- VCOL PG HAYS COUNTY CONDOMINIUM DECLARATION
  - VOL PG HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
  - HAYS COUNTY PLAT RECORDS
  - 1/2" IRON ROD FOUND OR DIAMETER NOTED
  - 1" IRON PIPE FOUND OR DIAMETER NOTED
  - WOOD FENCE
  - CHAIN LINK FENCE
  - WATER METER
  - FIRE HYDRANT
  - UTILITY PEDESTAL
  - CLEANOUT
  - LIGHT POLE
  - IRON ROD WITH ALUMINUM CAP FOUND
  - MAILBOX
  - ELECTRIC BOX
  - GAS METER
  - SIGN
  - SPRINKLER CONTROL BOX
  - SPRINKLER CONTROL VALVE
  - WATER CUT OFF VALVE
  - IRON FENCE
  - MASONRY FENCE
  - HANDICAP
  - TREE
  - ohu OVERHEAD UTILITY LINE, POLE AND GUY
  - W PET WASTE TRASH CAN
  - G GUARD POST

THE UNDERSIGNED, BEING A REGISTERED SURVEYOR OF THE STATE OF TEXAS CERTIFIES TO STUDENT HOUSING ASSOCIATES, LLC, AND STEWART TITLE GUARANTY COMPANY, AS FOLLOWS:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 2, 3, 4, 6a, 6b, 7a, 8, 9, 11a, 16 AND 18 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON OCTOBER 9, 2013.

DATE: OCTOBER 9, 2013  
KYLE SMITH  
REGISTRATION NO. 5307

**BYRN & ASSOCIATES, INC.**  
ENGINEERS SURVEYORS  
P.O. BOX 1433 SAN MARCOS, TEXAS 78667  
PHONE 512-396-2270 FAX 512-392-2945  
byrn@byrnassociates.com

ALTA/ACSM LAND TITLE SURVEY OF 7.88 ACRES, MORE OR LESS, IN THE J.M. VERAMENDI SURVEY NO. TWO, ABSTRACT 17, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS

# SUBDIVISION / ZONING VARIANCE APPLICATION

Updated: October, 2019



## CONTACT INFORMATION

Applicant's Name	Casey Whitson	Property Owner	1640 Aquarena, LLC
Company	MplusC Services	Company	Aqua 16 Apartments
Applicant's Mailing Address	22623 Two Lakes Dr. Tomba	Owner's Mailing Address	10200 Richmond Ave. #272, H
Applicant's Phone #	817-602-8374	Owner's Phone #	832-277-4464
Applicant's Email	casey@mpluscservices.com	Owner's Email	robert@relikrealty.com

## PROPERTY INFORMATION

Subject Property Address: 1640 Aquarena Springs Dr., San Marcos, TX 78666  
Acres: 7.88 Tax ID #: R 10-0017-2303-00000-3  
Legal Description: Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision See attachment  
Existing Use(s): Multiple family Residential

## DESCRIPTION OF REQUEST

Variance to Section: 7.2.6.2.G, 9.4.3.3H, 7.2.6.2 of the Land Development Code, which requires: 6ft high fence only if located in the secondary frontage. Articulated at 25ft. Vehilce gate 25

Description of proposed variance (additional pages may be used): Replace 6ft wrought iron fence on existing fence line, on back side of residence parking lot facing Jackson lane and frontage road.

## AUTHORIZATION

*I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee \$740

Technology Fee \$13

TOTAL COST \$753

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

**APPLY ONLINE – [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)**

## VARIANCE CONSIDERATIONS

(Please include additional pages as necessary)

- 1) What special circumstances or conditions affect the subject property such that strict application of the provisions of the Land Development Code would create an unnecessary hardship or inequity upon the applicant or would deprive the applicant of the reasonable and beneficial use of the property?  
The beneficial use and security of residences and their parked vehicles. The protection of the apartments new asphalt parking lot from non-residences using parking lot as a residential street.
- 2) Do the circumstances or conditions causing the hardship similarly affect all or most of the properties in the vicinity of the subject property? N/A
- 3) What substantial property right would not be preserved or enjoyed if the provisions of the Land Development Code were literally enforced? Right to protect residents and owners personal property. Right to safety.
- 4) What effect, if any, would the variance have on the rights of owners or occupants of surrounding property, or on the public health, safety or general welfare? N/A
- 5) What effect, if any, would the variance have on the orderly subdivision of other land in the area in accordance with the provisions of the Land Development Code? N/A
- 6) Is the hardship or inequity suffered by the applicant caused wholly or in substantial part by the property owner or applicant? N/A
- 7) To what extent is the request for variance based upon a desire of the owner, occupant or applicant for increase financial gain from the property, or to reduce an existing financial hardship?  
reduce personal property damage and theft for owner and occupants.
- 8) Is the degree of variance requested the minimum amount necessary to meet the needs of the applicant or property owner? Yes.

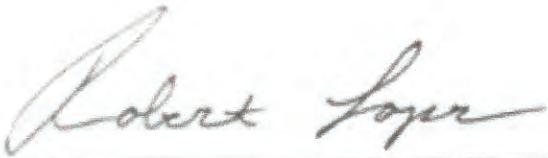
**\*Note for the Board / Commission:**

The following responses were provided by the applicant and may not be consistent with the Department staff report

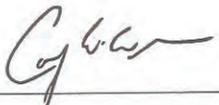
PROPERTY OWNER AUTHORIZATION

I, Robert Lopes (owner name) on behalf of 1640 Aquarena, LLC (company, if applicable) acknowledge that I/we am/are the rightful owner of the property located at 1640 Aquarena Springs Dr., San Marcos, TX 78666 (address).

I hereby authorize Casey Whitson and Jason Guzak (agent name) on behalf of MplusC Services (agent company) to file this application for Variance for parimeter fence (application type), and, if necessary, to work with the Responsible Official / Department on my behalf throughout the process.

Signature of Owner:  Date: 3/30/2020

Printed Name, Title: Robert Lopes

Signature of Agent:  Date: 3/30/2020

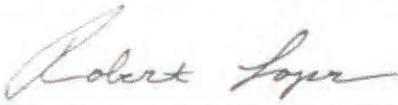
Printed Name, Title: Casey Whitson, Project Manager, MplusC Services

**AGREEMENT TO THE PLACEMENT OF NOTIFICATION SIGNS  
AND ACKNOWLEDGEMENT OF NOTIFICATION REQUIREMENTS**

The City of San Marcos Development Code requires public notification in the form of notification signs on the subject property, published notice, and / or personal notice based on the type of application presented to the Planning Commission and / or City Council.

- Notification Signs: if required by code, staff shall place notification signs on each street adjacent to the subject property and must be placed in a visible, unobstructed location near the property line. It is unlawful for a person to alter any notification sign, or to remove it while the request is pending. However, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements. ***It shall be the responsibility of the applicant to periodically check sign locations to verify that the signs remain in place had have not been vandalized or removed. The applicant shall immediately notify the responsible official of any missing or defective signs. It is unlawful for a person to alter any notification sign, or to remove it while the case is pending; however, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements.***
- Published Notice: if required by code, staff shall publish a notice in a newspaper of general circulation in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be published it may be at the expense of the applicant. The renotification fee shall be \$91 plus a \$13 technology fee.***
- Personal Notice: if required by code, staff shall mail personal notice in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be mailed it may be at the expense of the applicant. The renotification fee shall be \$91 plus a \$13 technology fee.***

*I have read the above statements and agree to the required public notification, as required, based on the attached application. The City's Planning and Development Services Department staff has my permission to place signs, as required, on the property and I will notify City staff if the sign(s) is/are damaged, moved or removed. I understand the process of notification and public hearing and hereby submit the attached application for review by the City.*

Signature: 

Date: 3/30/2020

Print Name: Robert Lopes



## CHECKLIST FOR SUBDIVISION / ZONING VARIANCE APPLICATION

The following items are requested for consideration of this application. These and additional items may be required at the request of the Department		Comments
<input checked="" type="checkbox"/>	<p><i>Pre-development meeting with staff is recommended</i></p> <ul style="list-style-type: none"> <li>Please visit <a href="http://sanmarcostx.gov/1123/Pre-Development-Meetings">http://sanmarcostx.gov/1123/Pre-Development-Meetings</a> to schedule</li> </ul>	
<input checked="" type="checkbox"/>	Completed Application for Variance	
<input type="checkbox"/>	If applicable, Completed Application for Development associated with the requested variance	
<input type="checkbox"/>	<p>If request is to waive platting requirements</p> <ul style="list-style-type: none"> <li>Certificate of no tax delinquency</li> <li>Metes &amp; Bounds or survey indicating the outer boundary of the subject property</li> <li>CAD file in grid for GIS integration. Projection: NAD 1983 StatePlane Texas South Central FIPS 4204 Feet</li> </ul>	
<input checked="" type="checkbox"/>	Detailed written statement of the reasons why the standards to be varied should not be applied to the development	
<input type="checkbox"/>	Description of the existing use and improvements of the subject property, including type(s) of building(s), floor area and number of off-street parking spaces, as applicable	
<input type="checkbox"/>	Description of the proposed use and related improvements / development of the subject property, including type(s) of building(s), floor area and number of off-street parking spaces, as applicable	
<input type="checkbox"/>	Illustrations or other documents showing the effect of the requested variance on the proposed development	
<input type="checkbox"/>	Written responses to the questions on pg. 2	
<input checked="" type="checkbox"/>	Notification Authorization	
<input checked="" type="checkbox"/>	Authorization to represent the property owner, if the applicant is not the owner	
<input checked="" type="checkbox"/>	<p>Application Filing Fee           \$740</p> <p>Technology Fee                   \$13</p>	
<p><b>**San Marcos Development Code Section 2.3.1.1(C): "Every application accepted by the responsible official for filing shall be subject to a determination of completeness...the responsible official is not required to review an application unless it is complete..."</b></p>		

Aqua 16 Apartment  
1640 Aquarena Spring Drive  
San Marcos, TX 78666

1640 Aquarena, LLC  
Casey Whitson  
817-602-8374  
[casey@mpluscservices.com](mailto:casey@mpluscservices.com)

Permit Request: 2020-31290  
Variance for Section: 7.2.6.2.G, 9.4.3.3.H, 7.2.6.2.B

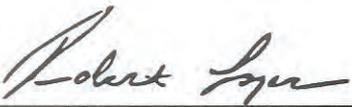
### Zoning Board of Adjustments

In 2019, 1640 Aquarena, LLC purchased the Aqua 16 apartments and low C grade property in San Marcos. Our business plan is always to stabilize a failing complex, infuse capital for improvements, create a clean and safe living environment for working class residence. We plan of spending over \$2M in capital improvements in the next 12 months at Aqua 16. The most important decision we make when making capital improvements is first to create a secure and safe environment for our residence and their property. Aqua 16 had a vehicle entrance gate and a perimeter wrought iron fence that was removed. We are requesting a variance to allow us to install a new 6-foot wrought iron fence on the existing fence line on the back perimeter of our residence parking lot. This would back up to the I45 frontage road and facing Jackson Lane. See detailed survey with fence style.

Denial of a variance would deprive and cause hardship to us and our residence reasonable and beneficial use of the property. The beneficial use and security of residence and their parked vehicles. The protection of the apartments new asphalt parking lot from Non-residence using our private parking lot as a city thru street causing large potholes and unnecessary wear.

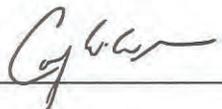
A secure environment, allows us to continue to provide family amenities like, perimeter lighting, outdoor kitchens, playgrounds, improved pools, dog parks, family events and etc. But, the most important thing is for our residence to feel safe in their homes and in the parking lot where they live.

Robert Lopes



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Casey Whitson



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