



Church of the Good Shepherd

Mission: Immaculate Conception, Marion | Schertz
Enter the Sheepfold


September 19, 2022

City of Schertz
Planning and Community Development
1400 Schertz Parkway
Schertz, Texas 78154

To Whom It May Concern:

Please find submitted herewith the necessary exhibits, documentation and justification requesting a variance from constructing an eight (8) foot masonry fence between non-residential and residential property as required in Article 9, Section 21.9.8 (B)(3) – Screening and Fencing of the Unified Development Code.

Respectfully Submitted,



Harry Bennett
Building Committee Chair
Church of the Good Shepherd

CITY OF SCHERTZ VARIANCE CHECKLIST

APPLICATION COMPLETENESS REQUIREMENTS:

- Fees including breakdown of calculations on a separate sheet
- Development Application signed by owner and notarized
- This checklist (signed by applicant/representative)
- One (1) set of plans (11" x 8 1/2") prepared in accordance with the checklist
- One (1) compact disc of all exhibits/applications electronically scanned (pdf and jpg)

*****Do not leave any items unchecked*****

	Applicant	Staff	Not Applicable	TECHNICAL REQUIREMENTS	General Variance	Sign Variance
✓				1 A survey of the subject property showing property dimensions, building locations, setback dimensions, and other applicable information.	✓	
✓				2 Photos or additional information deemed appropriate for justification.	✓	
			✓	3 If homeowner's association is in effect, provide an affidavit from an authorized representative of the association certifying that the association has approved the requested variance.	✓	
	✓			4 Such other information as the City Planning Department or the Board of Adjustment Members may require to determine full compliance with the UDC and other applicable ordinances of the City.	✓	✓
✓				5 Description of the requested variance and hardship.	✓	✓
✓				6 Justification for the requested variance.	✓	✓
			✓	7 Site Plan and elevation drawing of the proposed sign, dimensions, materials, colors, caption of the proposed sign, and such other data (such as lighting) as are pertinent to the application. Pictures and other back up documentation may be requested.		✓
			✓	8 Provide the following information: type of proposed sign (monument, free-standing, building, directory, etc.), dimensions of building face elevation (height and length), square feet of each sign requested.		✓
			✓	9 Show detail if illuminated, or add a statement indicating no illumination will be used.		✓
			✓	10 Legend for abbreviations or symbols used.		✓

Board of Adjustment may grant variances or modifications of height, yard, area, coverage, parking regulations, accessory building and non-conforming use subject to making a finding of hardship that the variance meets all four of the following criteria. State how your request meets these conditions.

Description of variance request:

see attached document

- 1. Does the requested variance violate the intent of the Unified Development Code or deprive the applicant of right commonly enjoyed by other properties in the same zoning district that comply with the same provisions? Yes No

Explain: *see attachment for explanation*

- 2. Do special conditions or restricted area, shape, topography, or physical features exist that are irregular to the subject parcel of land and not applicable to other parcels of land in the same zoning districts? Yes No

Explain: *see attachment for explanation*

- 3. Is the hardship the result of the applicant's own actions or intended for financial interest? Yes No

Explain: *see attachment for explanation*

- 4. Would granting this variance be detrimental to the public welfare or injurious to the value of property in the vicinity? Yes No

Explain: *see attachment for explanation*

Preparer's Signature: *[Signature]*

Printed Name: *Harry Brunet*

Date prepared: *01/19/2012*

September 19, 2022

City of Schertz
Planning and Community Development

Project: Good Shepherd Catholic Church
Project #: PLSPC20220074
Parcel #: G24802

Reference: Variance Request

To Whom It May Concern:

As defined in Article 1, Section 21.1.10 Development Manual as well as the City of Schertz, Variance Checklist, the following photos, description and justification relating to requesting a variance, by the Church of the Good Shepherd, as it relates to constructing an eight (8) foot masonry fence as required and outlined in Article 9, Section 21.9.8 (B) (3) - Screening and Fencing of the City's Unified Development Code is herein submitted.

Thank you for your time in considering granting the Church of the Good Shepherd the above stated. This variance request is presented in two (2) parts. The first segment deals with the pragmatic (non-legal approach) or what the Church considers a sound justification for granting said variance from constructing an eight (8) foot fence and the second speaks to the technical or legal side of the appeal following the requirements enumerated in the City's "variance checklist."

It is our understanding, based on multiple discussions with staff via e-mail, text and phone conversations, that the Board of Adjustment's primary charge deals with zoning regulations within the Unified Development Code (UDC) and usually considers granting a variance based on height, yard area, coverage, parking regulations, accessory building or structures, or non-conforming uses and does not normally address a variance concerning construction issues. Staff also pointed out that the masonry fence obligation is a "site design requirement" not a zoning regulation. However, when the Church discussed our concerns with the Planning Director and staff on February 25 of this year and since the City does not have a construction board to consider such a variance, it was suggested the path forward was by applying for said variance via the Board.

The masonry fence requirement was triggered with the Church's desire to enhance its St. Vincent de Paul ministry by providing and housing its administrative offices and services at one location and in its own building. To best understand why the Church is requesting this variance; some background information is needed. For several years the Church of the Good Shepherd, through its St. Vincent de Paul Ministry, has provided needed assistance to the less fortunate of the community by running a food pantry as well as offering financial aid and consulting services. Unlike other ministries, St. Vincent de Paul has not had a permanent location from which to operate and has at various times used a different classrooms in the existing education center and on occasion the existing, front metal structures (see exhibit 1) located in the northwest corner of the Church's property as offices as well as a food distribution center.



EXHIBIT 1

At present, this group of volunteers uses the front half of the existing metal building not only as a logistic space but also for food storage, delivery and

distribution. In order to meet the growing food needs of those being served additional warehousing was needed, requiring the logistic space to be eliminated. Since this ministry does not have a permanent office of it's own, they must carry all their files and information with them, which makes it very difficult when interviewing families in need, a very cumbersome and trying situation at best. The St. Vincent de Paul committee decided it was necessary to expand and envisioned closure of a 20x40 foot porte-cochere attached to the front of the first building as an answer. This led to the original site plan permit request showing utility placement, parking and vehicular access and circulation. The site permit was approved and yes the masonry fence denoted. However, the current approved site permit did not include a building permit for enclosing the porte-cochere nor interior finish out, plumbing, electrical, or HVAC. Upon further evaluation, the Church and the Committee realized that the existing porte-cochere is being used as a drive through for food pick up. Which necessitated a plan "B". The solution was to construct a new 1,100sf building in front of but attached to the existing porte-cochere for office space (see exhibits 2, 2A and 2B).

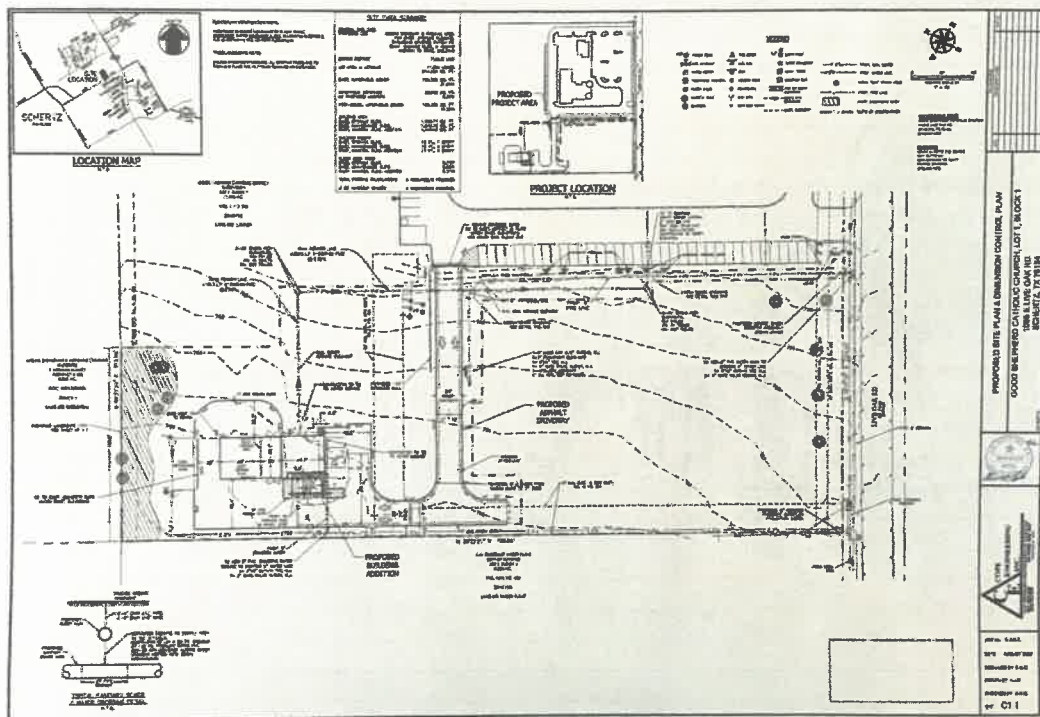


EXHIBIT 2

As a general note and for your information, both the architectural and site plans have been completed and approved by the Archdiocese of San Antonio. Whether enclosing the porte-cochere or building a new structure, concerns surrounding the masonry fence requirement per the City's UDC comes into question as it relates to receiving approval of a new site plan certification and building permit.

Two (2) points of reference, first, since 2018 the church has been trying as to provide a permanent space for this ministry. In 2019 Cope Engineering submitted drawings for a site plan permit, which denoted utility improvements and placement, and paved access and parking associated with enclosing the existing porte-cochere. Second, this ministry serves between seventy (70) and ninety (90) less fortunate families. Food distribution is available only on Monday mornings between 10:00am and noon and offered, now, from the existing metal building. Families approach in their vehicles, pass through the existing porte-cochere, and food is placed in the open trunk or bed of their vehicle.

Over the past four (4) years the Church has been communicating with the Planning Staff with regard to the masonry fence requirement. Prior to our phone conversation with staff and the Director, in the latter part of February, staff requested that we state what the Church's objection is about constructing said fence. In response to that request and per staff's e-mail which said "from the Church's stand point, you all are no longer willing to install a masonry fence for the 190 linear feet as previously shown and approved on the site plan?" In response, the Church stated that we were never willing to install the masonry fence. On July 24, 2018 at a Council meeting Father Ed, the former pastor, objected to such a requirement. Furthermore, the only reason the fence was shown on the original site plan was because the engineer of record was told it was required in order to receive approval. The engineer, to our knowledge, did not suggest nor offer the Church any options that might have been available such as asking for a variance or exploring other possibilities – save that the fence was required. Aside from saying the fence was required by the City and given this statement relayed by the engineer, the Church presumed that it had no other choice. So to say the Church signed off on the installation of an eight (8) foot high masonry fence would not be totally accurate.

To answer the second question of staff's e-mail, as to the reason the Church feels the masonry fence between the adjacent vacant tract (currently zoned residential but previously used industrially) north of the Church's property is not applicable brings us to the City's reasoning behind why the masonry fence is

needed in the first place and why, in this case, is it a condition for approval of either the site or building permit.

At the August 7, 2018 City Council meeting, city staff stated that the only reason for the eight (8) foot masonry fence requirement was to mitigate the effects of light and noise as well as to provide a visual barrier between residential and non-residential properties. The Church's position as it relates to these three (3) elements is as follows:

1. In terms of lighting, there are two (2) existing area lights that have been at this location on the Church site since the tract was owned by the Schertz school district and prior to the Church purchasing and taking ownership in 1997 (see exhibit 3). The proposed new improvements add no additional or new area lighting. The existing light standards are housed on poles approximately twenty (20) feet above grade and shed light away from the adjacent residential property. Even if there were some light spill over, any type of fencing would need to be at least twenty (20) feet tall to deflect such lighting.



EXHIBIT 3

An eight (8) foot high fence would not mitigate this light issue. Furthermore, there are a variety of vegetation along the joint property line, and even though not considered the best trees there are at least three (3) ten (10) foot high hackberries along the fence line (see exhibit 4). All of which help to defuse what little illumination is generated by these two (2) area lights. Thus, the new construction does not add any further impact to the adjacent tract that does not already exist;



EXHIBIT 4

2. As to noise concerns and as stated earlier, St. Vincent de Paul ministry operations are from 10:00am to noon on Monday's only. Constructing a new building will not add, change nor increase noise levels that does not currently exist nor would be it generate a higher noise level; and
3. Finally, from a visual stand point the new building is about one hundred and fifty (150) feet south of the adjacent tract and would be visually obscured by the existing two (2) metal building (see exhibit 5) as well as the existing vegetation. Again, constructing a new structure do not adversely impact the view from the neighboring property.



EXHIBIT 5

In other words, when or if this residentially zoned tract becomes a single-family development, the lighting, noise and visual impact on said future development and homes will be the same as that which exists now whether the Church builds a new structure or not. Regardless, the St. Vincent de Paul ministry will continue to provide assistance to the less fortunate at it's present location. Having expounded on the Church's position, from what we perceive as a logical finding for granting a variance, staff has indicated that normally a variance is allowed, by the Board, based on a given set of, what one might describe as, technical or legal conditions relating to zoning issues as well as the presence of a hardship. As stated at the onset of this deliberation, our variance request does not involve consideration or circumstances normally associated with granting a variance based on height, yard area, coverage, parking regulations, accessory building or structures, or non-conforming uses. Nonetheless, the following opinions are tailored based on meeting the following four (4) criteria the Board considers when approving a variance. The Church understands that financial consideration does not constitute a hardship. The Church is not basing its request for a variance due to monetary consideration. With that being said we will address each of the

variance criteria as enumerated in the City's "variance checklist". The checklist asks how the variance request by Church meets the following conditions.

The first criterion says: *"Does the request violate the intent of the Unified Development Code or deprive the applicant rights commonly enjoyed by other properties in the same zoning district that comply with the same provision"?*

Does the Church request violate the intent of UDC? The answer is no if the only intent of the masonry fence, as outlined in the UDC and described by staff on August 7, 2018, is to mitigate the effects of light and noise as well as provide a visual barrier. Landscaping, trees and shrubs, can achieve and even exceed the intent as defined in the UDC. In terms of whether this request deprives the Church and its St Vincent de Paul ministry rights enjoyed by other properties with similar conditions - the answer is yes. The Church is just asking for the same consideration and treatment given the following properties. Exhibits 6 through 9 depict those properties that do not comply with either the masonry fence and/or landscape requirements of the UDC. CVS Pharmacy, at 2693 FM3009, is adjacent to a single-family property and is non-compliant in terms of fence height and landscape requirements. The fact the existing fence is the same material and height as the fencing along FM 3009, and it appears that the existing five plus (5ft 6in) foot fence was constructed at the time the subdivision was built out. Nevertheless, the City did not require CVS to replace the existing fence with the mandatory eight (8) foot high masonry fence nor install shrubs. When Schertz United Methodist Church, at 3460 Roy Richard Dr., made improvements to its buildings there was no requirement to replace the existing six (6) foot wood fence between the church and residential property with a masonry wall nor install additional landscaping. The same is true for Resurrection Baptist Church at 1002 Live Oak Road with its six (6) foot wooden fence and bamboo hedge. The Screening and Fencing section of the UDC goes on to say that even if a non-residential property is separated only by a street from property or properties zoned for single-family use, said non-residential tract, lot or parcel shall construct an eight (8) foot masonry wall. One such tract that was not required to comply with this last statement is the Kids Dental office located at 1080 FM3009. Yet, according to staff "...from the City's standpoint the code requirement (eight (8) foot masonry fence and landscaping) have remained unchanged". As a matter of record, of the examples just discussed, none of these properties applied for nor were granted a variance from either the masonry fence or landscape requirements.



EXHIBIT 6 - CVS Pharmacy



EXHIBIT 7 – Schertz United Methodist Church



EXHIBIT 8 – Resurrection Baptist Church



EXHIBIT 9

The second item on the checklist asks: *“Do special conditions or restricted areas, shape, topography, or physical feature exist that are irregular to the subject parcel of land and not applicable to other parcels of land in the zoning districts?”*

Are there any special conditions or restrictions that apply to the Church property that are not applicable to lands with the same zoning? The following exhibit (#10) indicates the flow of the storm water run-off from the property directly to the north of the Church site. Based on the Pre-Development and Post Development Drainage Area Map provided by Cope Engineering, contours or natural topography indicate that the drainage from the adjacent property flows, highlighted in yellow, from north to south and enters and crosses the entire length (some 778 feet) of the north property line of the Church tract. Construction of the eight (8) foot fence, regardless of the material used, could cause flooding on the adjacent land. Even if the fence were raised six (6) inches to allow for minor storm water discharge, any heavy rain occurrence could still cause undue damage to the acreage in question. Furthermore, as part of the Church campus master plan (exhibit11) once a new site plan or building permit would be requested for the construction of the family center the masonry fence issue will again be triggered meaning the completion of the eight (8) foot masonry fence along the remaining north property line creating a damming effect and again possibly flooding the adjacent land.

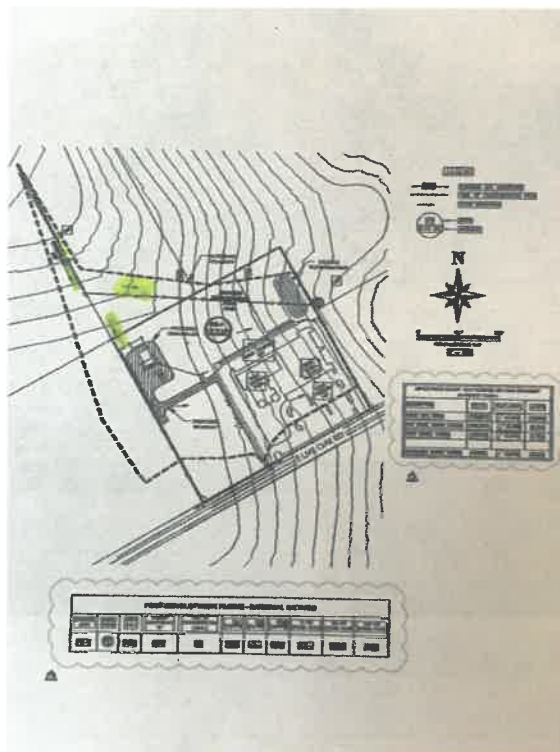


EXHIBIT 10



EXHIBIT 11

Criteria number three states: *“Is the hardship the result of the applicant’s own actions or intended for financial interest?”*

According to staff the property north of the Church tract, known as the Gutierrez property, was annexed into the Corporate Limits of the City of Schertz, via a request by Henry and Rosie Gutierrez, in 1979. Under the conditions of said annexation, the owners were entitled to “...all the rights and privileges of other citizens of the City of Schertz and they shall be bound by the acts, ordinances, resolutions and regulations of said City”. As an element of this annexation agreement that brought the Gutierrez property into the Corporate Limits, the City zoned the property as “R-1” single-family residential. Execution of said agreement by the owners acknowledged that they understood and accepted the conditions and zoning assigned to their property. This acknowledgement meant that the owners would rezone and/or plat the property when circumstances changed. Which begs the question on how did the Gutierrez family run and maintain a business on their property without issuance of a permit or

perchance a Certificate of Occupation (CofO)? To put things in perspective, according to the Texas Secretary of State Business Registration the family business, know as Gutierrez Disposal, Incorporated, filed for incorporation in 1971 as a domestic for-profit refuse corporation operating for fifty plus years. Per the filing, Gutierrez Disposal, Inc., listed their address as FM 3009 in Schertz, Texas. This information suggests that when the Gutierrez tract was annexed eight (8) years later the land use at the time might have been industrial or at best a business use, but not residential. Section 43.002 of the Texas Local Government Code permits a property owner to continue certain land use following annexation. Which might have been the case with Gutierrez Disposal. However, there are exception to this statue that says a municipality is not prohibited from imposing regulations relating to the storage and use of hazardous substances. The EPA defines hazardous items as materials that are harmful to people, plants or animals when dumping or disposing into the environment. House whole chemicals, paint, gasoline or paint thinner fall under this classification. With that in mind, at the time of annexation the City and the Gutierrez family could have and should have entered into an agreement zoning the property based on the existing industrial land use. Let us presume the land was not used as a business or industrially, then bringing the Gutierrez property into the corporate limits as R-1 Single Family Residential was appropriate. However, if the tract was not residential, then the action of the City rendered the property as an "Illegal non-conforming use" and municipalities may not knowingly cause a property to be illegally zoned.

Regardless of the land use associated with the Gutierrez tract at the time of annexation, it was stated earlier that the owners "... shall be bound by the acts, ordinances, resolutions and regulations of said City". In 1984 the EPA sighted the entire Gutierrez Deposal Service tract because "...they posed a potential risk to human health and/or the environment due to contamination by one or more hazardous waste" for the entire property. Meaning that the current R-1 Single Family zoning was not appropriate for the use on the property. So what would be the correct zoning for property being used as a dumping site that collected hazardous material? To understand the type of zoning needed to operate such a business, one must turn to Article 16 – Definitions of the UDC. There are three (3) classifications relating to "Recycling". The first is the Recycling Collection Center dealing with separating recoverable material and stored in on-site bins for shipment to others. However, the handling of hazardous material

is not included in this definition. Definition number two is a Recycling Collection Point referring to an incidental neighborhood drop-off point for temporary storage. One key point is the term "temporary". The Gutierrez business or site was used on a temporary bases. Finally, number three denotes a site but not a salvage yard for recoverable items that are collected, stored, recycled and processed to be used in production of goods. Again, there was no mention of recycling or handling of hazardous material with9n this definition. Of the three (3) uses denoted in Article 5, Section 21.5.8 – Permitted Use Table of the UDC, Recycle Collection Center best fits the use of the Gutierrez property suggesting that the zoning should at least be GB-2 General Business. Still, due the acceptance and storage of hazardous materials, as defined by the EPA, and the fact that this business operated year around, one of the manufacturing districts, either M-1 or M-2, would have been better suited for Gutierrez Disposal, Inc. operations. Exhibits 12 and 13, entitled Land Use Inventory implies, from a windshield survey taken and prepared for the City's 2002 Comprehensive Plan by Wilber Smith Associates, that the Gutierrez property was shown as and being used as industrial. It should also be noted that the entire property, as shown in a recent aerial photo (exhibit 14) might have been used in the operation of the business including the residential structure. This attached aerial show that the back area of the property housed eighteen-wheelers, front-in loaders, and other miscellaneous equipment. It appeared that the outbuilding or metal shed was not only a storage facility but might have been used as a mechanic's shop.

The above information leads one to ask why the City did not initially zone the Gutierrez tract as a business or industrial at the time of annexation if it was being used as a refuse site and not solely as a residence. Or due to the storage and use of hazardous substances, why didn't the City exercise its authority, under the Government Code, to assign the appropriate zoning to the property. If the City had rezoned the Gutierrez property to either a business or industrial classification there would be no need for a variance. This suggest that the City was complacent in it's duty by allowing the subject property and the owner's to operate "illegally". So to answer the question "Is the hardship the result of the applicant's own actions or intended for financial interest?" the answer is no. The hardship was and is the result of action or lack of action by another party.

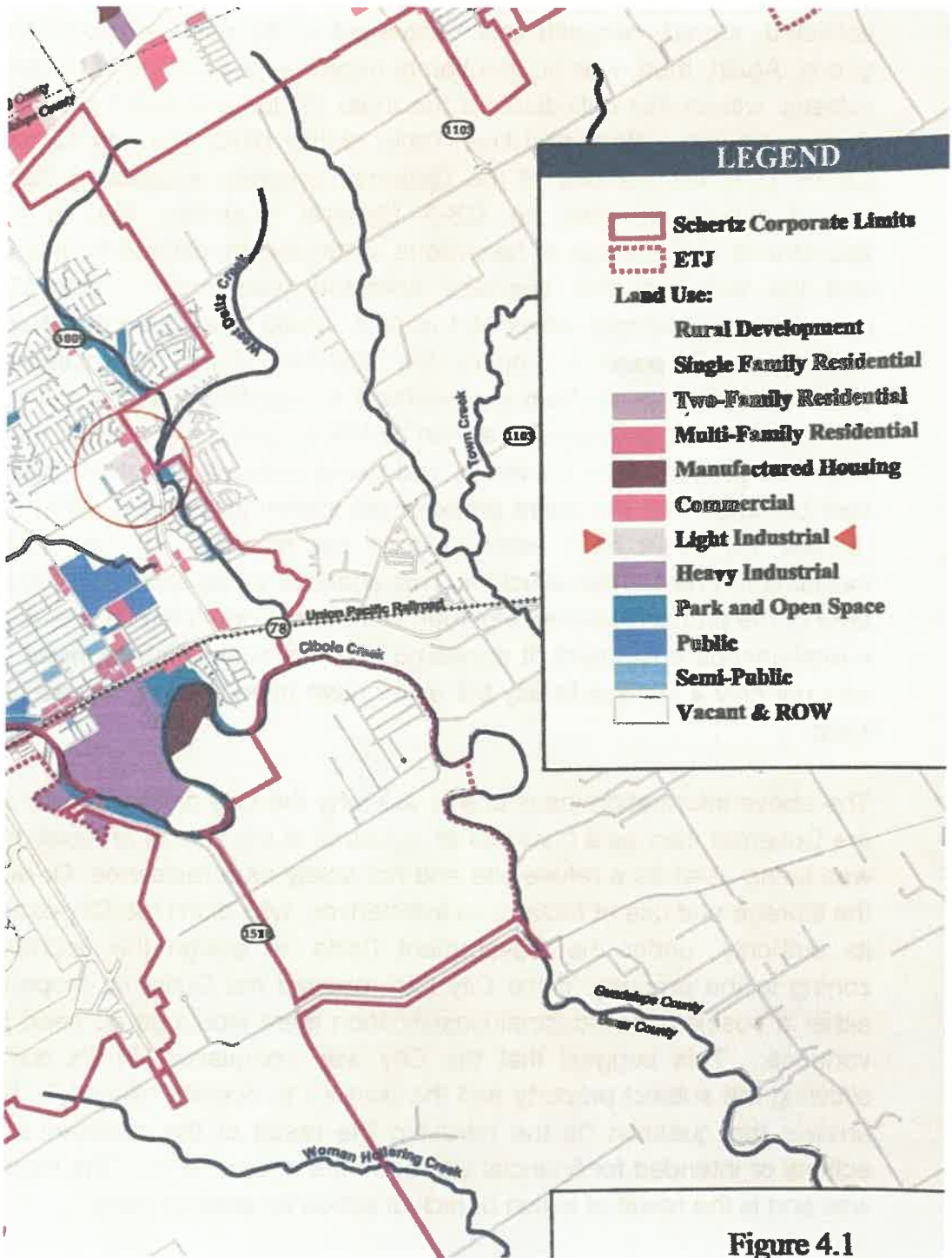


Figure 4.1

EXHIBIT 12

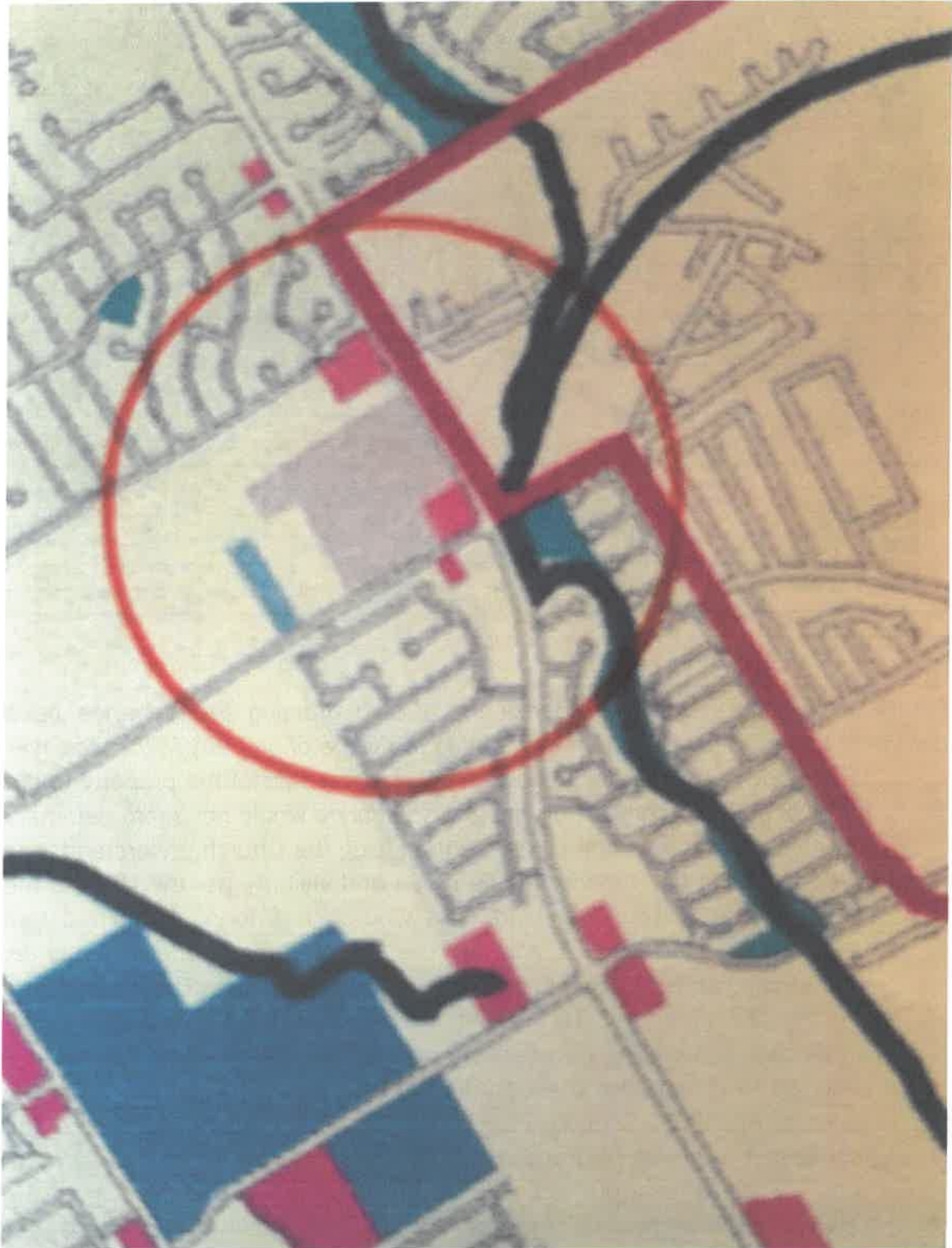


EXHIBIT 13

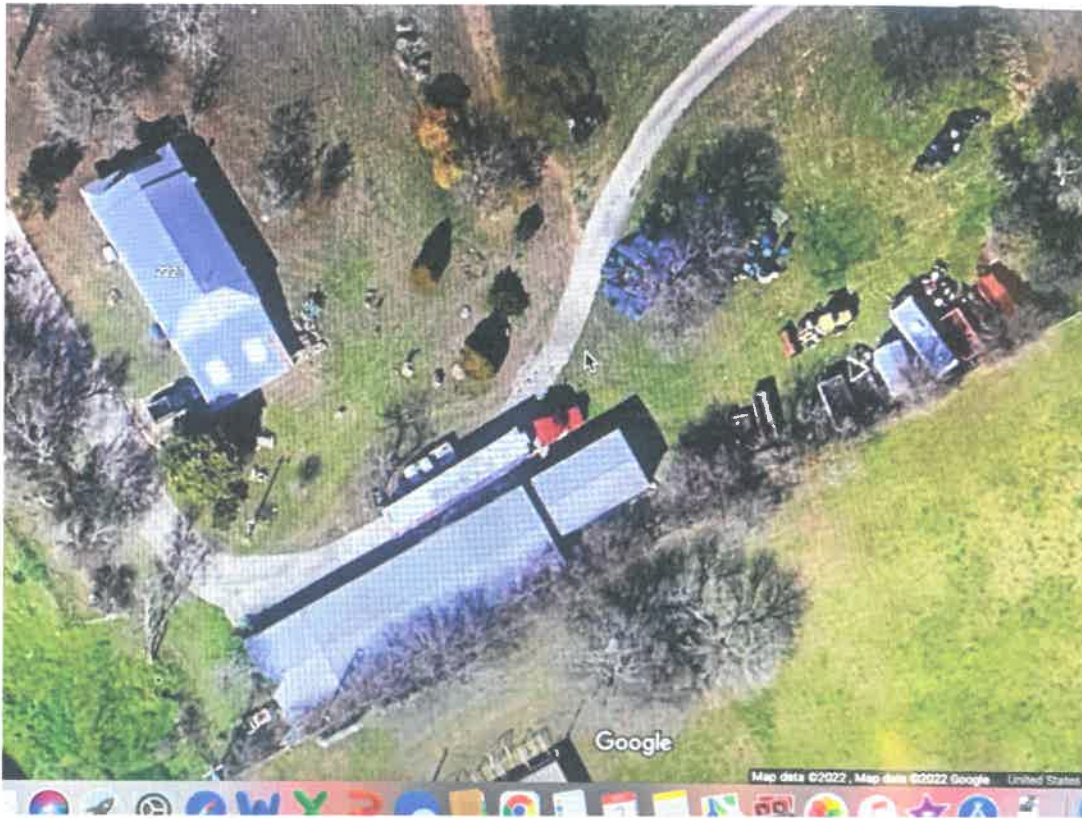


EXHIBIT 14

Finally, criteria four question speaks to: *“Would granting this variance be a detriment to the public welfare or injurious to the value of property in the vicinity?”*

When one considers the previous use and activities of the property to the north of the Church tract, granting this variance would not seem detrimental to either the public or the Gutierrez tract. But, the Church understands the need to soften the impact of light, noise and visibility per the UDC to the adjacent and surrounding land. The Church has long maintained that landscaping can and will achieve the same, if not better, results as constructing an eight (8) foot masonry fence between the Church property and the Gutierrez tract. To that end the Church has proposed to city staff enhanced landscaping between the two (2) properties. If the church was required to construct a masonry fence, the landscape guidelines as set forth in Article 9, Section 21.9.7 (G) of the UDC, would require the installation of seven (7) trees and thirty-eight (38) shrubs along the north property line. In lieu of the building a masonry fence and to mitigate the City’s concerns relating to light, noise, and view, the Church per conversations with staff is proposing, as shown on exhibit 15 - Landscape

Plan, in addition to the existing four (4) mesquite trees, to plant ten (10) more shade trees and fifty (50) shrubs along the common property line. The proposed trees along the north property line, at maturity, will reach a height of sixty (60) feet (52 feet taller than the required 8 foot fence) and each with a spread of five (5) feet providing for a solid barrier between the properties. Since the proposed trees are deciduous, the species of trees specified were selected so each loses it's leaves or adds new foliage at different times during the year so as to maintain visual, sound and illumination barrier between properties. The same is true with reference to the shrubs each with varying heights and densities in order to form a natural barrier. In all, as it relates to this project, the Church is committed to planting twenty (20) trees and fifty-six (56) shrubs.

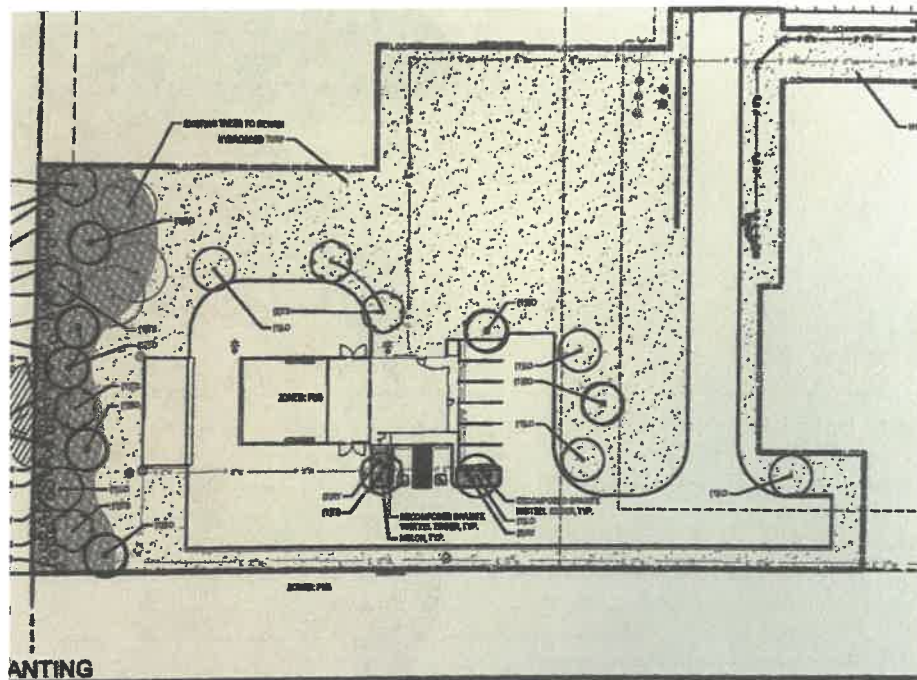


EXHIBIT 15

On behalf of the Church of the Good Shepherd thank you for considering our request for a variance to constructing an eight (8) foot masonry fence as required and outlined in Article 9, Section 21.9.8 (B) (3) - Screening and Fencing of UDC. We respectfully ask that the masonry fence variance submitted herein be granted but in lieu thereof the landscaping as shown on the proposed Landscape Plan be approved.

Harry Bennett
Building Committee Chair

