

MEMO



Date: May 4, 2015

To: Zoning Board of Adjustment

RE: Decision letters on the appeal of ZBA Case 14-41 drafted by HR Wardlaw III and Samuel S. Allen

Attached are two decision letters drafted by HR Wardlaw III, the appellant, and Samuel S. Allen, counsel for the appellee, that have been reviewed by the City Attorney's office.

Both decision letters are identical, with the exception of an additional sentence by Mr. Allen. The last sentence reads as follows:

"This ruling does not modify any other portion of the decision of the Planning Director, including the determination that the subject property is zoned "Light Manufacturing (ML) District" and that the transloading and storage of products used in the oil and gas industry other than frac sand is a permitted use."

The Board may chose either letter, or elect to draft a decision letter with different verbiage. Whichever version is agreed upon by the Board will be signed by the Chair and made part of the record for the appeal.

**BEFORE THE ZONING BOARD OF ADJUSTMENT
OF THE CITY OF SAN ANGELO**

PROPERTY:

A 5.510-acre tract more or less occupying the J. Ebert Survey 680, Abstract 0172 and L. Vogel Survey 681 (#39 Orient Branch – City and SAISD), in San Angelo, Texas

ZONING BOARD OF ADJUSTMENT DECISION

On the 2nd day of February, 2015 came on to be heard the appeal by Jesse Martinez, et al alleging error in the written determination of the City of San Angelo Planning Director, Patrick Howard, dated October 10, 2014. The alleged error is the determination that the proposed silica frac sand transloading operation of Southwest Orient Properties, LLC is permitted in the Light Manufacturing (ML) Zoning District under the Zoning Ordinance of the City of San Angelo. The location of the proposed operation includes a 5.510 acre tract of land, more or less, out of J. Ebert Survey 680, Abstract 0172 and L. Vogel Survey 681 (#39 Orient Branch- City and SAISD) in San Angelo, Tom Green County, Texas, owned Southwest Orient Properties, LLC.

Appellant H.R. Wardlaw III appeared in person, and Appellee Southwest Orient Properties, LLC appeared through its Manager, Addison Lee Pfluger, and through its attorneys, Samuel S. Allen and Mindy Ward.

Appellants Jesse Martinez, Mark Thieman, Chris Cornell, and Dennis Grafa appeared by and through their attorney of record, Guy D. Choate, and announced their withdrawal from this appeal.

The Zoning Board of Adjustment having heard the evidence and arguments of the Parties and Counsel is of the opinion and finds (by 5 to 0, unanimous vote) that the zoning determination of Planning Director, Patrick Howard, set forth above should be reversed as hereinafter set out.

The Zoning Board of Adjustment in the exercise of its appellate authority pursuant to Local Government Code Section 211.010 (d), City Code Section 2.07.062, et. seq. and Zoning Ordinance Section 214 hereby reverses the written decision of the City of San Angelo Planning Director, dated October 10, 2014, insofar as it relates to the transloading and storage of silica frac sand on the above described 5.510 acre tract for the reason that the proposed silica frac sand operations are not permitted in the Light Manufacturing (ML) Zoning District of the City of San Angelo, Texas.

Signed this _____ day of April, 2015

Chairman of Zoning Board of Adjustment

Approved as to form:

H.R. Wardlaw III
Appellant

Samuel S. Allen
Counsel for Appellee

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Signed this _____ day of April, 2015

Chairman of Zoning Board of Adjustment

Approved as to form:

H.R. Wardlaw III
Appellant

Samuel S. Allen
Counsel for Appellee

STAFF REPORT



Meeting: May 4, 2015

To: Zoning Board of Adjustment

From: Patrick B. Howard, AICP
Director

Through: Rebeca A. Guerra, AICP, LEED-AP, CPD
Planning Manager

Staff Planner: Edward Vigil
Senior Planner

Case: ZBA15-05

Request: A request for approval of a Variance from Section 401(1) of the Zoning Ordinance to allow for a detached, accessory apartment in the Two-Family Residential (RS-2) District to be 1,300 square feet in size, in lieu of 900 square feet on the following property:

Location: 204 N. Washington Street

Legal

Description: Lot 7, Block 55, in the San Angelo Heights Addition

General Information

Zoning:	Two-Family Residential (RS-2)
Existing Land Use:	Existing single-family detached residence

Future Land Use: Neighborhood

Surrounding Zoning/Land Use:

North:	Two-Family Residential (RS-2)	Single-family detached residences
West:	Two-Family Residential (RS-2)	Single-family detached residences
South:	Two-Family Residential (RS-2)	Single-family detached residence
East:	Two-Family Residential (RS-2)	Single-family detached residences

District: CMD # 5 Elizabeth Grindstaff

Neighborhood: Central Neighborhood

Notification Required: Yes

Notifications Sent: 24

Responses in Favor: 0

Responses in Opposition: 0

Recommendation:

The Planning Division recommends APPROVAL of this request.

History and Background:

The property has been located within the City’s boundaries since at least 1940, and is zoned Two-family (RS-2) Residential District. This zoning district allows for up to two family dwellings on one lot. The existing single family home, a detached single story accessory apartment, and an attached carport were constructed in 1958. The accessory apartment and attached carport are located behind the existing single

family home on the same lot, and have access both from an alley and from Rio Grande Street. The existing accessory apartment and attached carport total 688 square feet.

On February 23, 2015, the applicant submitted an application for a Variance from Section 401(1) of the Zoning Ordinance to allow for a detached, accessory apartment to be 1,300 square feet in size. The Zoning Ordinance allows for accessory apartments to be constructed up to 900 square feet in size. The property owners plan to remodel the accessory apartment and attached carport by converting the carport into a living room and adding a second floor. The purpose of this request is to allow the applicants' aging and ill parents to relocate into the existing single family home with a live-in family member to provide 24 hour care. The owners of the property will then move into the new two story accessory apartment. They are proposing to repair the existing structure and add an additional 612 square feet, creating a two-story accessory apartment with a gross floor area of 1,300 square feet.

Section 401(1) of the Zoning Ordinance states, "The accessory apartment shall be clearly subordinate to the primary dwelling unit and an accessory apartment shall contain less than 900 square feet in total floor area. The accessory apartment shall comprise less than 50% of the total enclosed square footage of the primary structure."

The existing single family home is 1,320 square feet in size. By this rule, the accessory apartment could only be 660 square feet. The applicants' parents are aging, the dad is disabled, and the mother is battling cancer. The applicants feel that 660 square feet of living space is not adequate for a three member family to live in. The applicants would like to enclose the existing attached carport and add a second floor so that it may accommodate two bedrooms instead of only one, and create two bathrooms, a kitchen, and a living room. Again, the applicants feel this is the minimum amount of space they will need for themselves and their family.

With the existing single family home and the proposed two-story accessory apartment, the lot will have a total floor area of 2,620 square feet. The Zoning Ordinance allows two family uses to have a floor area ratio of 50% of the total lot size. This existing lot is 8,395 square feet. This would allow for 4,197 square feet of gross floor area on this particular lot. The applicant is asking for a combined 2,620 square feet of gross floor area which is 32% of the allowable 50%. Section 803 (C) (3) of the Zoning Ordinance defines FAR as: "the gross floor area of the building divided by the total area of the lot on which it is constructed or proposed." The applicant would be under the 50% requirement for Gross Floor Area for this specific lot. The applicants' proposal appears to comply with all other provisions of the Zoning Ordinance.

Analysis:

Section 207(F) of the Zoning Ordinance requires that an applicant for a Variance must show that a hardship exists and that the Zoning Board of Adjustment make an affirmative finding that each and every one of the following six (6) criteria are met.

- 1. Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial;**

The special circumstances in this case are that the proposed site and surrounding area are all zoned Two-Family Residential (RS-2) and several of the properties within this neighborhood have existing accessory apartments that range from 480 square feet, up to 1,300 square feet. This request is not merely financial, nor are the applicants requesting any type of financial relief. Another special circumstance is the health of the parents as they age and require additional assistance to attend doctor appointments and to perform their normal daily routines. The father is disabled and the mother is ill with cancer. The property owners wish for their parents to live as close as possible so that they may see to their needs.

- 2. These special circumstances are not the result of the actions of the applicant;**

The applicants' stated that when they purchased the property, the single family home and the existing accessory apartment with attached carport already existed. The applicants' would to be able to take care of their parents and want them nearby so they can provide the healthcare and assistance they will need as they get older. The existing structure which they intend to build the addition upon has a set foundation. It is the applicants' intent to follow this form when constructing the accessory apartment.

- 3. Literal interpretation and enforcement of the terms and provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship;**

A literal interpretation of the Zoning Ordinance would in this case deprive the applicant of rights enjoyed by its neighbors who have existing single story and two story accessory apartments. Many of the existing accessory apartments have floor areas that range from 480 square feet to 1,300 square feet. The applicants feel that if they were not able to build the addition, they would be deprived of being able to provide living accommodations, healthcare, and assistance to their aging and disabled parents. In addition, the existing zoning of the property allows for two family uses such as the proposed accessory

apartment, but limiting the apartment to a 660 square foot living area would be considered an undue hardship for this specific situation.

- 4. Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of this Zoning Ordinance and substantial justice;**

Staff conducted a site visit and found many properties with existing accessory apartments in their rear yard. In addition, the County Appraisal District shows several properties with accessory apartments that range from 480 square feet to 1,300 square feet. The proposed addition will maintain all requirements described in the Zoning Ordinance, Section 401(1) for accessory apartments including setback and height requirements. The proposed two story accessory apartment appears to “fit in” within the neighborhood and would not appear to impede the adjacent property owner’s visibility, or that of any other abutting owners’ since most of the adjacent property owners have accessory apartments or accessory structures in their side or rear yards.

- 5. Granting the variance will not adversely affect adjacent land in a material way;**

Staff does not anticipate this variance to have adverse effects on neighboring properties. As mentioned above, most of the adjacent properties have existing accessory apartments or accessory structures in their side or rear yards. In addition, this property is on a corner and would have access to the proposed accessory apartment from a 20-foot wide alley or Rio Grande Street. The proposed structure will be built and inspected according to the City’s Zoning Ordinance and Building Code requirements.

- 6. Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.**

Staff believes this variance appears to be consistent with all the purposes and intent of the Zoning Ordinance. The proposed accessory apartment also appears to comply in all other respects of the Zoning Ordinance.

Action Requested:

The action requested is for the Zoning Board of Adjustment to **APPROVE** Case ZBA15-05 and approve the Variance from Section 401(1) of the Zoning Ordinance to allow for a detached, accessory apartment in the Two-Family Residential (RS-2) District to be 1,300 square feet in size, in lieu of 900 square feet.

Effect of Variance:

Per Section 207(H) of the Zoning Ordinance:

1. Issuance of a Variance shall authorize only the particular variation which is approved in the Variance. A Variance shall run with the land.

2. Unless otherwise specified in the Variance, an application to commence construction of the improvements that were the subject of the Variance request must be applied for and approved within 12 months of the date of the approval of the Variance; otherwise, the Variance shall automatically become null and void. Permitted time frames do not change with successive owners. Upon written request, only one (1) extension from the 12-month period may be granted by the Planning Manager if it is determined that conditions of the site and immediately surrounding area are substantially unchanged.

Attachments:

- Aerial Map
- Future Land Use Map
- Zoning Map
- Notification Map
- Site Plan
- Application
- Applicants' Responses
- Site Photos



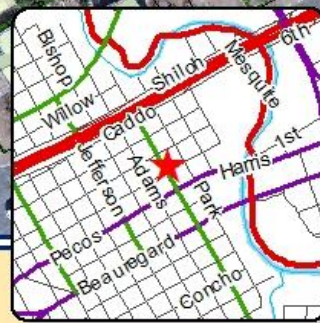
Zoning Case File

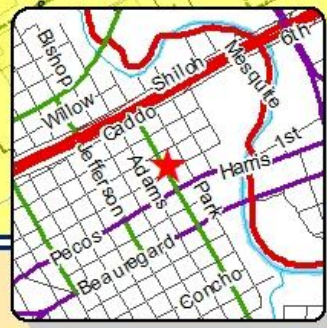
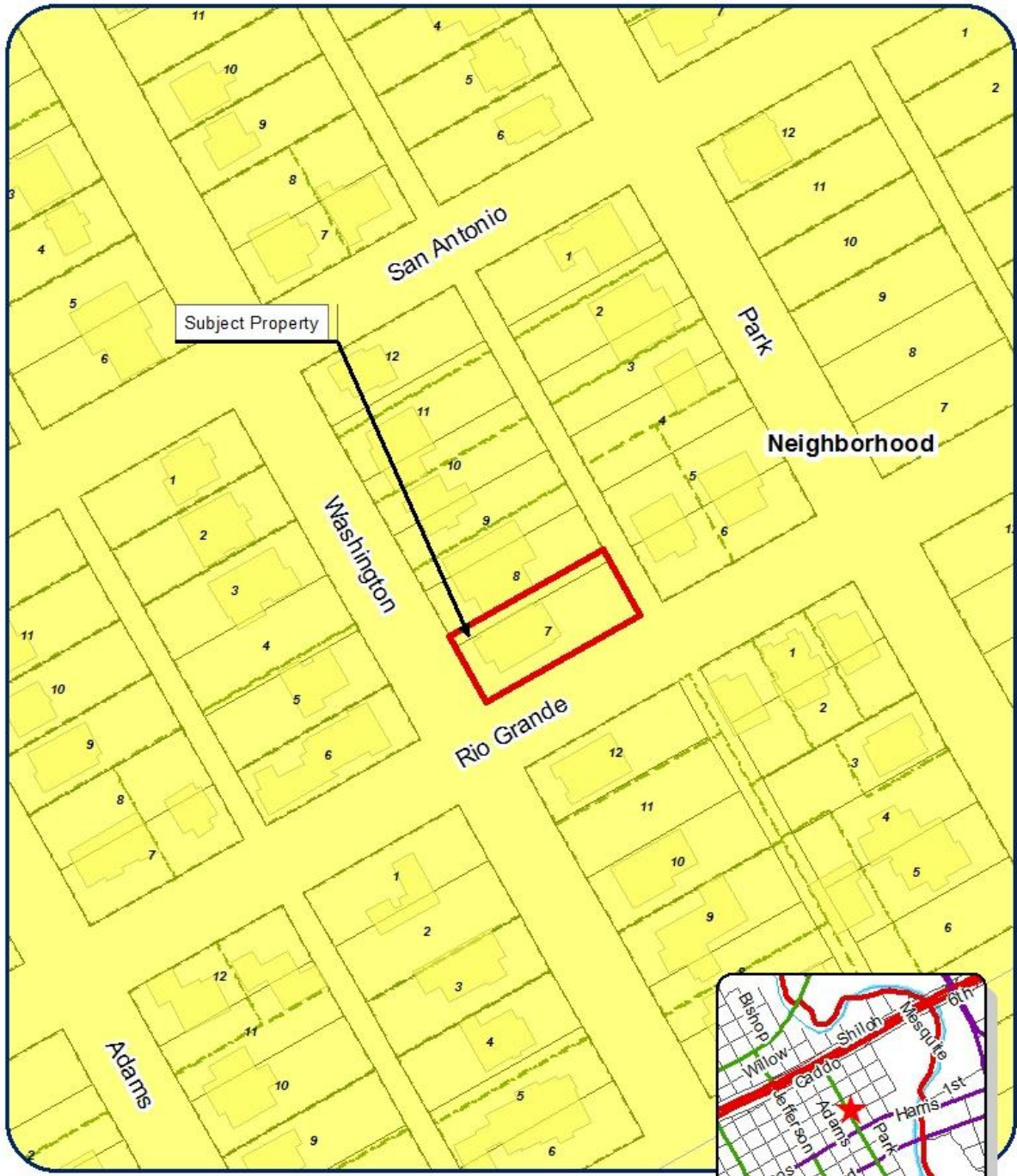
Case Z15-05

Council District: Elizabeth Grindstaff
 Neighborhood: Central
 Scale: 1" approx. = 100 ft
 Subject Property Legal Description(s): Lot 7 Block 55 Angelo Heights Addition

Legend

Subject Properties: —
 Current Zoning: **RS 1**
 Requested Zoning Change: **N/A**
 Vision: **Neighborhood**





Zoning Case File		Legend	
Case Z15-05		Subject Properties: —	
Council District: Elizabeth Grindstaff		Current Zoning: RS 1	
Neighborhood: Central		Requested Zoning Change: N/A	
Scale: 1" approx. = 100 ft		Vision: Neighborhood	
Subject Property Legal Description(s): Lot 7 Block 55 Angelo Heights Addition			





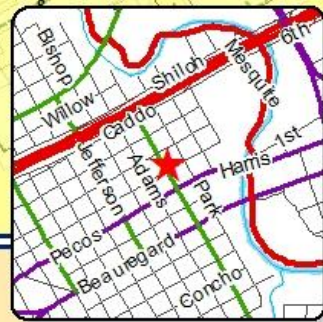
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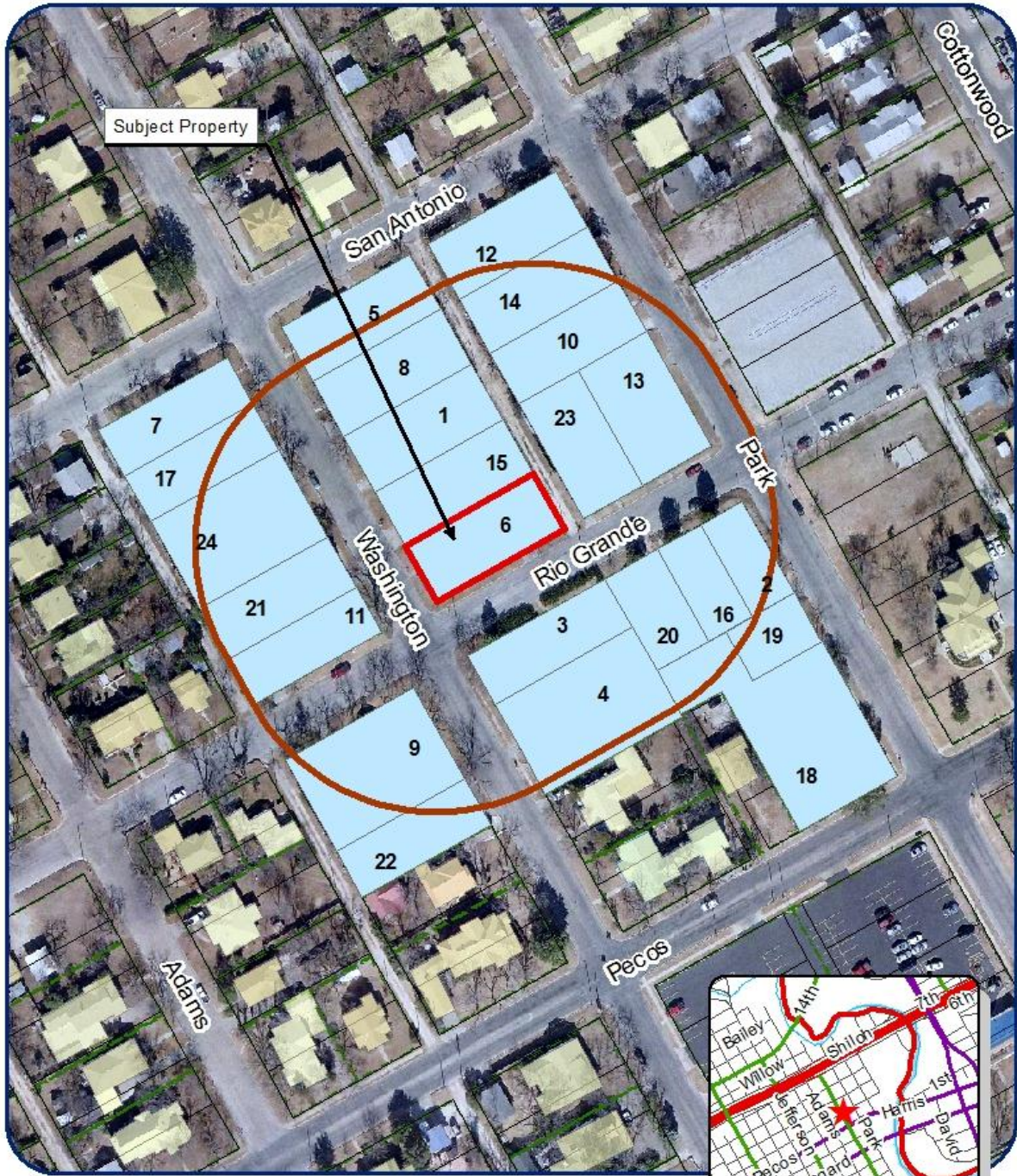
Case Z15-05

Council District: Elizabeth Grindstaff
 Neighborhood: Central
 Scale: 1" approx. = 100 ft
 Subject Property Legal Description(s): Lot 7 Block 55 Angelo Heights Addition

Legend

- Subject Properties: —
- Current Zoning: **RS 1**
- Requested Zoning Change: **N/A**
- Vision: **Neighborhood**





Zoning Case File

Case Z15-05

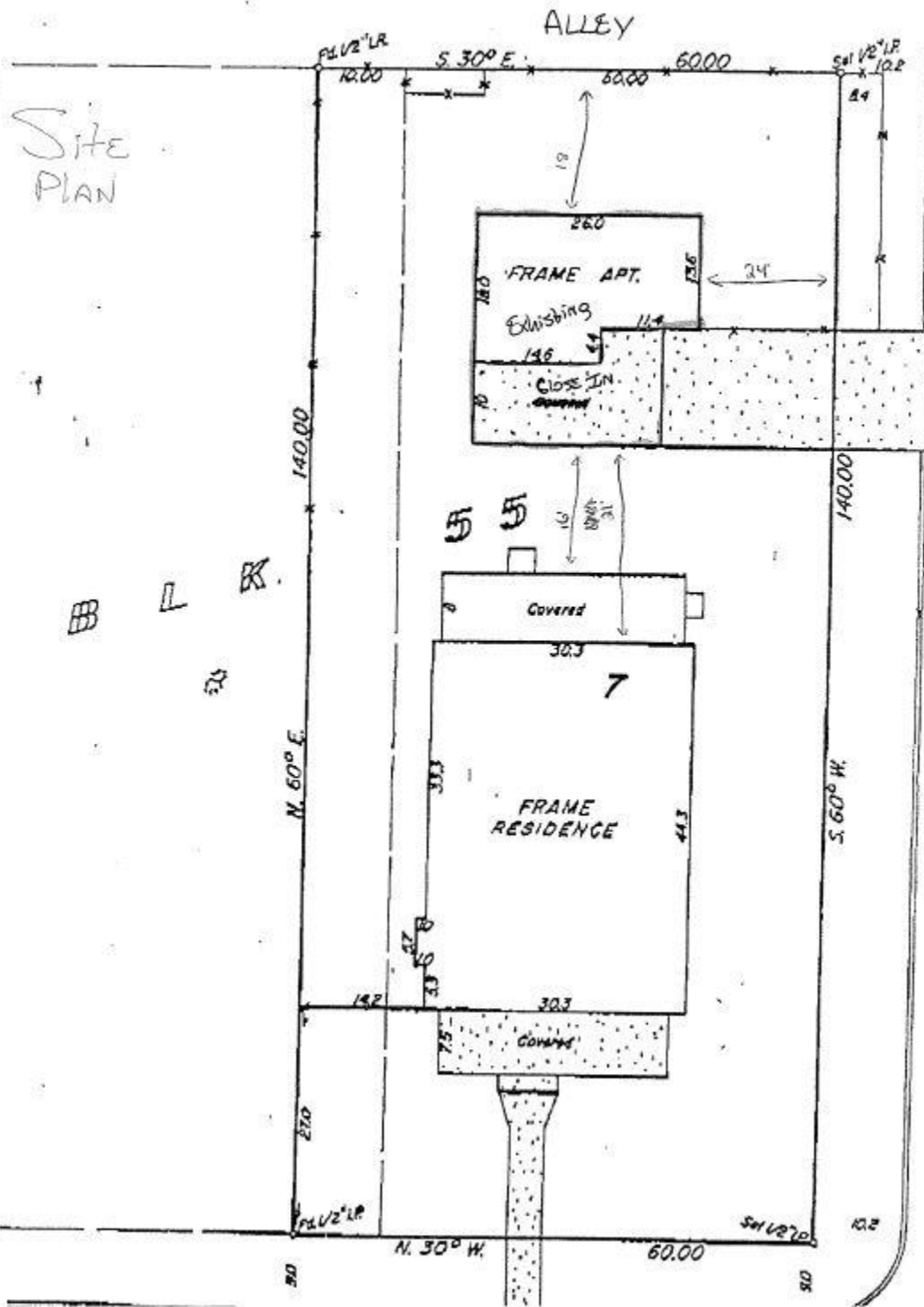
Council District: Elizabeth Grindstaff
 Neighborhood: Central
 Scale: 1" approx. = 120 ft
 Subject Property Legal Description(s): Lot 7 Block 55 Angelo Heights Addition

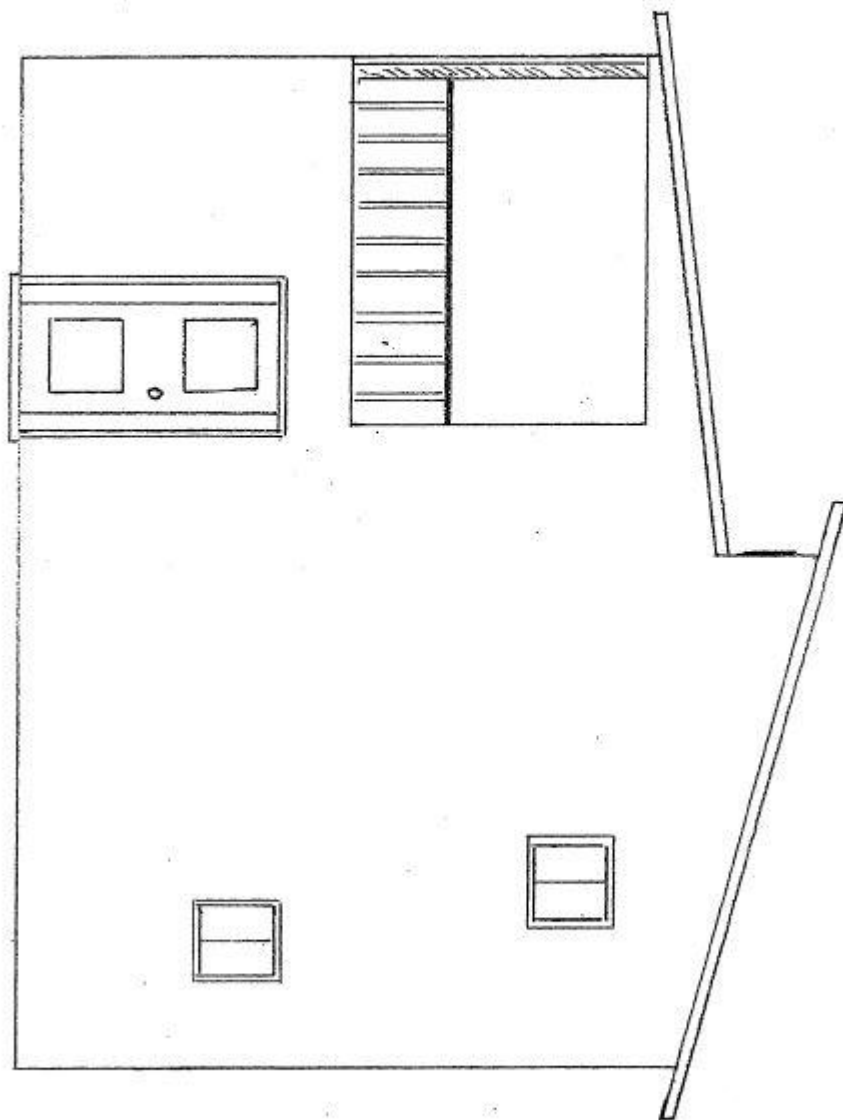
Legend

Subject Properties: —
 Current Zoning: **RS 1**
 Requested Zoning Change: **N/A**
 Vision: **Neighborhood**



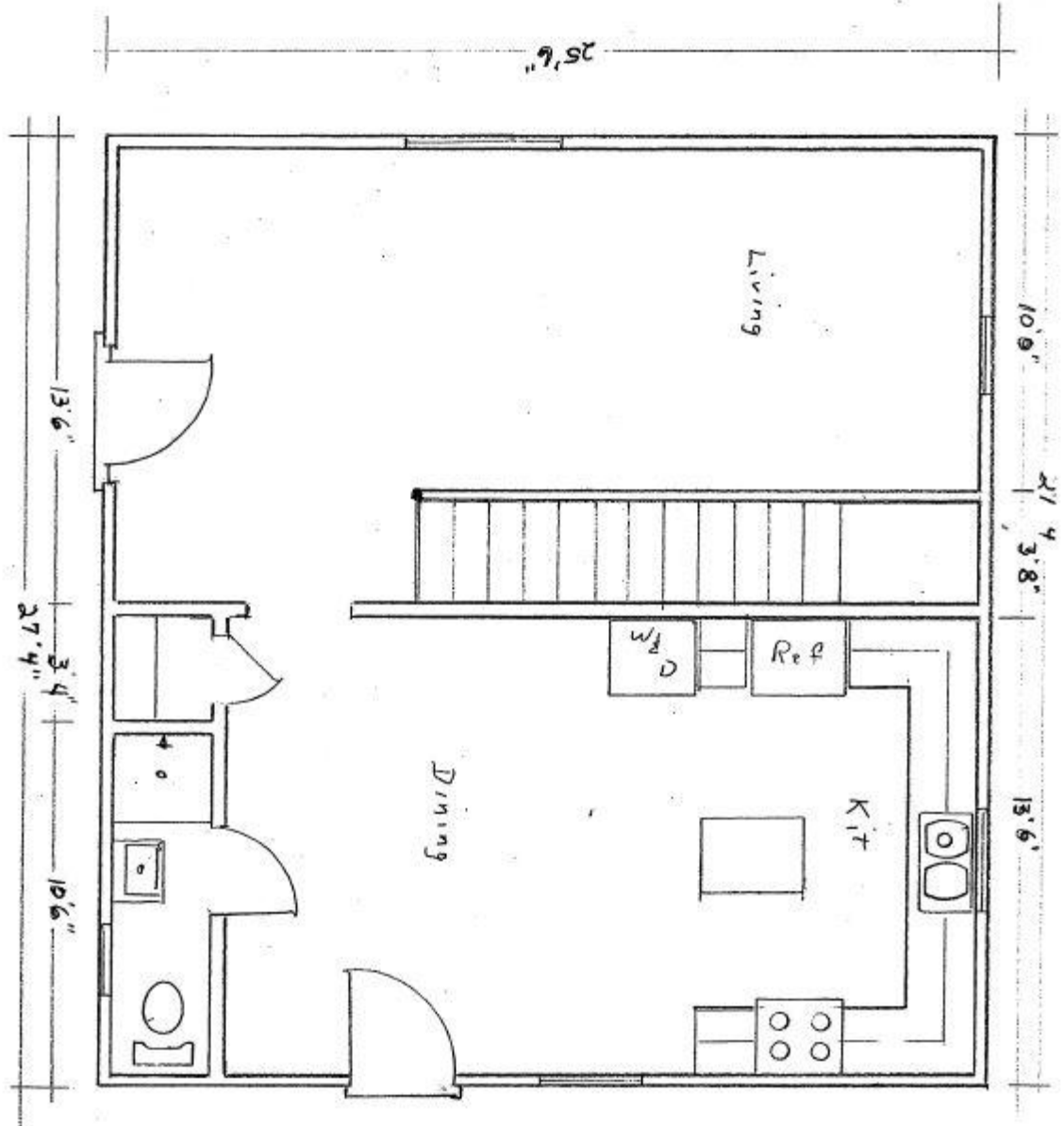
MARY NELL RUFF



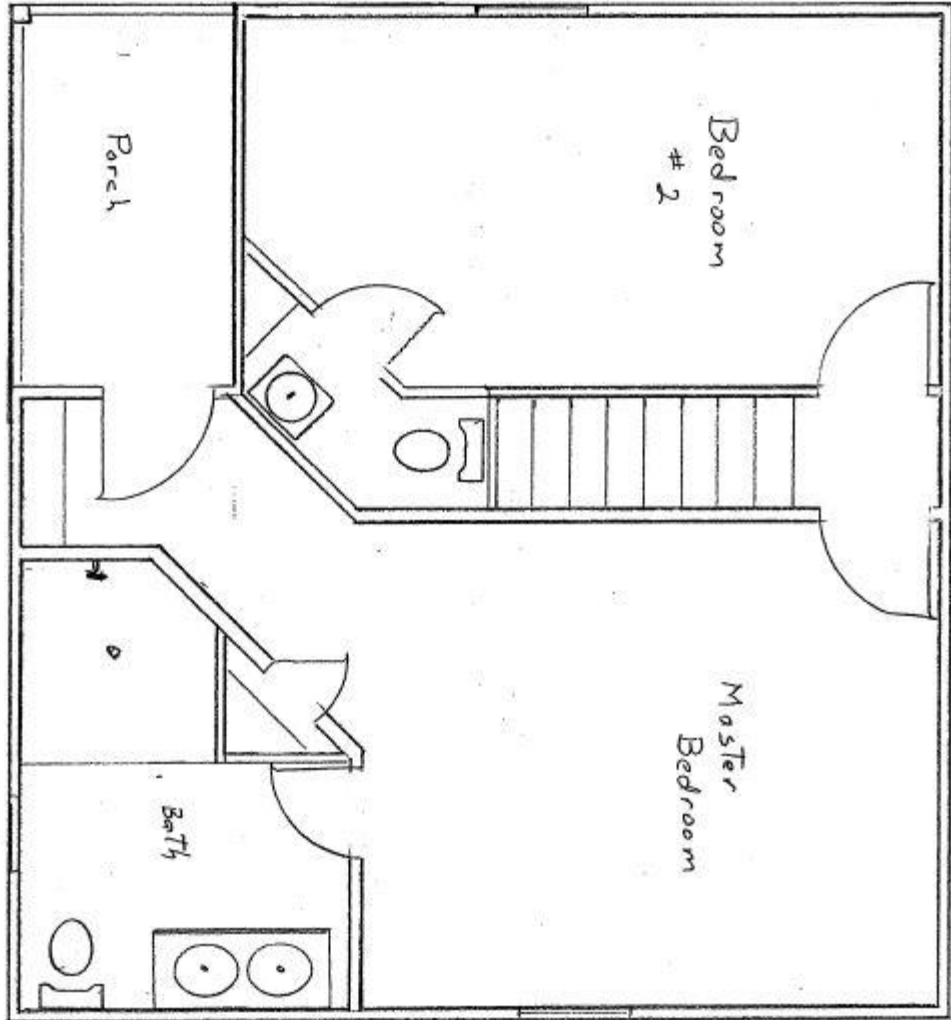


1st Floor

Scale
1/4" = 1'-0"



2nd
Floor



SITE PHOTOS

SUBJECT PROPERTY - FRONT



SUBJECT PROPERTY - SIDE



SUBJECT SIDE-REAR YARD EXISTING ACCESSORY APARTMENT AND ATTACHED GARAGE-VIEW FROM RIO GRANDE



REAR YARD VIEW OF ACCESSORY APARTMENT FROM ALLEY



**ADJACENT PROPERTIES WITH SIMILAR
ACCESSORY APARTMENTS**



1010 RIO GRANDE STREET



1005 & 1007 Rio Grande



1010 San Antonio Street & 303 N. Park Street



321 N. Bishop Street



403 N. Adams Street

City of San Angelo, Texas - Planning Division
Application for Variance from Zoning Regulations

Name of Applicant(s): Shae McClure

Owner Tenant Representative (Affidavit required)

Mailing Address: PO Box 62828 Telephone: 325-277-9742

City/State/Zip: SAN ANGELO, TX 76906 Fax/other: _____

Email Address: ~~shae@shae.com~~ DW outfitters@gmail.com

Subject Property Address and/or Location*:
204 N. Washington St.
SAN ANGELO TX 76901

Legal Description*:
Lot 7, Block 55, Angelo Heights Addition, SAN ANGELO, TOM GREEN COUNTY, TEXAS

Zoning: RS-2

Specific Description of Request*:
Add second floor to existing apartment where (1) the total ^{square footage} ~~footage~~ would exceed
900 sqft (2) be more than 50% of the primary structure. The existing site plan will NOT change.

* use attachment, if necessary

I/We the undersigned acknowledge that the information provided above is true and correct, and have read the statements below.


Signature

2/23/2015
Date

- I understand that the Zoning Board of Adjustment is bound by criteria established by state law; I further understand that my request is not guaranteed to be approved and that it constitutes an exception from regulations of the City of San Angelo;
- I/We the undersigned acknowledge that the information provided above is true and correct. I/We understand that any variation(s) authorized by the Zoning Board of Adjustment will require me/us to obtain a building permit for that stated variation within **twelve (12) months** of the approval date by the Board, unless the Board has specifically granted a longer period;
- I understand that all drawings, pictures, documents or other information used during your testimony to the Board must be kept in the permanent files of the Planning Division; and
- I understand that any appeal of a decision made by the Zoning Board of Adjustment must be presented to a court of record with a verified petition stating that the decision of the Zoning Board of Adjustment is illegal in whole or in part and specifying the grounds of the illegality. This petition for appeal must be presented within ten (10) days after the date the decision is filed in the board's office.

I assert that my request for variance meets all of the required criteria based on my explanation(s) below:

- Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial;

Explanation: The ground space and slab for apartment are already there. This apartment would be a two bedroom simple home to allow disabled parents immediate care with independence.

- These special circumstances are not the result of the actions of the applicant;

Explanation: The apartment was here when we bought the house. The disability was caused by ^{car} accident in the case of the father who is a paraplegic, and cancer in the case of mother.

- Literal interpretation and enforcement of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship;

Explanation: There are other homes in the area with apartments whose ground space alone equals the primary residence. Fitting ^{disabled} ~~normal~~ parents ^{+ 3 person family} into the primary residence will cause undue hardship.

- Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of the Zoning Ordinance and substantial justice;

Explanation: Growing the existing apartment up will allow for immediate family members to share space and utilities.

- Granting the variance will not adversely affect adjacent land in a material way; and

Explanation: There will be no difference in ^{existing} site plan. The added space will be where existing carport is. And then up not out.

- Granting the variance will be generally consistent with the purposes and intent of the Zoning Ordinance.

Explanation: RS-2 allows for accessory apartments.

OFFICE USE ONLY	
Case no.: ZBA <u>15 - 005</u>	Date of application: <u>MARCH 2, 2015</u>
Fully-dimensioned site plan: <input checked="" type="checkbox"/>	Nonrefundable fee: \$ <u>225.00</u> Date paid: <u>3.2.15</u>
Date to be heard by ZBA: <u>4/6</u>	
Received by: <u>Edward Vivil</u>	Receipt Number: _____
Ordinance section(s) from which variance(s) is/are requested: <u>SECTION 401</u>	

STAFF REPORT



Meeting: May 4, 2015

To: Zoning Board of Adjustment

From: Patrick B. Howard, AICP
Director

Through: Rebeca A. Guerra, AICP, LEED-AP, CPD
Planning Manager

Staff Planner: Edward Vigil
Senior Planner

Case: ZBA15-07

Request: Variance from Section 501 A. of the Zoning Ordinance to allow for a 10-foot front yard setback in lieu of the required 15 feet for a detached, single-family primary residence.

Location: 1942 Valleyview Drive, generally located approximately 100 feet east of the intersection of Silver Creek Pass and Valleyview Drive, San Angelo, Texas.

Legal Description: Lot 2A, in Section 24 of Amended Plat lots 2-11, on Block 53, of Bentwood Country Club Estates.

General Information

Zoning: RS-3 (Zero Lot Line, Twinhome and Residence) District

Future Land Use: Neighborhood

Existing Land Use: Existing single-family detached residences

Surrounding Zoning/Land Use:

North:	RS-1	Single-family detached residences
West:	RS-3	Single-family detached residences
South:	RS-3	Single-family detached residences
East:	RS-3	Single-family detached residences

District: CMD # 1 Rodney Fleming

Neighborhood: Country Club Neighborhood

Notification Required: Yes

Notifications Sent: 19

Responses in Favor: 2

Responses in Opposition: 0

Recommendation:

The Planning Division recommends **DENIAL** of a Variance from Section 501 A. of the Zoning Ordinance, to allow for a 10-foot front yard setback in lieu of 15 feet for a detached, single-family primary residence.

History and Background:

The property was annexed into the City on June 26, 1979 and is zoned RS-3 (Zero Lot Line, Twinhome and Residence) district. The existing house was constructed in 2015 with a front setback of 10 feet. Section 501.A of the Zoning Ordinance requires a front setback of 15 feet. The applicants stated they were unaware of the existing front yard setback requirement and relied upon the homebuilder to be aware of all Zoning requirements associated with building a new home. On March 28, 2015, the applicants submitted an application for a Variance to allow them to have a front setback of 10 feet, five feet less than what is required. The single-family residence complies with all other provisions of the Zoning Ordinance.

Analysis:

Section 207(F) of the Zoning Ordinance requires that an applicant for a Variance must show that a hardship exists and that the Zoning Board of Adjustment make an affirmative finding that each and every one of the following six (6) criteria are met.

- 1. Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial;**

Special circumstances do not exist on this particular property as the lot is not irregularly shaped, the contour of the land is similar to other lots, and the required front yard setbacks are not unique because they apply to all lots within this subdivision. However, the applicant states that there are special circumstances due to the home designer and builder misunderstanding the 10-foot underground utility easement for the 15-foot front yard setback requirement.

- 2. These special circumstances are not the result of the actions of the applicant;**

These circumstances were the direct result of the applicants' actions as they contracted to have the house built in its current location. The applicants state, however, that when the house was constructed in 2015, they were not aware of the front yard setback requirement and mistook the property line for the edge of pavement when calculating the correct setback.

- 3. Literal interpretation and enforcement of the terms and provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed**

by other land in the same zoning district, and would cause an unnecessary and undue hardship;

A literal interpretation and enforcement of the Zoning Ordinance would not deprive the applicant of any rights commonly enjoyed by other land owners. All homes built along this street meet the required front yard setback. Moreover, Staff could not find any similar types of variances granted in the immediate area. The applicants have indicated that the homebuilder and designer were not aware of the front yard building setback requirements and the resulting situation was made in error.

- 4. Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of this Zoning Ordinance and substantial justice;**

The subject property and the existing detached single-family residence comply with all other provisions of the Zoning Ordinance other than the required 15 feet front yard setback. Granting the variance is the minimum action that would make possible the use of this land and the existing structure and does not appear to be contrary to the public interest. Twenty-seven properties within a 200-foot radius of the subject site were notified on April 16, 2015. As of May 1, 2015 there have been two responses in favor and zero responses against the variance request.

- 5. Granting the variance will not adversely affect adjacent land in a material way;**

It does not appear that granting a variance from Section 501 A. of the Zoning Ordinance to allow for a 10-foot front yard setback in lieu of 15 feet for a detached, single-family primary structure would adversely affect adjacent land or property owners other than being closer to the street by 5 feet. None of the adjacent land owners have indicated that they object to the granting of this Variance request.

- 6. Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.**

The proposed Variance request to allow for a 10-foot front yard setback in lieu of 15 feet for a detached, single-family primary structure is not consistent with the purposes and intent of the Zoning Ordinance and although the existing single family primary structure does comply with all other provisions of the Zoning Ordinance, it does not currently meet the front yard setback.

Action Requested:

The action requested is for the Zoning Board of Adjustment to **DENY** Case ZBA15-07.

However, should the Board wish to approve the request, Staff recommends that one condition of approval be added in the event that house is ever destroyed or permanently damaged by 50% or more.

Condition of Approval:

1. If the nonconforming structure (principal residential structure) is destroyed or damaged by 50% or more, the nonconforming structure shall be rebuilt with the required 15-foot front yard setback as required by the Zoning Ordinance, Chapter 12, Section 501.

Effect of Variance:

Per Section 207(H) of the Zoning Ordinance:

2. Issuance of a Variance shall authorize only the particular variation which is approved in the Variance. A Variance shall run with the land.
3. Unless otherwise specified in the Variance, an application to commence construction of the improvements that were the subject of the Variance request must be applied for and approved within 12 months of the date of the approval of the Variance; otherwise, the Variance shall automatically become null and void. Permitted time frames do not change with successive owners. Upon written request, only one (1) extension from the 12-month period may be granted by the Planning Manager if it is determined that conditions of the site and immediately surrounding area are substantially unchanged.

Attachments:

Aerial Map
Future Land Use Map
Zoning Map
Notification Map
Notification Responses
Site Plan
Applicants' Responses
Site Photos



Zoning Case File

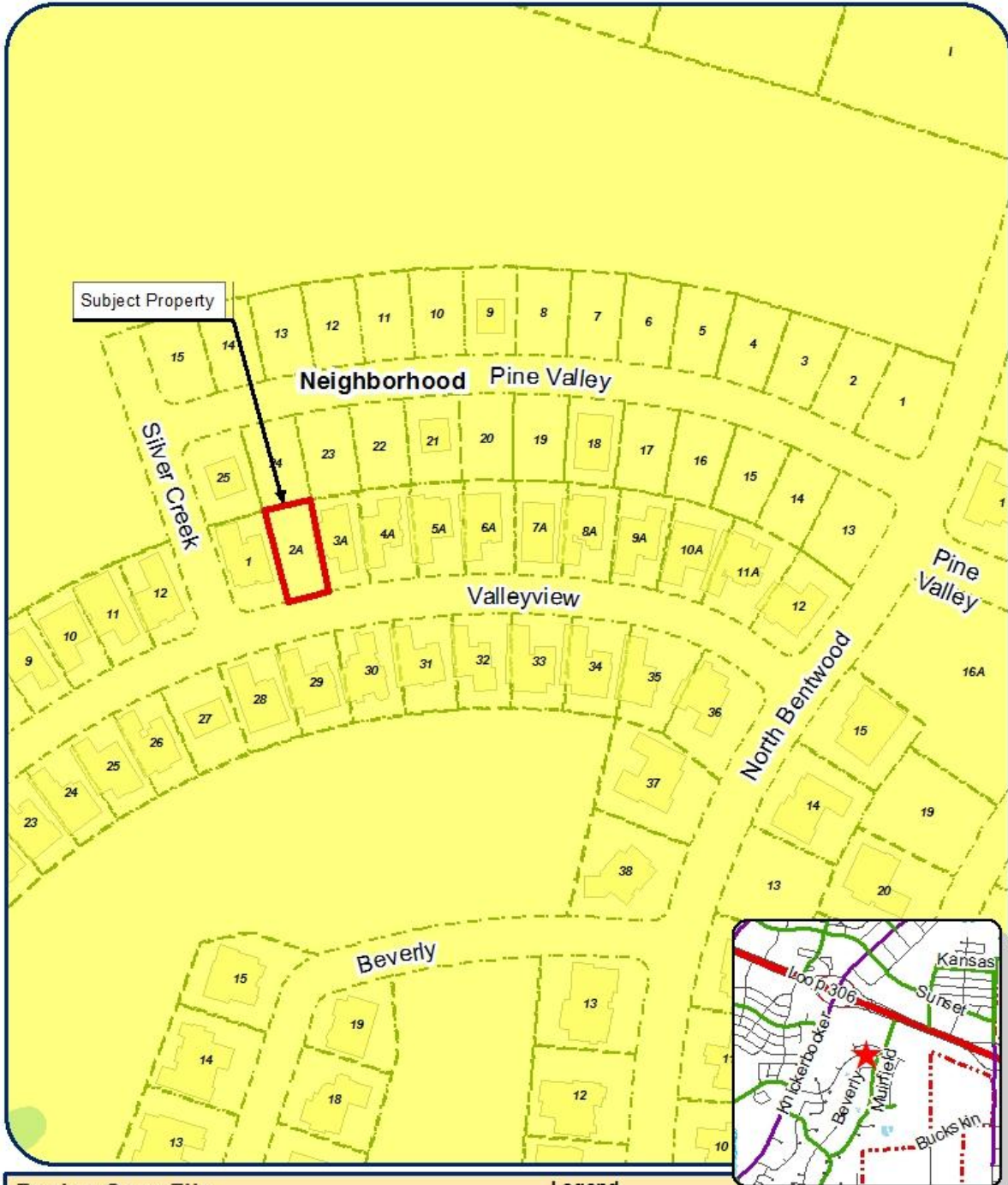
ZBA15-07

Council District #1 Rodney Fleming
 Neighborhood: Country Club
 Scale: 1" approx. = 160 ft
 Subject Property Legal Description(s): Lot 2A Blk 53 Sec 24 Bentwood CC Estates

Legend

Subject Properties: █
 Current Zoning: **RS-3**
 Requested Zoning Change: **N/A**
 Vision: **Neighborhood**





Zoning Case File

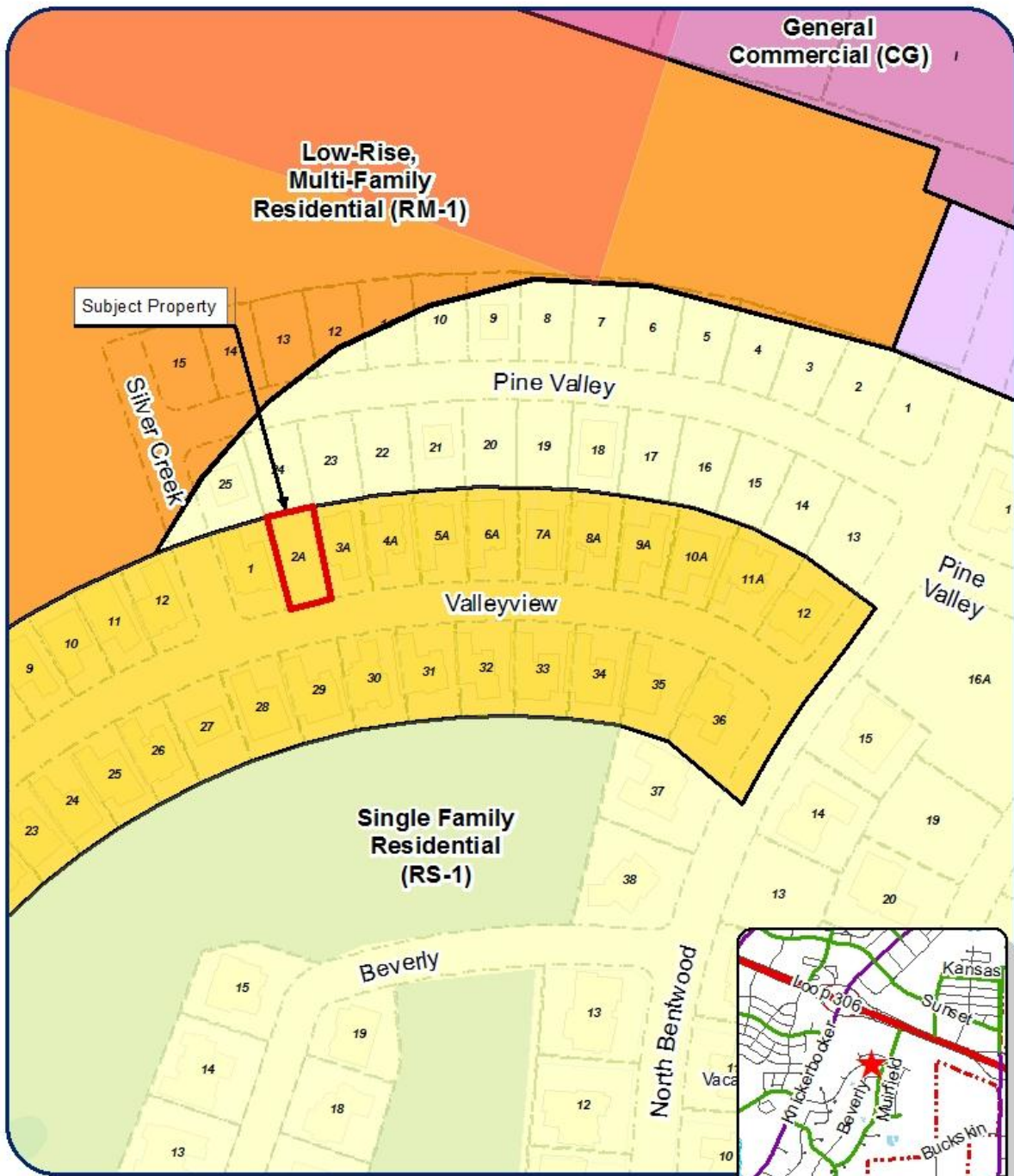
ZBA15-07

Council District #1 Rodney Fleming
 Neighborhood: Country Club
 Scale: 1" approx. = 160 ft
 Subject Property Legal Description(s): Lot 2A Blk 53 Sec 24 Bentwood CC Estates

Legend

Subject Properties: █
 Current Zoning: RS-3
 Requested Zoning Change: N/A
 Vision: Neighborhood





Zoning Case File

ZBA15-07

Council District #1 Rodney Flemng
 Neighborhood: Country Club
 Scale: 1" approx. = 160 ft
 Subject Property Legal Description(s): Lot 2A Blk 53 Sec 24 Bentwood CC Estates

Legend

Subject Properties: █
 Current Zoning: **RS-3**
 Requested Zoning Change: **N/A**
 Vision: **Neighborhood**





Zoning Case File

ZBA15-07

Council District #1: Rodney Fleming
 Neighborhood: Country Club
 Scale: 1" approx. = 481 ft
 Subject Property Legal Description(s): Lot 2A Blk 53 Sec 24 Bentwood CC Estates

Legend

Subject Properties: —
 Current Zoning: RS-3
 Requested Zoning Change: N/A
 Vision: Neighborhood



1942 Valleyview Drive

TO BE FORMALLY ON RECORD IN FAVOR OR AGAINST THIS REQUEST, YOU MAY ALSO FILL OUT THIS FORM, SIGN IT AND MAIL IT BACK TO THE PLANNING DIVISION AT 52 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903. THIS FORM CAN ALSO BE FAXED TO THE PLANNING DIVISION AT 325-657-4227.

() IN FAVOR () IN OPPOSITION

REASON(S) THE CITY ERRED FIRST OF ALL BY
NOT REQUIRING THE SLAB (AT THE TIME OF
INSPECTION) TO BE 20 FEET, THE REQUIRED
MINIMUM FRONTYARD SETBACK.

IF YOU ARE REQUESTING AN ADDITIONAL
TEN FEET, I DO OPPOSE.

IF YOU ARE REQUESTING THE 10 FEET TO BRING
THE STRUCTURE IN COMPLIANCE I DO NOT OPPOSE.

I DO REQUEST YOU REQUIRE THE GUTTER ON THE
WEST SIDE OF THE HOUSE AND REPAIR THE NEIGHBORS
YARD.

NAME: WILLIAM HENDON BOND

ADDRESS: 2002 VALLEYVIEW

SAN ANGELO, TX 76904

SIGNATURE: W Bond

If you have any questions about these proceedings, please call the City of San Angelo's Planning Division at telephone number 325-657-4210. The Planning Division staff may also be reached at fax number 325-657-4227.

1942 Valleyview Drive

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IN FAVOR () IN OPPOSITION

REASON(S) Bentwood Estates Has no problem
with This Variance

NAME:

Kevin Collins

ADDRESS:

2111 Clubhouse Lane

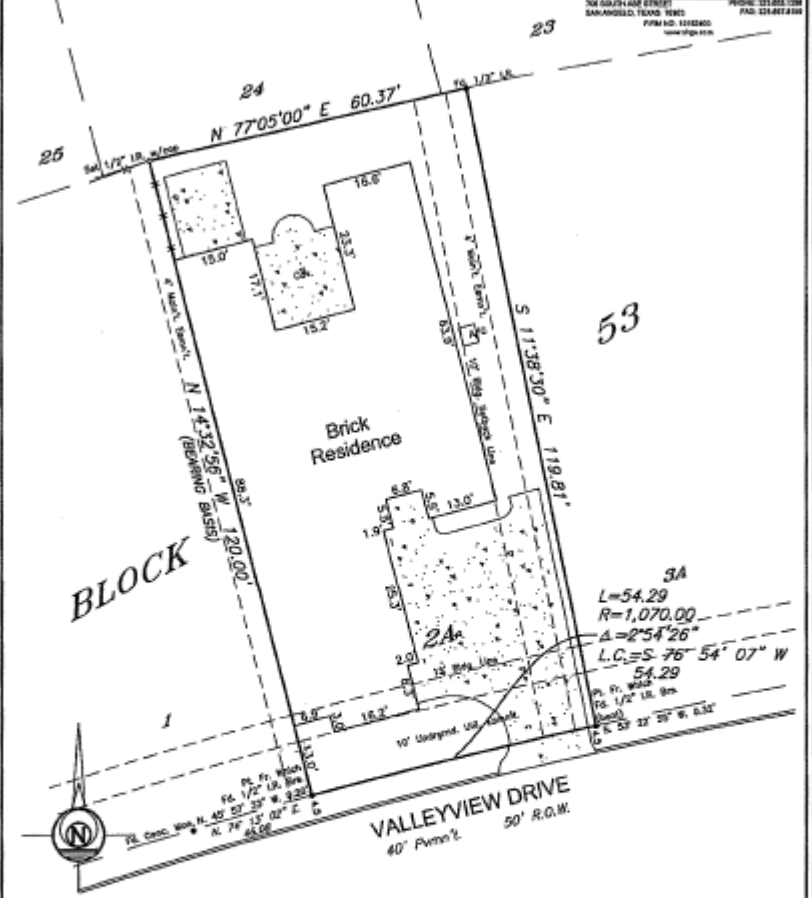
SIGNATURE:



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THIS SURVEY IS PROTECTED BY ALL APPLICABLE STATE AND FEDERAL COPYRIGHT LAWS. THIS SURVEY IS VOID WITHOUT AN ORIGINAL SIGNATURE AND SEAL.

SKG ENGINEERING, LLC
 SURVEYING • ENVIRONMENTAL • LANDSCAPE
 200 GULFVIEW STREET SUITE 111 SAN ANGELO, TEXAS 76901
 PHONE: 325.832.1238 FAX: 325.832.1239
 P.O. BOX 1032400 SAN ANGELO, TEXAS 76910-0240
 www.skg.com



SCALE: 1"= 20'
 BEARINGS ARE BASED UPON THE PLAT OF RECORD.

1942 VALLEYVIEW DRIVE
 PLAT SHOWING A SURVEY OF LOT 2A, AMENDED PLAT OF LOTS 2-11, BLOCK 53, SECTION 24, BENTWOOD COUNTRY CLUB ESTATES, CITY OF SAN ANGELO, TOM GREEN COUNTY, TEXAS, ACCORDING TO THE AMENDED PLAT RECORDED IN CABINET G, SLIDE 116, PLAT RECORDS, TOM GREEN COUNTY, TEXAS.

Certification is hereby made that a survey was made on the ground under my supervision according to the minimum standards of the Professional Land Surveying Practices Act and the General Rules of Procedures and Practices set forth by the Texas Board of Professional Land Surveying.

This survey is prepared for the exclusive use and benefit of the parties listed. Use of this survey by a third party may not be transferred or assigned. Not valid without the original signature and seal of a Registered Professional Land Surveyor.

Surveyed on the ground December 18, 2014.

Russell T. Gully
 RUSSELL T. GULLY
 REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5638



FIRST TITLE COMPANY OF NO. 201412019

14-S-1829

I assert that my request for variance meets all of the required criteria based on my explanation(s) below:

- Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial;

Explanation: ~~THE~~ ~~BY~~ ~~THERE~~ ~~ARE~~ ~~THE~~ ~~SPECIAL~~ ~~CIRCUMSTANCES~~
THAT EXIST. THIS WAS AN ACCIDENT ON THE DESIGNER + BUILDERS PART.

- These special circumstances are not the result of the actions of the applicant;

Explanation: WHEN THE HOUSE WAS DESIGNED BY THE HOMEOWNER, THEY THOUGHT
THE BUILDING-LINE WAS 15' FROM THE STREET, NOT FROM THE FRONT
LOT LINE.

- Literal interpretation and enforcement of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship;

Explanation: THE SETBACKS ON THIS LOT WERE MERELY MISUNDERSTOOD + THE HOME
WAS BUILT 5' TOO CLOSE TO THE STREET. THIS WAS A MISTAKE (AHEHT TOO LATE).

- Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of the Zoning Ordinance and substantial justice;

Explanation: GRANTING THE 5' VARIANCE WILL ALLOW THE BUYER TO
CLOSE ON THE PROPERTY AND SHOULD NOT AFFECT ANY SPIRIT OF
THE ZONING ORDINANCE.

- Granting the variance will not adversely affect adjacent land in a material way; and

Explanation: ~~THIS~~ THIS SHOULD NOT INHIBIT ANY ADJACENT LAND
IN ANY MATERIAL WAY SIMPLY BECAUSE IT IS 5 FEET CLOSER TO
THE STREET.

- Granting the variance will be generally consistent with the purposes and intent of the Zoning Ordinance.

Explanation: THE HOME IS WITHIN SIDE BUILDING REQUIREMENTS,
WHICH IS MOST IMPORTANT IN THESE CIRCUMSTANCES.

SITE PHOTOS



**Division 3. Zoning Board of Adjustment
-PROPOSED TEXT AMENDMENT-**

Sec. 2.07.061 Organization and procedure

(a) ~~There shall be a zoning board of adjustment (board) that consists of five (5) members to be appointed by the city council. The city council may also appoint four (4) alternate board members when requested to do so by the mayor or city manager. The following rules shall apply to such board:~~

~~(1) The term of each member shall be two (2) years.~~

~~(2) The city council may remove a board member for cause on a written charge after a public hearing.~~

~~(3) A vacancy on the board shall be filled for the unexpired term.~~

~~(4) No board member shall serve more than three (3) consecutive two (2) year terms.~~

There shall be a zoning board of adjustment that consists of seven (7) regular board member seats and two alternate board member seats to be filled by nomination and appointment by the city council as follows:

(1) One (1) regular board member seat shall be designated to be filled by a nomination of the mayor

(2) Two (2) alternate board member seats shall be designated to be filled by nominations of the mayor;

(3) Each of six regular board member seats shall be designated for a single member district one through six respectively, to be filled by nomination of the council member representing the designated single member district;

(4) The appointment of any regular board member or alternate board member nominated pursuant to this section shall be made by vote of the City Council. Should any nominee not secure at least four affirmative votes of council members, the mayor or single member district city council member having made the nomination shall make a new nomination for vote of the council.

(5) The City Clerk shall maintain a record of board members that includes the board member's designation as regular board member or as alternate board member, whether the nomination is by mayor or single member district council member, including the designated single member district, the date of appointment by city council, and the date of expiration of the term of appointment.

- (6) For purposes of expanding the regular board membership from five regular members to seven regular members after the effective date of this ordinance, the City Clerk shall, based on the record of current appointments to the board, designate each current regular member of the board as representative of mayor or specific single council member district. Each of the two additional regular board member seats shall be designated by the City Clerk for nomination by the mayor or specific single member district council member so as to provide the mayor and each single member district council member with a designated regular board member seat and the right to make nominations for vacancies or expired terms for such designated regular board member seat.
- (b) Each case before the zoning board of adjustment must be heard by at least ~~(4) four~~ five (5) members.
- (c) The board shall adopt rules in accordance with ~~any ordinance adopted under subchapter A of chapter 211 of the~~ Texas Local Government Code.
- (1) Meetings of the board are held at the call of the chairman and at other times as determined by the board.
- (2) The chairman, or acting chairman, may administer oaths and compel the attendance of witnesses.
- (3) All meetings of the board shall be open to the public.
- (d) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the board's office and are public records.
- (e) Any member who fails to attend at least two-thirds (2/3) of the regular meetings in any one-year period shall be deemed to have automatically resigned from office, unless such absences were excused as set forth: the absence shall be termed "excused" by notification to the board secretary no later than 12:00 noon on the Friday before the regularly scheduled zoning board of adjustment meeting. The board secretary shall make periodic attendance reports to the zoning board of adjustment, and a replacement shall be appointed in the manner provided above, for any zoning board of adjustment member who has resigned.
- (f) The following rules shall apply to the zoning board of adjustment:
- (1) The term of each board member or alternate board member shall be two (2) years.

- (2) The city council may remove a regular board member or alternate board member for cause on a written charge after a public hearing.
- (3) A vacancy on the board in a regular board member seat or in an alternate board member seat shall be filled for the unexpired term in the same manner as provided for nomination and appointment of a member to fill such member seat.

Sec. 2.07.062 Authority

(a) The zoning board of adjustment may:

- (1) Hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this division or the zoning ordinance.
- (2) Hear and decide special exceptions to the terms of the zoning ordinance when the ordinance requires the board to do so.
- (3) Authorize in specific cases, and subject to appropriate conditions and safeguards, a variance from the terms of the zoning ordinance, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the regulation is observed and substantial justice is done.

(b) In exercising its authority under subsection (a), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for the purpose of the board has the same authority as the administrative official.

(c) The concurring vote of four members of the board is necessary to:

- (1) Reverse an order, requirement, decision, or determination of an administrative official;
- (2) Decide in favor of any applicant on a matter on which the board is required to pass under the zoning ordinance; or
- (3) Authorize a variation from the terms of the zoning ordinance.

Sec. 2.07.063 Appeal to the board

(a) Any of the following persons may appeal to the zoning board of adjustment a decision made by an administrative official:

- (1) A person aggrieved by the decision; or
- (2) Any officer, department, board, or bureau of the city affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed within ten (10) days from the decision of the administrative official. Within ten (10) days of receiving the notice, the official from whom the appeal is taken shall transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within a reasonable time.

(e) Prior to the public hearing in which the zoning board of adjustment shall hear an appeal, the following actions shall be made by the board at a separate public hearing:

- (1) Designating of the parties in interest;
- (2) Setting of a reasonable time and date for the appeal hearing;
- (3) Giving of due notice of the appeal hearing to parties in interest;
- (4) Giving of public notice of the appeal hearing; and
- (5) Establishing of protocol for conducting the appeal hearing.

(f) The public hearing for any appeal shall follow the following procedural order:

- (1) Identification of Parties
- (2) Identification of documents constituting the record on appeal to the Board
- (3) Identification and admission as evidence of pre-filed documents and any additional documents offered into evidence
- (4) Presentation by City Staff
- (5) Presentations by identified Parties in Interest
- (6) Public comment
- (7) Rebuttals by identified Parties in Interest

- (8) Discussion and deliberation by Board members
- (9) Motion and decision to affirm, modify, or reverse the decision of the administrative official, with supporting findings of fact applicable under the Zoning Ordinance

Sec. 2.07.064 Judicial review of board decision

(a) Any of the following persons may present to a court of record a verified petition stating that the decision of the zoning board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

- (1) A person aggrieved by a decision of the board;
- (2) A taxpayer; or
- (3) An officer, department, board, or bureau of the city.

(b) The petition must be presented within ten (10) days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after ten (10) days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, both [but] on application and after notice to the board, the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

Sec. 2.07.065 Fee

(a) No application to the zoning board of adjustment shall be processed unless such application is accompanied with the appropriate processing fee as established by the city council.

(b) In the case of a second hearing, the fee, or a portion thereof, may be waived by the board.

(1959 Code, sec. 2-1-5; 1996 Code, sec. 2.3205)

Sec. 2.07.066 Notification of property owners

(a) The zoning board of adjustment shall mail notices of each hearing to the petitioner and to the owners of property lying within two hundred feet (200') of any point of the lot, or portion thereof, on which a variance or special exception is desired, and to all other persons deemed by the board to be affected thereby, such owners and persons being determined according to the current tax rolls of the Tom Green County tax appraisal district.

(b) Written notice of the public hearing shall be sent within not less than ten (10) days before any such hearing is held. Depositing such written notification in the mail shall be deemed sufficient compliance.

Sec. 2.07.067 Second hearing

(a) An appeal of a denial by the zoning board of adjustment shall not be allowed on the same piece of property prior to the expiration of six months from a ruling of the board, unless other property in the same zoned area shall have been, within such six (6) month period, altered or changed by a ruling of the zoning board of adjustment.

(b) Such circumstance shall permit the allowance of a second hearing but shall in no way have any force in law to compel the zoning board of adjustment, after a hearing, to grant the variance or special exception; such request shall be considered on its individual merits.

Sec. 2.07.068 Time limitation on approved requests

(a) Unless otherwise specified in the minute record of the zoning board of adjustment's action on a request, an application to commence construction of improvements that were the subject of the request must be applied for and approved within 12 months from the date of approval of that request; otherwise, the board's action on that request shall automatically become null and void. Permitted time frames do not change with successive owners.

(b) Upon written request, only one extension of the 12-month period may be granted by the planning director if it is determined that conditions of the site and immediately surrounding area are substantially changed.

Secs. 2.07.069–2.07.090 Reserved