

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL CORRESPONDENCE
DEVELOPMENT SERVICES DEPARTMENT**

TO: Mayor and City Council

FROM: Florencio Peña, Director, Development Services Department
Emil R. Moncivais, AICP, AIA, Director, Planning Department

THROUGH: Terry M. Brechtel, City Manager

COPY: Christopher J. Brady, Assistant City Manager; Jelynn LeBlanc Burley, Assistant City Manager; File

SUBJECT: Request for waiver of requirements in the Limited Purpose Annexation

DATE: September 4, 2003

SUMMARY AND RECOMMENDATIONS

On August 22, 2003, a request for a waiver of the requirement not to issue building permits was received from Joseph and Maria Foley for the property at 11249 Apple White Rd.

This property is located in the Limited Purpose Annexation area. No permits are presently being issued for construction in this area pursuant to Ordinance No. 97173, which established interim development controls. This property is presently zoned DR (Development Reserve) which only allows residential uses. The request is to grant the waiver and allow the petitioner to submit plans for construction of a single-family residence and receive a building permit once approved. Granting of this waiver does not guarantee approval of the plans or issuance of a building permit.

Staff recommends approval of the waiver.

BACKGROUND INFORMATION

On June 26, 2003, City Council approved Ordinance 97875 adopting the Southside Initiative Community Plan, a comprehensive land use plan.

This area was annexed for limited purposes on January 5, 2003, and on February 6, 2003, City Council approved Ordinance No. 97173 establishing interim development controls in the limited annexation areas for a 180 day period pending consideration and adoption of a comprehensive plan and development regulations. Subsequently, City Council approved an extension of the Interim Development Controls for sixty (60) days. The Interim Development Controls will expire on October 4, 2003.

Section 7 of said ordinance states that City Council may waive the application of this ordinance to the development of the appellant's property if the Council finds:

- (a) That appellant has demonstrated that the proposed action, and the development it is a part of, by itself, cumulatively or through a resulting growth pattern, will not have an adverse effect on the areas annexed for limited purposes and that the development is not likely to impair the goals and objectives of the regulations being developed; or
- (b) That appellant has demonstrated that the appellant has:
 - (i) relied upon an act of the City of San Antonio or its agency,
 - (ii) in good faith,
 - (iii) to the applicant's detriment, and
 - (iv) that it would be inequitable to require the applicant to delay development during the time this ordinance is in effect; or
- (c) That the appellant has demonstrated with written evidence a vested right under Chapter 245 of the Texas Local Government Code, under the common law, or from and action of an authorized representative of the City of San Antonio.

POLICY ANALYSIS

Staff has reviewed the proposed development in regards to the criteria established for considering a waiver to the Interim Development Controls. Following is the analysis:

(a): The property is within the Agriculture Land Use Category of the approved Land Use Plan. Agriculture promotes preservation of crop agriculture, ranching, and related agri-business practices, and larger lot single-family developments. The proposal is to develop a single-family home upon a one (1) acre lot that was platted in 1987. Although the proposed flex zoning district requires a density of 1 lot per 25 acres, the land use category does not specify density for single-family developments. The proposed development is in keeping with the major goals and objectives of the Southside Initiative Community Plan.

(b): The City has not acted in any way that would be inequitable to require a delay to this development.

(c) The applicant has provided written documentation of an approved subdivision plat (1987), which is consistent with the criteria needed to provide evidence of a vested right under Chapter 245 of the Local Government Code.

The appellant has met two of the three criteria required in order to provide a waiver from the interim development controls, therefore staff recommends approval.

FISCAL IMPACT

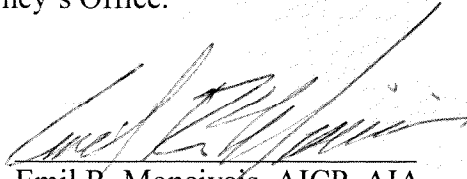
This ordinance has no financial impact upon the financial resources of the City other than normally associated with residential development.

COORDINATION

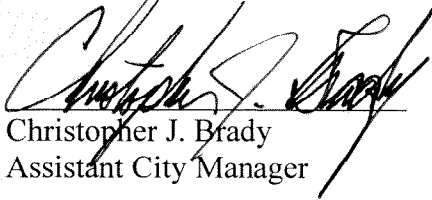
This ordinance was coordinated with the City Attorney's Office.



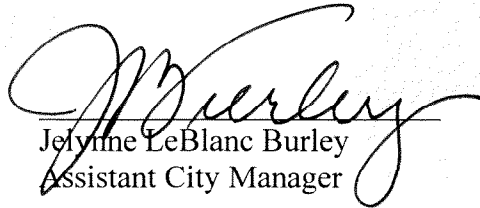
Florencio Peña
Director, Development Services Department



Emil R. Moncivais, AICP, AIA
Director, Planning Department



Christopher J. Brady
Assistant City Manager



Jerynne LeBlanc Burley
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager

REQUEST FOR WAIVER OF INTERIM DEVELOPMENT CONTROLS

A complete application package shall be submitted (MAILED OR HAND-DELIVERED) to the City Clerk's Office., 2nd floor, City Hall. The package shall consist of all items as indicated in Ordinance No. 97173. The application will be forwarded to the DEVELOPMENT SERVICES DEPARTMENT and PLANNING DEPARTMENT for review and recommendation.

NAME OF APPLICANT: Joseph & Maria Foley
ADDRESS: 11249 Applewhite Rd
PHONE NO: HOME (210) 628-4152 WORK (210) 456-2552 FAX ()
I, _____, the owner of the property to be considered, give _____ permission to submit this application.

SUBJECT PROPERTY DESCRIPTION

ADDRESS OR BLOCK NUMBER: 11249 Applewhite Rd
LEGAL DESCRIPTION: Lot 1 CB 4005 D
EXISTING PROPERTY USE or STATE NONE: Residential
PROPOSED USE & DESCRIPTION: Residential
ACREAGE AND/OR SQUARE FOOTAGE: 1.0110 Acre

TYPE OF WAIVER APPLICATION

(X) where applicable	Attach documentation demonstrating waiver request meets one or more of the following:
	(A) Appellant wishes to demonstrate that the proposed action, and the development it is a part of, by itself, cumulatively or through a resulting growth pattern, will not have an adverse effect on the areas annexed for limited purposes and that the development is not likely to impair the goals and objectives of the regulations.
	(B) Appellant wishes to demonstrate that the appellant has: <ul style="list-style-type: none"> (i) relied upon an act of the City of San Antonio or its agency, (ii) in good faith, (iii) to the applicant's detriment, and (iv) that it would be inequitable to require the applicant to delay development during the time this ordinance is in effect
X	(C) Appellant wishes to demonstrate with written evidence a vested right under Chapter 245 of the Texas Local Government Code, under the common law, or from an action of an authorized representative of the City of San Antonio.

Complete the following Type of permit to be requested:					
Building Permit Application:			<input checked="" type="checkbox"/> Yes		<input type="checkbox"/> No
MDP <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	PUD <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Zoning <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Plat <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Vested Rights Application:			<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No
Existing Master Development Plan <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	#:	Existing Planned Unit Development <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	#:	Existing Plat <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	#:
Tax Incrementing Financing Project:			<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> No
Number of Lots: 1		Acreage: 1.0110		Density: 1	
Linear Feet of Street:		<input type="checkbox"/> Private <input checked="" type="checkbox"/> Public		Gated <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

SIGNATURE OF APPLICANT AND DATE: <i>Maria Foley</i> 8-22-03

- **IT IS HIGHLY ENCOURAGED** that the applicant meet with the Development Services Department and /or Planning Departments prior to submittal of the application.
- **The following items are required to be submitted by the applicant to ensure appropriate review and analysis by staff:**
 - Completed Application Form
 - Letter of intent explaining how the request meets one or more of the items outlined in "Type of Waiver Application"
 - Previously approved Master Development Plans, and/or Plats, and/or other type of permits, if applicable.
 - Site plan, if applicable
- **Information provided on this application will be reviewed by the Development Services and Planning Departments for accuracy, investigation, and will provide a recommendation to City Council at the scheduled meeting.**
- **Department staff may call upon the appellant to provide additional information in order to make the appropriate recommendation.**
- **The deadline date for filing a completed application is 4:30 PM Friday, 10 days prior to the next available regularly scheduled City Council Meeting Date.**
- **The City Council meetings begin at 1:00 pm, Thursdays, in the City Council Chambers in the Municipal Plaza Building at 103 Main Plaza.**
- **It is important that the Applicants / Appellants or their representative be present at the City Council meeting to present their application and answer any questions from Council.**

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INTERIM DEVELOPMENT CONTROLS PROCESS

ORDINANCE APPLICATION:

- During the period of the Interim Development Controls, no application for zoning or rezoning of property located within the areas annexed for limited purposes shall be accepted by the City.
- During the period of the Interim Development Controls, no application for approval of a development plat or replat of property located within the areas annexed for limited purposes shall be accepted by the City.
- During the period of the Interim Development Controls, no application for approval of a development plan for property located within the areas annexed for limited purposes shall be accepted by the City.
- During the period of the Interim Development Controls, no new application for any other permit or license shall be accepted by the City, or, to the extent allowed by law, by an utility or agency of the City, that would alter the status quo or confer vested rights under any statute, ordinance or at common law.

EXCLUSIONS:

- Filing and receipt of an application for, or issuance of, a permit or license for the repair, modification or expansion of an existing structure provided that such does not alter the status quo to establish or constitute a new or different use of the property. Permits and licenses include, but are not limited to:
 - Electrical repair
 - Mechanical repair
 - Plumbing repair

WAIVER CONSIDERATION BY CITY COUNCIL:

- Once waiver has been submitted to City Clerk's Office, the waiver **shall be scheduled for consideration** at the next available regularly scheduled City Council meeting **no later than TEN (10) WORKING DAYS** after the date the waiver is received by the City Clerk.
- City Council may waive the application of the Interim Development Controls to the development of the appellant's property if the Council finds:
 - (A) Appellant has demonstrated that the proposed action, and the development it is a part of, by itself, cumulatively or through a resulting growth pattern, will not have an adverse effect on the areas annexed for limited purposes and that the development is not likely to impair the goals and objectives of the regulations; or
 - (B) Appellant has demonstrated that the appellant has:
 - (i) relied upon an act of the City of San Antonio or its agency,
 - (ii) in good faith,
 - (iii) to the applicant's detriment, and
 - (iv) that it would be inequitable to require the applicant to delay development during the time this ordinance is in effect; or
 - (C) Appellant has demonstrated with written evidence a vested right under Chapter 245 of the Texas Local Government Code, under the common law, or from an action of an authorized representative of the City of San Antonio.

APPROVAL OF WAIVER TO INTERIM DEVELOPMENT CONTROLS:

- The granting of an appeal by Council only allows the appellant to submit the application for the permit or license in question.
- The granting of an appeal does not constitute either an approval or any other ruling on the underlying permit or license.

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