

**ZONING BOARD OF ADJUSTMENT – June 4, 2018  
STAFF REPORT**



<b>APPLICATION TYPE:</b>	<b>CASE:</b>
Variance	ZBA18-07: McMinn (America’s Carports)

**SYNOPSIS:**

On May 7, 2018, the applicant submitted this request for a variance to allow an attached carport with a minimum rear yard setback of 20 feet measured to the centerline of the rear alley, to be partially encumbered with a metal panel skirt wall in lieu of being fully unencumbered. The Single-Family Residential (RS-1) Zoning District requires a 20-foot rear yard setback measured to the rear property line. However, Section 402.A.1.b. of the Ordinance allows this 20-foot rear setback to be measured to the centerline of the alley, instead of the rear property line, for carports that are substantially open. “Substantially open” means those carports unencumbered by any walls, screening, or glazing except for vertical supports no greater than 12 inches and where this unencumbered area is at least 7’-½” above the finished floor level. In this case, the proposed carport has support posts 4 inches wide, and a vertical clearance of 8’-6”, but will have a 6’-0” high metal skirt wall located along 20 feet of its west side for shade, 2’-0” above grade and attached to the bottom of the roof. This will create an encumbrance and therefore requires a variance (see Additional Information).

<b>LOCATION:</b>	<b>LEGAL DESCRIPTION:</b>		
3342 Shadyhill Drive; generally located at the northeast corner of Shadyhill Drive and Blue Grama Trail	Lot 21 in Block 23 of the Southland Hills Addition, Section 1, comprising a total of 0.285 acres.		
<b>SM DISTRICT / NEIGHBORHOOD:</b>	<b>ZONING:</b>	<b>FUTURE LAND USE:</b>	<b>SIZE:</b>
SMD District #6 – Billie DeWitt Bonham Neighborhood	RS-1 – Single-Family Residential	N - Neighborhood	0.285 acres

**THOROUGHFARE PLAN:**

**Shadyhill Boulevard** – Urban Local Street  
Required: 50’ right-of-way, 40’ pavement, or 36’ pavement with 4’ sidewalk; Provided: 50’ right-of-way, 36’ pavement (complied with standards at time of platting).

**Blue Grama Trail** – Urban Local Street  
Required: 50’ right-of-way, 40’ pavement, or 36’ pavement with 4’ sidewalk; Provided: 50’ right-of-way, 44’ pavement in compliance

**NOTIFICATIONS:**

20 notifications were mailed within a 200-foot radius on May 24, 2018. No letters received in support or opposition of the request to date.

**STAFF RECOMMENDATION:**

Staff’s recommendation is for the Zoning Board of Adjustment (ZBA) to **DENY** a Variance from Section 402.A.1.b of the Zoning Ordinance that would allow an attached carport with a minimum rear yard setback of 20 feet from an alley’s centerline to be partially encumbered on the west side in lieu of being fully unencumbered, within the Single-Family Residential (RS-1) Zoning District.

**PROPERTY OWNER/PETITIONER:**

*Property Owner:*  
Alan and Sue Atkins

*Applicant:*  
Mr. P. V. McMinn (America’s Carports)

**STAFF CONTACT:**

Jeff Fisher, AICP  
Senior Planner  
(325) 657-4210, Extension 1550  
[jeff.fisher@cosatx.us](mailto:jeff.fisher@cosatx.us)



**Additional Information:** The applicant indicates that the owners' reason for attaching a metal skirt wall to the carport is to protect their vehicles from afternoon sun. The proposed metal carport will be 24 feet wide by 24 feet long, a total of 576-square feet, located directly behind the existing two-car garage on the rear driveway facing the alley. It will be adjacent to an existing cedar fence on the east side, and will be 10 feet from the rear property line, with an additional 10 feet to the centerline of the alley. The carport and skirt wall will have "ash" (light) grey paneling with "charcoal" (dark) grey trim to match the colors of the existing rear garage doors. The applicant indicates that the owners have additional vehicles and require a new carport for shade and protection from the elements. All of the homes along this portion of Shadyhill Drive were built close to the front yard setback, leaving only the rear yard for placement of carports, garages, and parking areas. The applicant applied for a permit for the carport from the Permits and Inspections Division, and was told that the skirt wall required a variance. They removed the skirt wall from their permit application and the permit was issued (18-2239) on May 15, 2018. If this variance is approved, the applicant will require a permit modification to re-include the skirt wall as part of the carport.

**Allowed Variances:**

In exercising its authority to grant a variance, per Section 207.D of the Zoning Ordinance, the Zoning Board of Adjustment (ZBA) must affirmatively find that one or more circumstances applies (see below). If determined that one or more of the circumstances do not apply, the variance request will be automatically denied. If one or more of these circumstances do apply, the ZBA must then determine if various criteria have been met. The Planning Division has reviewed the three circumstances below and believe that the proposed request does **not** meet any of the circumstances and the variance should therefore be **DENIED**. A brief synopsis of each of the circumstances are provided below:

1. **SPECIAL CIRCUMSTANCES RESULTING IN UNNECESSARY HARDSHIP.** *Where special circumstances exist on the property related to the size, shape, area, topography, surrounding conditions or location that do not generally apply to other property in the same zoning district, and that the circumstances are such that strict application of this zoning ordinance would create an unnecessary hardship or deprive the applicant of reasonable use of the land or building.*

The applicant believes there is a special circumstance given that the carport will be 30 feet from the west property line facing Blue Grama Trail. He believes that not granting the variance would create a hardship given that the property immediately north of the alley has a carport built closer to the same property line and has erected an 8-foot masonry wall screening vehicles from afternoon sun. The applicant further indicates that approval of the variance would be the "most advantageous" use of the structure being proposed, which is not in contrary to the public interest.

The Planning Division believes that while it may be less advantageous not to attach a skirt wall to the carport, *it is not a special circumstance nor unnecessary hardship*. The Planning Division suggested an alternative to the applicant – installing a fence or wall along the west edge of the driveway, approximately 10 feet back from the new carport. This would provide shade through the majority of the day, even if not directly attached to the carport. This option is allowed in the current Zoning Ordinance by right - fences in RS-1 zones may be located anywhere in a rear or side yard up to 8 feet in height without a variance.

### Additional Research

The Planning Division also researched the property immediately north of the alley mentioned by the applicant, and surrounding properties. The property to the north, 3337 Grandview Drive, was denied a variance on June 5, 2000, (ZBA00-19) to allow a carport with a 10-foot rear yard setback. However, the variance was not denied based on the openness of the structure, but from the setback itself which was measured from the rear property line, not the alley. At this time, subsection “d” of Section 402.A.1 which allowed unencumbered, substantially open carports to have an additional setback to the centerline of an alley did not exist. An interoffice memorandum in this file from the City’s Legal and Planning Departments indicated that while the setback was in violation, the carport could be built adjacent to the existing cinder block fence, provided its supports were at least 20 feet from the rear lot line. In other words, the carport was allowed to be located close to the fence, as the fence was not deemed to be part of the carport itself. This carport remains on the property today based on the new rules which measure the setback to the centerline of an alley for an open carport. The Planning Division found similar examples of rear carports which themselves were unencumbered by any direct, attached screening, but which were built next to fences and walls. The property immediately northwest of the subject property and west of Blue Grama Trail, 3401 Grandview Drive, has a rear carport that is adjacent to its existing rear fences. This property was granted a variance for a 2-foot side yard on March 2, 1997 (ZBA98-10). This structure is only 2.5 feet from the rear property line, but the 1987 Zoning Ordinance which applied at that time allowed accessory buildings within 2 feet of a rear property line (later changed to 20 feet in the 2000 Ordinance unless unencumbered). In summary, other carports were granted variances based on previous setback rules, or because they were deemed unencumbered.

### Conclusion

The applicant was given an option to separate the skirt wall from the carport, but has chosen not to do so. As stated above, a special circumstance refers to “*the size, shape, area, topography, surrounding conditions or location that do not generally apply to other property in the same zoning district*” and a hardship would “*deprive the applicant of reasonable use of the land or building.*” The owners have a 30 foot wide area along their west side yard to erect a screening wall or fence up to 8 feet in height, similar to the properties immediately west of Blue Grama Trail. Therefore, the Planning Division does not believe there is a special circumstance nor hardship. While there may be a gap between the carport and a separate screening wall, an inconvenience is not a hardship as defined in the Zoning Ordinance criteria for a variance. Therefore, the application should be **denied**.

2. **OVERRIDING PUBLIC INTEREST.** *If the variance will further an overriding public interest or concern, including, but not limited to: (a) Preserving the natural environment, (b) Promoting maintenance or reuse of older urban or historic buildings, or (c) Helping to eliminate a nonconforming use at another location.*

The Planning Division does not believe the requested variance would further an overriding public interest. As indicated previously, surrounding properties have either complied with the 20-foot rear yard setback, or built their carports unencumbered by any attached screening or glazing. While

several are located next to fences on one or two sides, there is nothing in the current Zoning Ordinance that prohibits this. An “unencumbered” carport means the carport itself is not encumbered by any “walls, screening, or glazing” except for support posts. The attached 6’-0” skirt wall creates an encumbrance which does not comply with this section of the Zoning Ordinance.

3. **LITERAL ENFORCEMENT.** *If it is found that the literal enforcement and strict application of this Zoning Ordinance will result in extraordinary circumstances inconsistent with the general provisions and intent of this ordinance, and that, in granting the variance, the spirit of the ordinance will be preserved and substantial justice done.*

If the variance was denied, the Planning Division does not believe there would be an extraordinary circumstance for the applicant. As indicated, other carports in the area comply with the current standards or obtained variances under previous rules. Granting a variance when other options are available would set a negative precedent, potentially leading to more variances being granted without regard for the current ordinance provisions. The apparent intent of the “unencumbered” provision was to ensure that bulkier, enclosed buildings were not erected in rear yards, as these buildings would create unsightly impacts on neighbors’ properties, blocking sunlight and their rear yard view. Residents who chose to erect carports that were substantially open would get a reduced setback as in theory, these structures appears less bulky, and light could still radiate through them. Since there is no requirement to erect a side or rear yard fence to block the view of a carport, the substantially open provision would ensure less visual impact on a carport from a neighboring property. Regardless, fences are a separate consideration, and erection of a fence does not abdicate a property owner’s responsibility to comply with the rear yard setback for a carport.

#### **Variances:**

For the reasons above, the Planning Division does not believe that the proposed request meets any of the circumstances outlined in Section 207(D) of the Zoning Ordinance, and the variance should therefore be **DENIED**. However, should the ZBA believe that one or more of the circumstances does justify a variance, they must also rule that all of the below criteria have been met. 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 applicant believes that there is a special circumstance because the carport will be setback at least 30 feet from the west property line facing Blue Grama Trail, and that an 8-foot fence could already be built along this property line. The Planning Division understands that there would be an inconvenience if the applicant could not attach a screening wall onto the carport. However, an inconvenience is not a hardship. As the applicant indicates, a separate wall or fence could be erected up to the same 8-foot height anywhere in the rear yard. While not ideal, the Planning Division had recommended to the applicant that they could erect this fence or wall 10 feet back from the carport on the west side of the driveway. This would provide shade from the sun at least for most of the day. As indicated earlier in this report, an “encumbered” carport means one that

has a wall, screening, or glazing attached to it, or that would be less than 7 ½ feet above finished floor level. The fact that the skirt wall is attached to the carport meets this definition of encumbered. Given the substantial area in the side yard to erect a fence or wall, similar to other properties in the area, the Planning Division cannot support the variance for an encumbered carport on an inconvenience alone. There is nothing peculiar to the property different than other properties in this case.

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

By choosing to attach a skirt wall onto the carport, the applicant is creating the circumstance. The applicant indicates that the driveway is not shaded to the west by any house, but this is the case for all corner lots. Other properties had built their rear driveways closer to their side property lines, which gave them the advantage of using their side fence as screening from the sun. The applicant could either erect a fence that would have a similar effect, or could also extend their driveway closer to the west property line and built the fence here. As indicated above, the Planning Division agrees there is an inconvenience, but it does not go as far as a hardship.

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.**

If the applicant were denied a variance for the skirt wall attached to the carport, they would not be deprived rights commonly enjoyed by neighboring property owners. They could still erect a screening wall or fence, but just have to set it back further west. The applicant indicates that surrounding properties enjoy the benefits of sun screening with masonry fences along their side property lines. As stated previously, these properties have carports that were built closer to the side property lines, taking advantage of side fences as screening. The applicant could choose to extend the driveway westward but has decided to erect the carport on the existing driveway. This is an inconvenience but not a hardship.

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 applicant indicates that granting the variance would be the most “advantageous” use of the structure and would have any negative impacts on the surrounding neighborhood. The Planning Division agrees that attaching a skirt wall is the most advantageous option for the applicant, but is still contrary to the intent of the Zoning Ordinance provision. As indicated above, carports are allowed to have a reduced rear yard setback measured to the rear alley (typically an additional 10 feet), if they are substantially open. The intent of this provision was to prevent enclosed and bulkier buildings from being erected into rear yards. Regardless of whether the Planning Division receives any letters or support or opposition from adjacent neighbors before or at the ZBA hearing, allowing this variance would set a negative precedent, allowing other property owners to erect enclosed or partially enclosed buildings in their rear yards, blocking sunlight and views of their neighbors, and defeating the purpose of the provision for rear carports.

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

The applicant indicates that because the carport will be 33 feet away from Blue Grama Trail, it will not adversely affect the neighbors. The Planning Division agrees that there is a substantial setback from Blue Grama Trail and that the cedar fence to the east will block the view from the adjacent neighbor on this side. However, this is only one of the criteria for a variance. The applicant has not demonstrated that the other five tests have been satisfied, and therefore, the Planning Division recommends denial of the variance as presented.

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

The applicant states that the variance will have no detrimental effect on the health, safety, morals, or general welfare of the community, given that the carport is 30 feet from the west side property line. While the carport may not have a negative effect on surrounding neighbors, it would create a negative precedent on allowing further rear yard setback variances in this neighborhood and possibly other neighborhoods. Allowing encumbered or partially encumbered carports does not meet the intent of the Zoning Ordinance to protect rear yard space from enclosed structures.

**Recommendation:**

Staff's recommendation is for the Zoning Board of Adjustment (ZBA) to **DENY** a Variance from Section 402.A.1.b of the Zoning Ordinance that would allow an attached carport with a minimum rear yard setback of 20 feet from an alley's centerline to be partially encumbered on the west side in lieu of being fully unencumbered, within the Single-Family Residential (RS-1) Zoning District.


**Attachments:**



Aerial Map  
Future Land Use Map  
Zoning Map  
Photographs  
Site Plan  
Elevation  
Application



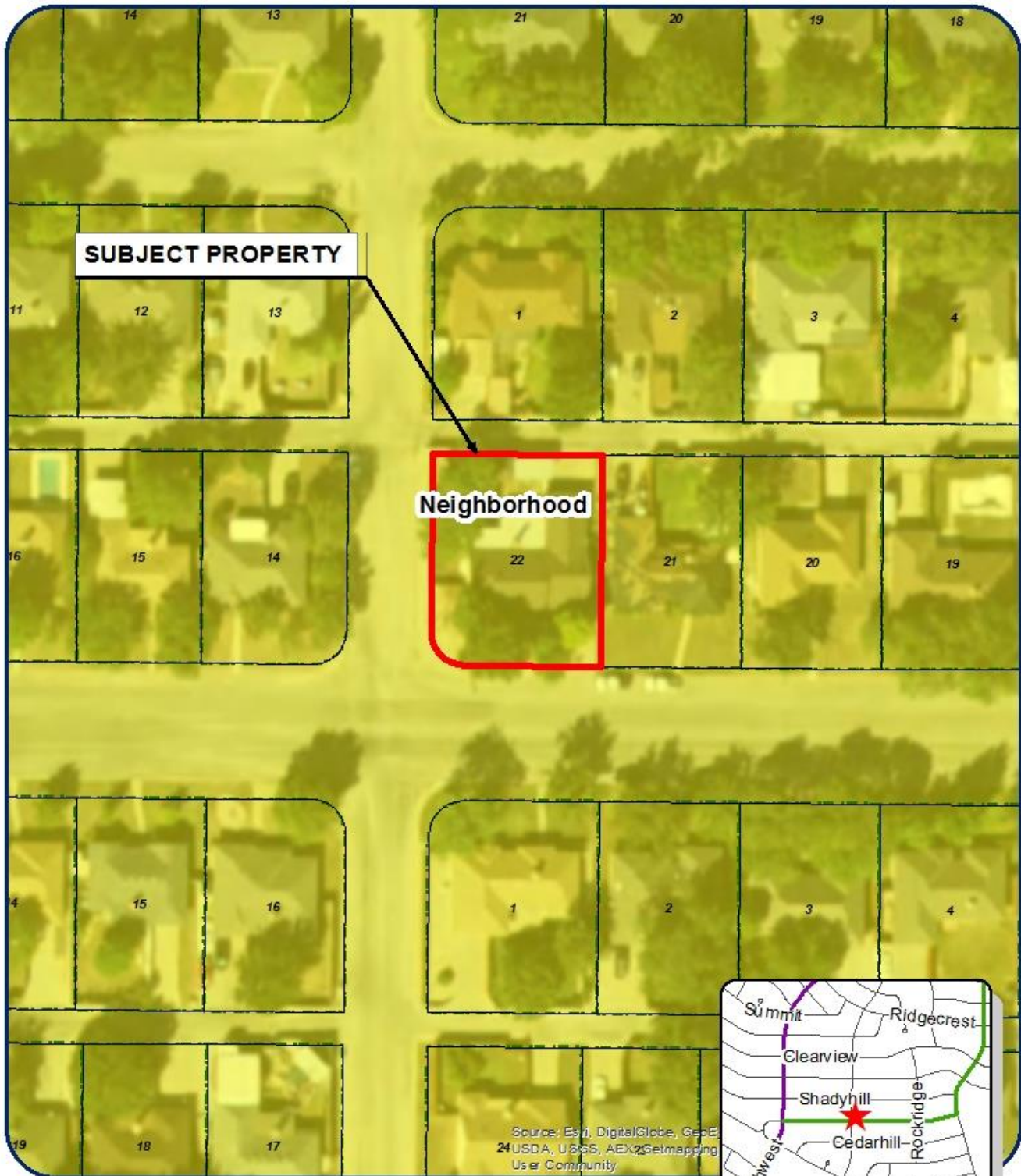


**Variance Case File**  
**Case ZBA18-07: McMinn**  
Council District: Billie DeWitt (SMD #6)  
Neighborhood: Bonham  
Scale: 1" approx. = 75 ft  
Subject Property: 3342 Shadyhill Drive

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





Source: Esri, DigitalGlobe, GeoEye,  
24 USDA, USGS, AeroGRID, IGN, SDA, CNES, Swire,  
User Community

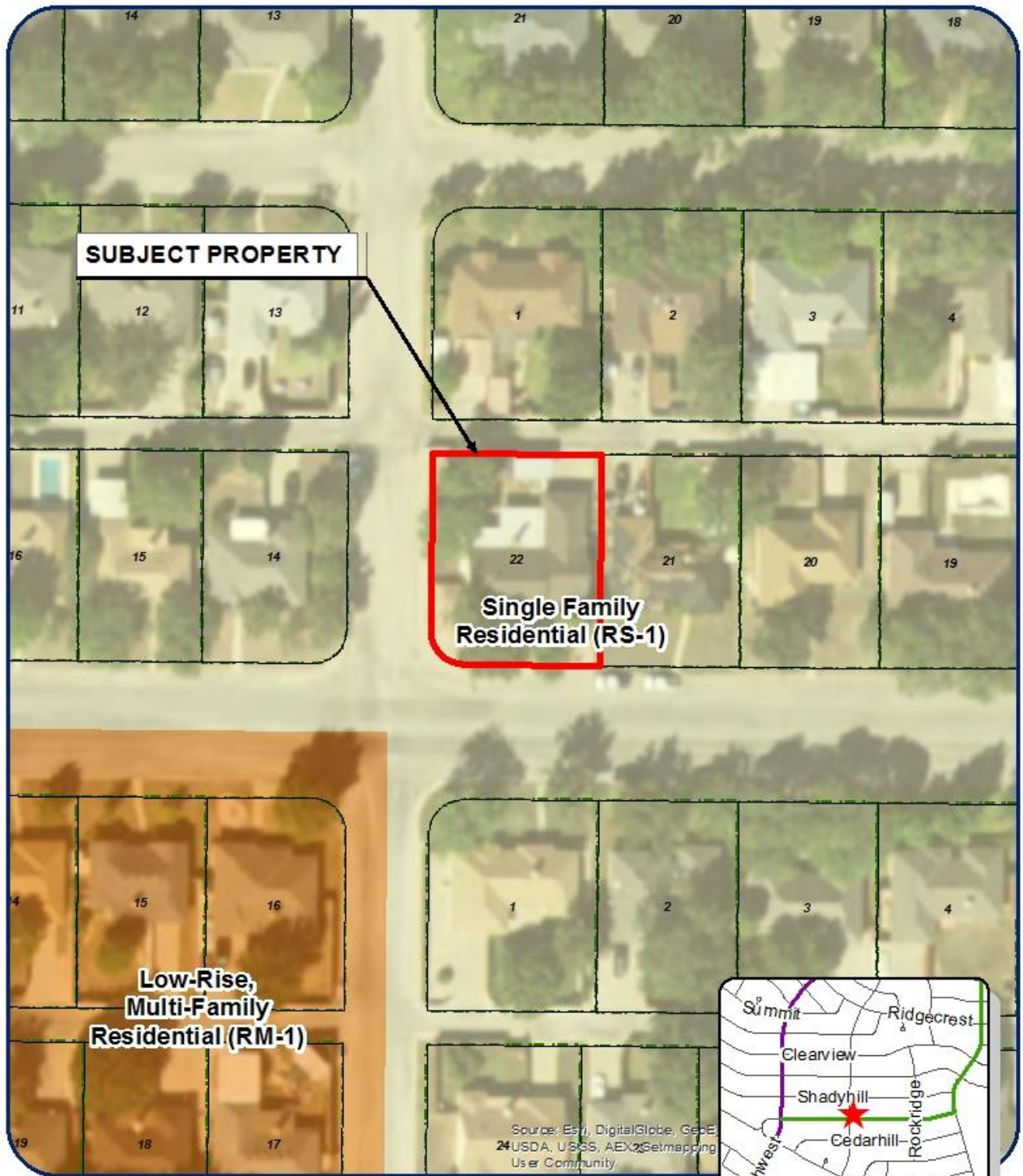


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**Legend**  
Subject Properties: —  
Current Zoning: **RS-1**  
Requested Zoning Change: **N/A**  
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**Variance Case File**

**Case ZBA18-07: McMinn**

Council District: Billie DeWitt (SMD #6)  
 Neighborhood: Bonham  
 Scale: 1" approx. = 75 ft  
 Subject Property: 3342 Shadyhill Drive

**Legend**

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





**Photos of Site and Surrounding Area**

**WEST**



**EAST**



**SOUTH**



**NORTH AT SUBJECT PROPERTY (FRONT)**



**REAR OF PROPERTY  
(LOCATION OF PROPOSED CARPORT)**



**REAR OF PROPERTY  
(LOCATION OF PROPOSED CARPORT)**





**Photos of Site and Surrounding Area**

**3337 GRANDVIEW DRIVE**



**3401 GRANDVIEW DRIVE**



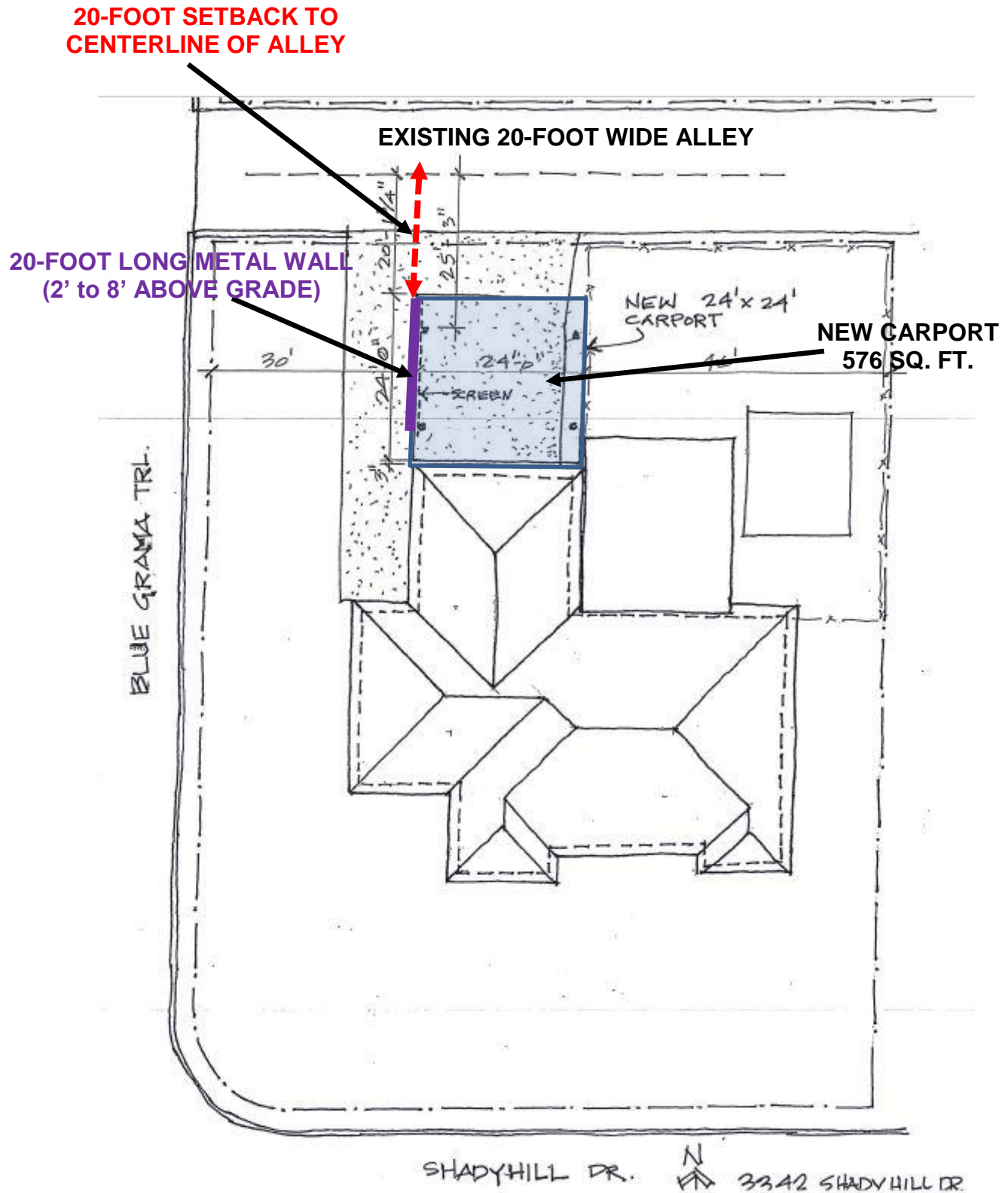
**REAR ALLEY VIEW**



**WEST FACING BLUE GRAMA TRAIL**

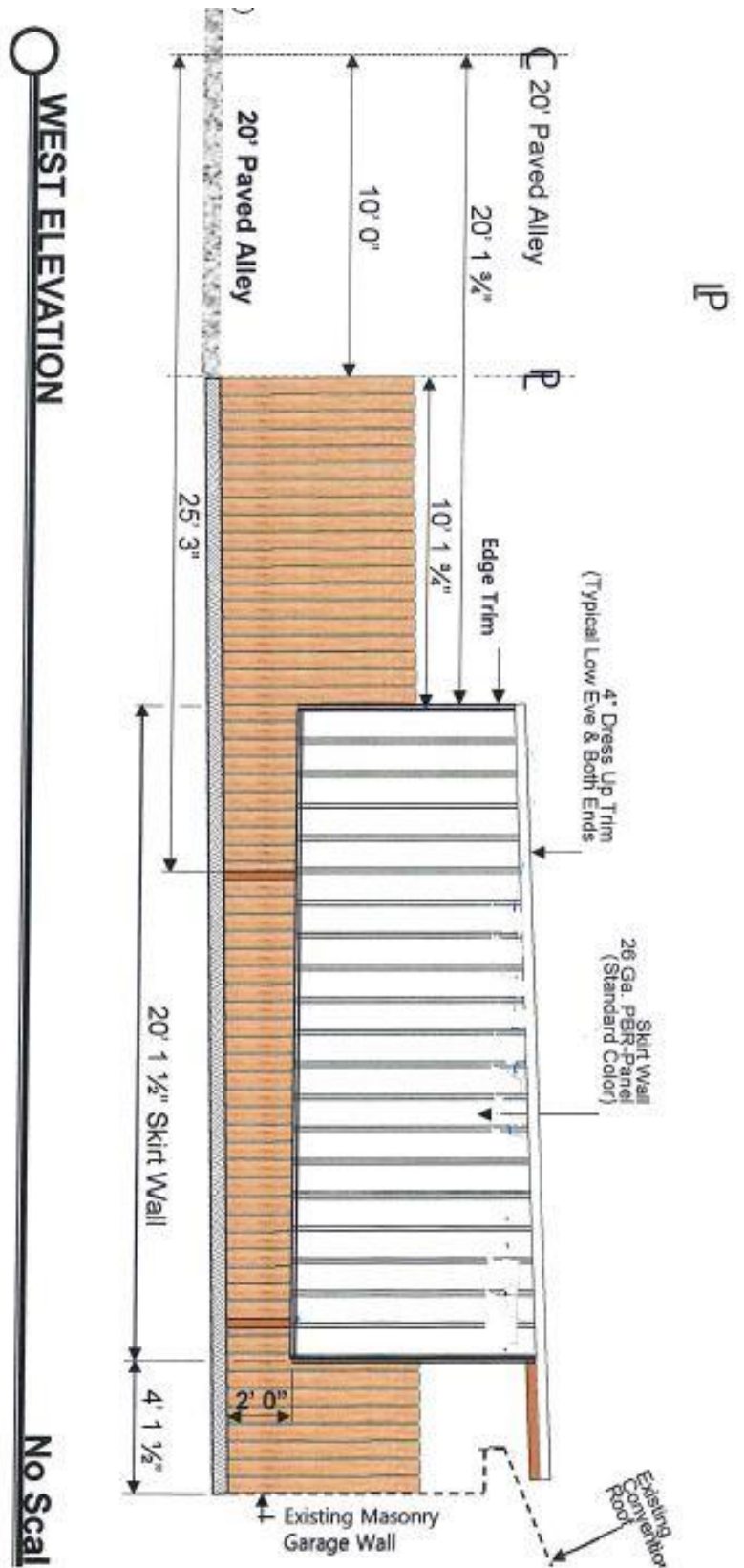


### Site Plan





Elevation



325-651-7322  
 www.wtxsteel.com  
 6617 S. US Hwy 277  
 San Angelo, TX 76904

WEST TEXAS STEEL  
 COLOR FOR SKIN REPORT  
 CLAY  
 POLAR WHITE  
 ASH GRAY  
 CHARCOAL GRAY  
 MODA TON  
 WOOD GRAY



City of San Angelo, Texas – Planning Division  
 52 West College Ave



**Application for Variance from Zoning Regulations**

**Section 1: Basic Information**

Name of Applicant(s): AMERICAN'S CARPORTS / P.V. MCMINN, JR., MEMBER  
 Owner  Representative (Notarized Affidavit Required)

Mailing Address: 3124 SHERWOOD WAY, SAN ANGELO, TX 76901  
City State Zip Code

Contact Phone Number: 325-234-9424 Contact E-mail Address: pvmcminnjr@gmail.com

Subject Property Address and Location: 3342 SLOTT HILL SAN ANGELO, TX 76904  
City State Zip Code

Legal Description (can be found on property tax statement or at [www.fomgreencad.com](http://www.fomgreencad.com)):  
Southland Hills Addition Section 1, Block 23, Lot 21

Zoning District:  
 CN  CO  CG  CH  CG/CH  CBD  OW  ML  MHS  MHP  PD  
 RS-1  RS-2  RS-3  RM-1  RM-2  R&E

(Zoning Map available on [City Maps](#))

**Section 2: Variance Request(s)**

- List each variance request separately:
- Zoning Ordinance section: 402.A.2.b  
 Describe variance: Accessory structure shall be unencumbered by any walls, screening or glazing.
  - Zoning Ordinance section: \_\_\_\_\_  
 Describe variance: \_\_\_\_\_
  - Zoning Ordinance section: \_\_\_\_\_  
 Describe variance: \_\_\_\_\_
  - Zoning Ordinance section: \_\_\_\_\_  
 Describe variance: \_\_\_\_\_

**Section 3: Variance Request Criteria**

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

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:  
 Explanation: A SKIRTWALL (SCREEN) ON THE WEST END OF THE PROPOSED CARPORT IS SOME 30' IN FROM THE SIDE PROPERTY LINE ON BLUE GRAMA TRAIL. THE PROPOSED SCREEN IS NEEDED TO PROTECT VEHICLES FROM AFTERNOON SUN IN THE WEST. AN 8' HIGH FENCE CAN BE BUILT ON THE PROPERTY LINE, 3' BACK OF CURB.



Section 3 continued: Variance Request Criteria

2. These special circumstances are not the result of the actions of the applicant:

Explanation: The Special Circumstance that is not the result of the actions of the applicant is the fact that the subject property is a single family dwelling with a rear entry garage situated on the north east corner of the intersection of Shady Hill and Blue Grama Trail. The west side of the double driveway, off the alley, is not the typical five feet (5') from a side property line. Rather, the driveway is some thirty plus (30+) feet in from and parallel to the side property line on Blue Grama Trail. The driveway is not shaded on the west by any adjacent house, structures or trees. Therefore, the owner's vehicles are totally exposed and being damaged by the hot afternoon sun as it sets in the western sky.

3. 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: Literal interpretation of the Zoning Ordinance would "will" deprive the applicant of rights commonly enjoyed by other land in the same zoning district and would "will" cause an unnecessary and undue hardship. #1.) The homeowner directly across the alley to the north has a carport with an eight foot (8') masonry fence (wall) on the west end parallel to the side property line on Blue Grama Trail. This masonry fence provides a total screen against the hot west afternoon sun. However, it is situated near the side property line. #2.) Unless this Request for Variance to allow the proposed screen is approved, the homeowner will not have the protection for his vehicles that he should be entitled to.

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 the Zoning Ordinance and substantial justice;

Explanation: Granting the variance is the minimum action that will make possible the " MOST ADVANTAGEOUS " use of the structure being proposed, which is not contrary to the public interest. How can it be deemed contrary to the public interest to permit a San Angelo taxpayer to upgrade his home and protect his vehicles, when doing so has no negative impact on the neighborhood whatsoever, including but not limited to aesthetic considerations and/or the safety of the residents and their visitors? The only effect will be that it is beneficial to the homeowner?

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

Explanation: Granting this variance cannot possibly have any "adverse" affect on adjacent land, material or otherwise. Again, the adjacent "land" is Blue Grama Trail, which is over thirty-three feet (33') away. The screen as proposed is attractive and has no negative impact on anything whatsoever. The only effect will be that it is a positive benefit to the homeowner?

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

Explanation: Granting this variance will be generally consistent with the purposes and intent of the Zoning Ordinance. Provided however that the purposes and intent of the Zoning Ordinance is not to serve as a means of restricting the personal freedoms of the citizens of San Angelo but rather to advance the greater good by promoting the health, safety, morals, and general welfare of the community, protecting and conserving the value of buildings, and encouraging the most appropriate use of the land and to preserve the existing character of a given area by excluding prejudicial (harmful, detrimental) uses, and to provide for the development of various areas in a manner consistent with the uses for which they are best suited.

Therefore, granting this variance will have no detrimental effect on the health, safety, morals, and general welfare of the community. It will enhance the owner's ability to enjoy his beautiful home and protect his property and it will increase his property value. There can be no possible prejudicial use by erecting a simple sun screen on the west end of this new carport as needed to block the afternoon sun and it will have absolutely no effect whatsoever on the existing character of the area.

Please consider that, under the Zoning Ordinance, the owner would be permitted to build an eight foot (8') solid wood or masonry fence on his west side yard property line, which is three feet (3') back of the curb on Blue Grama Trail. Such a fence could legally extend to the rear property line at the alley.

How can an attractive metal sun screen integral to the west end of a new custom steel carport, which is to be some thirty-three feet (33') in from the side yard curb and ten plus feet (10'+) in from the alley possibly be considered detrimental to anything?

Effective January 3, 2017

**Section 4: Applicant(s) Acknowledgement**

Please initial the following:

PVM I/we understand that the Zoning Board of Adjustment (ZBA) 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;

PVM I/we understand that any variation(s) authorized by the ZBA will require me/us to obtain a building permit for that stated variation within twelve (12) months of the approval date by the ZBA, unless the ZBA has specifically granted a longer period;

PVM I/we understand that all drawings, pictures, documents or other information used during your testimony to the ZBA must be kept in the permanent files of the Planning Division; and

PVM I/we understand that any appeal of a decision made by the ZBA must be presented to a court of record with a verified petition stating that the decision of the ZBA 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/We the undersigned acknowledge that the information provided above is true and correct.

AMERICA'S CARPORTS (AN) AMERICA'S COMPONENT CONSTRUCTORS, LLC COMPANY  
[Signature] MEMBER JUNE 7, 2018  
Signature of licensee or authorized representative Date

R.V. McMINN, JR., MEMBER  
Printed name of licensee or authorized representative

AMERICA'S CARPORTS  
Name of business/Entity of representative

**FOR OFFICE USE ONLY:**

Reviewed/Accepted by: Jeff Fisher Date: 5, 7, 2018  
Case No.: ZBA: 18 - 07 ZBA Hearing Date: 6, 4, 2018  
Fully-Dimensioned and scaled Site Plan:  Yes  No Date of Application: 5, 7, 2018  
Non-Refundable Fee: \$ 250.00 Receipt #: 284688 Date paid: 5, 7, 2018  
Ordinance section(s) from which variance(s) is/are requested: 402.A.1.b



**ZONING BOARD OF ADJUSTMENT – June 4, 2018**  
**STAFF REPORT**



<b>APPLICATION TYPE:</b>		<b>CASE:</b>	
Appeal of an Administrative Official’s Decision		ZBA18-06: Favre	
<b>SYNOPSIS:</b>			
<p>Hearing on, and decision of, an appeal that alleges error in a decision or determination made by the Planning &amp; Development Services Director for the City of San Angelo relating to zoning for the proposed use of a 0.693-acre property described as 2458 Fisherman’s Road for an application of a Conditional Use for a Short-Term Rental specifically:</p> <p>Board action on an appeal by Sammee Favre, Applicant for conditional use CU18-05, from determination of the Planning &amp; Development Services Director dated March 5, 2018, that the proposed Short-Term Rental does not comply with the specific use standard that it adjoin a public street at least 30 feet in width.</p>			
<b>LOCATION:</b>		<b>LEGAL DESCRIPTION:</b>	
2458 Fisherman’s Road		Lot: 10, Block: 1, Lake Nasworthy Subdivision, Group 14, City Of San Angelo, Tom Green County, Texas	
<b>SM DISTRICT / NEIGHBORHOOD:</b>	<b>ZONING:</b>	<b>FUTURE LAND USE:</b>	<b>SIZE:</b>
SMD #1 – Tommy Hiebert Nasworthy Neighborhood	RS-1 – Single-Family Residential	Neighborhood	0.693 Acre
<b>THOROUGHFARE PLAN:</b>			
<u>Fisherman’s Road</u> – Parkway – No ROW Existing – Pavement Width 30’ Existing			
<b>NOTIFICATIONS:</b>			
<p>17 notifications were mailed within a 200-foot radius on May 18, 2018.</p> <p>Two responses have been received in support and Three in opposition. Four in favor responses have been received from outside of the notice area.</p>			
<b>STAFF RECOMMENDATION:</b>			
Staff recommends <b>UPHOLDING</b> the Administrative Official’s Decision			
<b>PETITIONER:</b>			
Sammee Favre			
<b>STAFF CONTACT:</b>			
Hillary Bueker, RLA Senior Planner (325) 657-4210, Extension 1547 <a href="mailto:hillary.bueker@cosatx.us">hillary.bueker@cosatx.us</a>			

**History**

On February 12, 2018, Ms. Favre submitted an application for Conditional Use for 2458 Fisherman’s Road for a Short Term Rental (STR). Staff took in the application, but upon review, discovered that her property did not directly adjoin a public street but instead adjoins an intervening access easement. Following this discovery, Planning staff asked the City’s Legal Department for an interpretation of Zoning Ordinance 406 A.4 and 406 D. 2 on February 27, 2018. Per the Zoning Ordinance, 406.A.4., “**neither a Bed and Breakfast nor a Short-Term Rental may be approved unless it adjoins a public street at least 30 feet in width,**” and Section 406.D.2. A. which states a “change in occupancy from a single-family home to a Bed and Breakfast or Short-Term Rental shall require issuance of a new Certificate of Occupancy to ensure compliance with all applicable standards. A Short-Term Rental that is currently operating and paying City and State hotel tax as of the effective date of this ordinance shall have one year therefrom to obtain Conditional Use approval and a Certificate of Occupancy for the Short-Term Rental use.”

Because Ms. Favre had been paying both State and City hotel taxes since at least January 17, 2017, had she applied for the Conditional Use within a year of the adoption of the ordinance (also on January 17, 2017), per Section 406.D.2, she would not have to meet the stipulation of adjoining a 30 foot wide public street in section 406.A.4. On March 5, 2018, staff drafted a letter of denial and sent it to Ms. Favre by regular mail. Following this, on March 13, 2018, the same letter was emailed to Ms. Favre. The letter allowed for appeal to the Zoning Board of Adjustment, via the Planning Director, within 30 days.

On March 16, 2018, Ms. Favre came to the Planning and Development Services Department to discuss the issue. She met with Aaron Vannoy, Planning Administrator, and Rebeca Guerra, Planning Manager, to discuss what options were available to her. Three possible solutions were determined: 1) file the appeal, 2) request through her Council Member to seek a possible change to ordinance extending the window to secure a Conditional Use and Certificate of Occupancy, or 3) look into a possible access easement abandonment and purchase the property between her property line and the public street so that her property would then adjoin a public street.

On March 21, 2018, Ms. Favre sent letters to two City Council members asking if they would be willing to bring a text amendment forward in order for her, and any other STR applicant in her situation, to extend the deadline to apply for a Conditional Use. At that time, they declined her request, so on April 5<sup>th</sup> and subsequently April 11<sup>th</sup>, 2018 Ms. Favre notified Jon James, the Planning and Development Services Director, she would be requesting an appeal of his interpretation of the Zoning Ordinance.

On May 7, 2018, the preliminary information for this case was decided by ZBA including:

- a. Designating of the parties in interest,
- b. Setting of reasonable time and date for the appeal hearing,
- c. Giving of due notice of the appeal hearing to parties in interest,
- d. Giving of public notice of the appeal hearing, and
- e. Establishing of protocol for conducting the appeal hearing.

During this meeting it was also determined by the ZBA that the notification area should include properties across the lake so staff has included an additional eight nearby property owners.

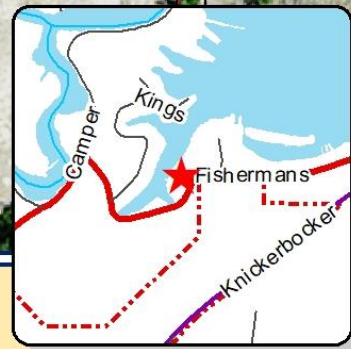
Please note that this decision is not based on criteria for a variance, as in a typical case the Board considers, nor is it a decision based on what seems reasonable given the circumstances. The Board is charged with simply making a determination as to whether the Planning Director correctly interpreted the existing language of the Zoning Ordinance.

**Recommendation:**

Staff recommends that the Zoning Board of Adjustments **UPHOLD** the Administrative Official's Decision.

**Attachments:**


Aerial Map  
Future Land Use Map  
Zoning Map  
Notification Map



**CU18-05: Favre**  
**2458 Fishermans Road**

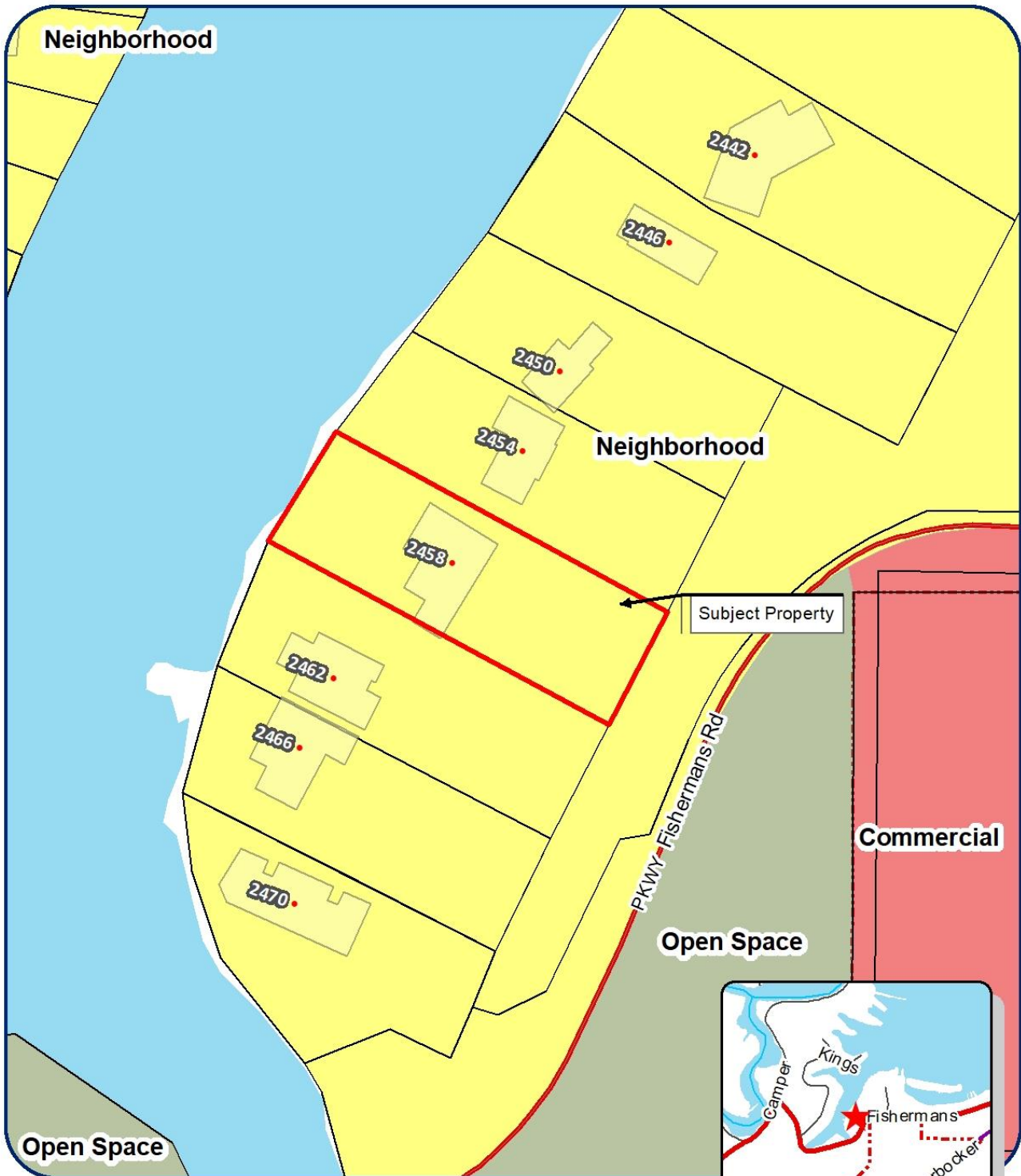
Council District: SMD #1 - Tommy Hiebert  
Neighborhood: Nasworthy  
Scale: 1" approx. = 100 ft

**Legend**

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



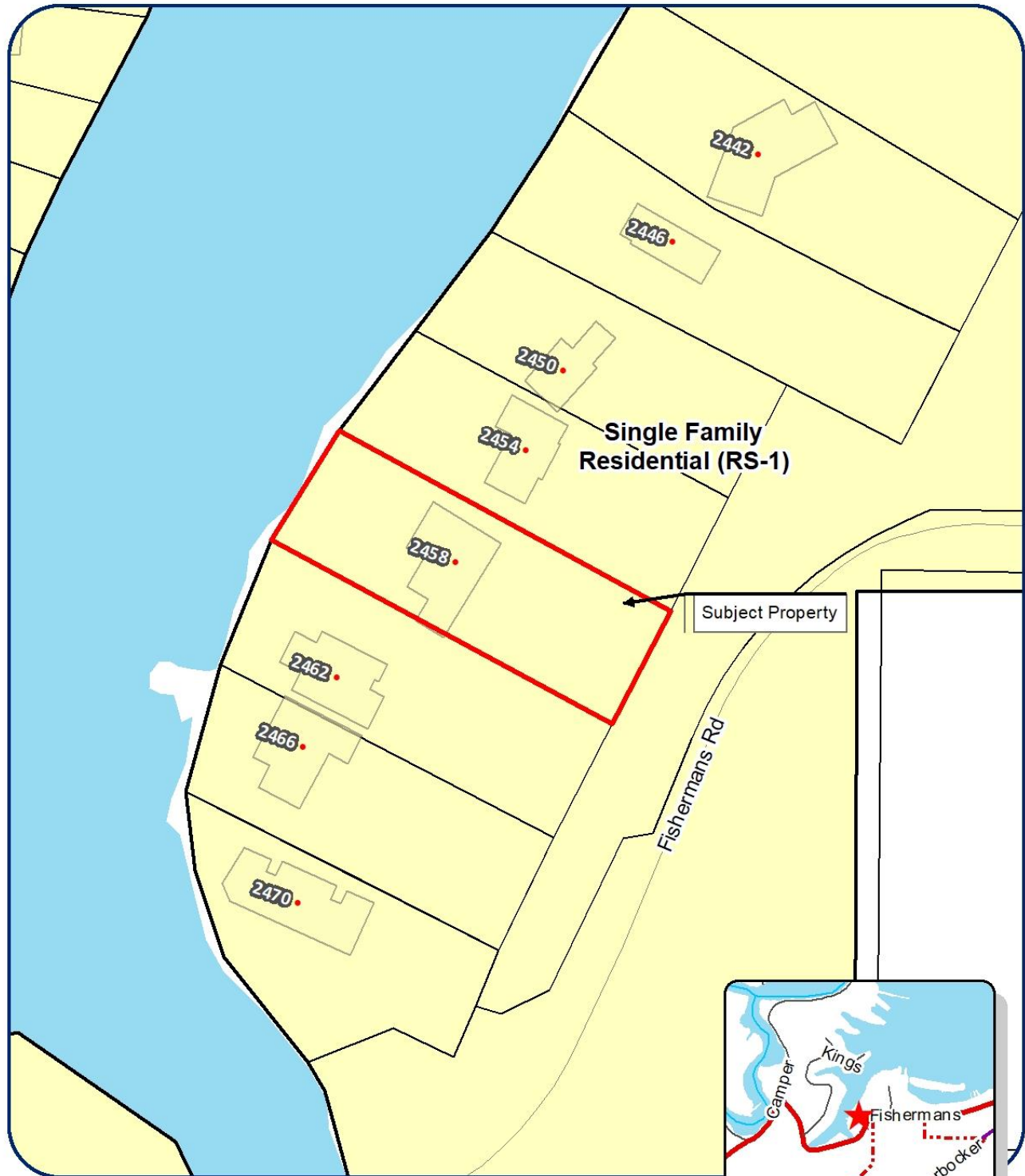




**CU18-05: Favre**  
**2458 Fishermans Road**  
Council District: SMD #1 - Tommy Hiebert  
Neighborhood: Nasworthy  
Scale: 1" approx. = 100 ft

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

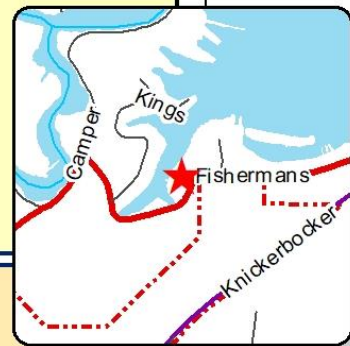


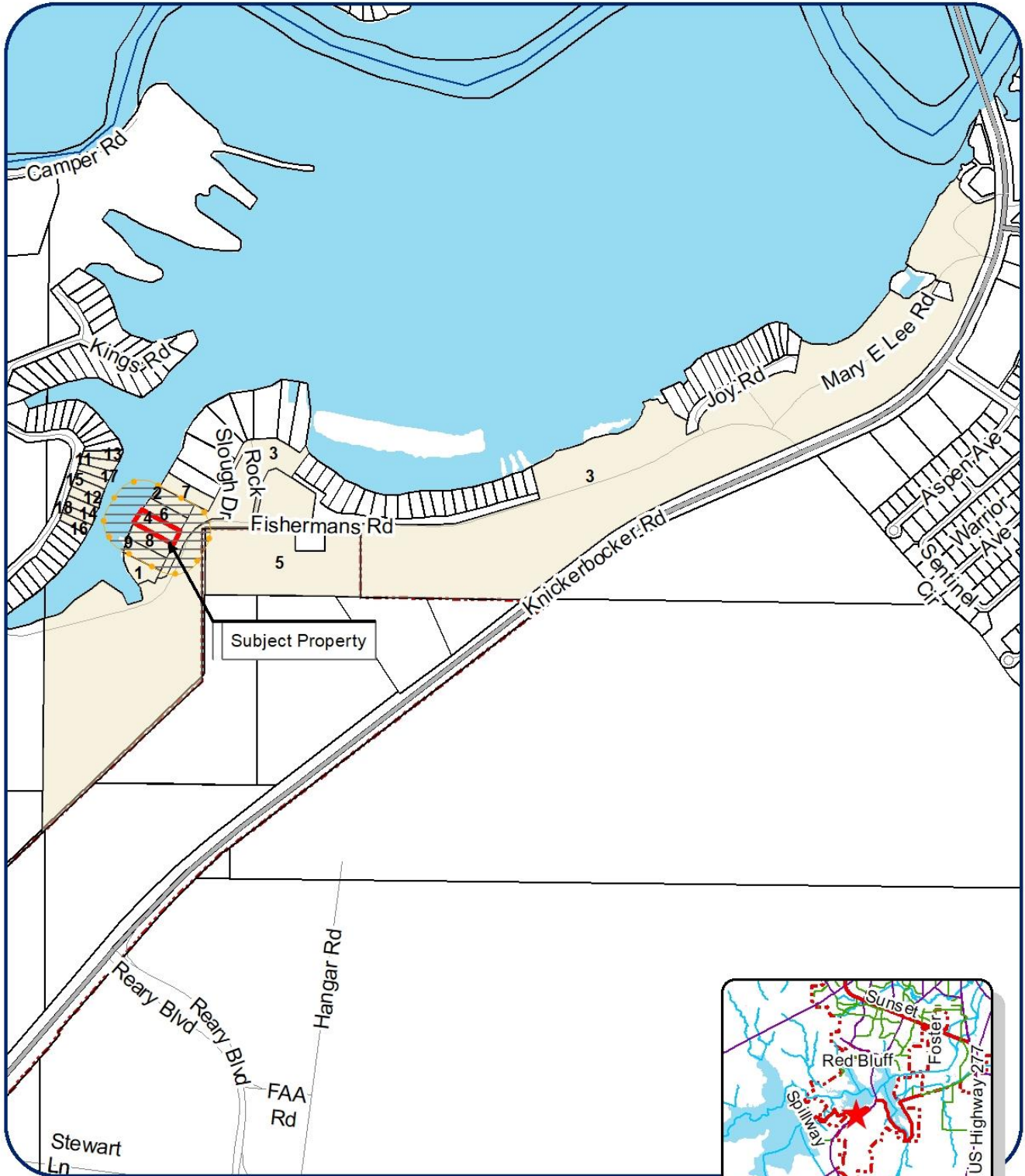


**CU18-05: Favre**  
**2458 Fishermans Road**

Council District: SMD #1 - Tommy Hiebert  
Neighborhood: Nasworthy  
Scale: 1" approx. = 100 ft

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





**ZBA18-06: Favre**  
**2458 Fishermans Road**

Council District: SMD #1 - Tommy Hiebert  
 Neighborhood: Nasworthy  
 Scale: 1" approx. = 850 ft

**Legend**

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

