

ZONING BOARD OF ADJUSTMENT – May 6, 2019
STAFF REPORT



APPLICATION TYPE:		CASE:	
Variance		ZBA19-07: Biggerstaff	
SYNOPSIS:			
<p>The owner has submitted this variance request and associated building permit to rebuild the front one-story portion of the home and attached porch. This area includes a bedroom, foyer, and closet. The existing home was built in 1967 prior to the property being annexed into the City Limits and prior to current zoning which requires a 25-foot front yard setback. The owner requires the rebuild in order to resolve a foundation issue by reconstructing the structure and add new footings. The current structure is 15 feet back from the front yard and the new structure will encroach an additional two feet, requiring a 13-foot front yard setback variance. The existing 2-story portion of the residence will remain unchanged. There is also an attached carport setback eight feet from the front property line which is not part of this request and has existed since at least 1996 according to aerial photography (see Additional Information).</p>			
LOCATION:		LEGAL DESCRIPTION:	
2842 Red Bluff Circle, located approximately 385 feet east of the intersection of Red Bluff Lane and Red Bluff Circle		0.42 acres in the First Replat of Lots 16 to 36, Block 2, Lake Nasworthy Addition, Group Red Bluff, Section Two	
SM DISTRICT / NEIGHBORHOOD:		ZONING:	FUTURE LAND USE:
SMD District #1 – Tommy Hiebert Nasworthy Neighborhood		RS-1	N- Neighborhood
			SIZE:
			0.42 acres
THOROUGHFARE PLAN:			
<p>Red Bluff Circle – Urban Local Street Required: 50’ right-of-way, 40’ pavement or 36’ feet with a 4’ sidewalk; Provided: 50’ right-of-way, 20’ (complied at the time of platting)</p>			
NOTIFICATIONS:			
<p>10 notifications were mailed within a 200-foot radius on April 25, 2019. Zero responses have been received in support or opposition of the request to date.</p>			
STAFF RECOMMENDATION:			
<p>Staff’s recommendation is for the Zoning Board of Adjustment (ZBA) to APPROVE a variance from Section 501.A of the Zoning Ordinance to allow for a front yard setback of 13 feet in lieu of the required minimum front yard setback of 25 feet, for a single-family dwelling within the Single Family Residential (RS-1) Zoning District located at 2842 Red Bluff Circle, subject to two conditions of approval.</p>			
PROPERTY OWNER/PETITIONER:			
<p><i>Property Owners: Michael Dixon and Loren Ammerman</i></p> <p><i>Applicant: Mr. Gary Biggerstaff</i></p>			
planSTAFF CONTACT:			
<p>Jeff Fisher, AICP Principal Planner (325) 657-4210, Extension 1550 jeff.fisher@cosatx.us</p>			

Additional Information: Planning Staff researched other front yard variance requests on Red Bluff Circle, which stretches over a quarter mile south of Red Bluff Lane. The Zoning Board of Adjustment granted four front yard setback variances, a 0-foot front yard at 2834 Red Bluff Circle (ZBA97-39); a 15-foot front yard at 2838 Red Bluff Circle (ZBA03-76); a 15-foot front yard at 2914 Red Bluff Circle (ZBA02-35); and a 13-foot front yard at 3045 Red Bluff Circle (ZBA08-40). These case reference extensive right-of-way between the front property lines and Red Bluff Circle which act as a special circumstance unique to this area. The owners have received a letter from the Lake Nasworthy Homeowners Association that the proposal construction complies with HOA requirements (see attached).

Variances: 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.**

There is a 90-foot access easement between the front property line and the Red Bluff Circle right-of-way approved as part of the replat recorded in 2013. All of the properties along Red Bluff Circle utilize this easement to gain access to Red Bluff Circle. As indicated, four variances were granted for front yard setbacks along Red Bluff Circle for the same reason. Consistent with past approvals, including the two homes immediately west, the Planning Division believes that the substantial access easement at 90 feet acts as a special circumstance. It is noted that the depth of a lot in the RS-1 district is 100 feet, and therefore, the setback from the street is almost the same length as an RS-1 lot itself.

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

The applicants did not create the special circumstance as they purchased the home in 2014 in its current configuration which has existed since 1967 according to the Tom Green County Appraisal District. The applicants are rebuilding the one-story addition and porch in its original footprint, plus an additional two feet to construct a new internal staircase to meet the International Building Code.

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.

The applicants need to rebuild the existing addition due to structural issues with the current foundation. Literal enforcement would require them to lose their existing bedroom, foyer, and internal staircase in this location which connects to the second floor of the home. As indicated, several variances have already been granted on this street for similar requests, and not allowing the one-story portion of the house to be rebuilt in its current configuration would create an unnecessary hardship. With the access easement buffer, the front yard setback to the Red Bluff Circle is substantial at 103 feet.

3. **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.**

Reconstruction of the first story addition in its current configuration is the minimum action necessary. The 13-foot front yard setback variance will allow the home to be rebuilt, and replace the current foundation and footers which have structural issues, and staircase.

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

Reconstruction of the first-story addition will not have any adverse impact on neighboring properties. As indicated, the two homes immediately to the west received front yard setback variances, and are both approximately 15 feet from the front property line, similar to the requested setback for the subject property.

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

The Planning Division believes that the variance request is inconsistent with the intent of the Zoning Ordinance. Section 104.2 requires the protection of “the character and the established pattern of desirable development in each area.” Planning Staff believes that the variance request is consistent with this purpose statement in the Zoning Ordinance. The setback will be consistent with other front yard setbacks on the same street, some approved by variance and others that are non-conforming.

Allowed Variances:

In addition to the above criteria, in exercising its authority to grant a variance, per Section 207.D of the Zoning Ordinance, the Zoning Board of Adjustment must affirmatively find that one or more of the following circumstances applies:

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 Planning Division believes that the 90-foot access easement, and a proliferation of other approved front yard variances for the same reason is a special circumstance warranting approval of the request.

2. **OVERRIDING PUBLIC INTEREST.** *If the variance 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.*

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.*

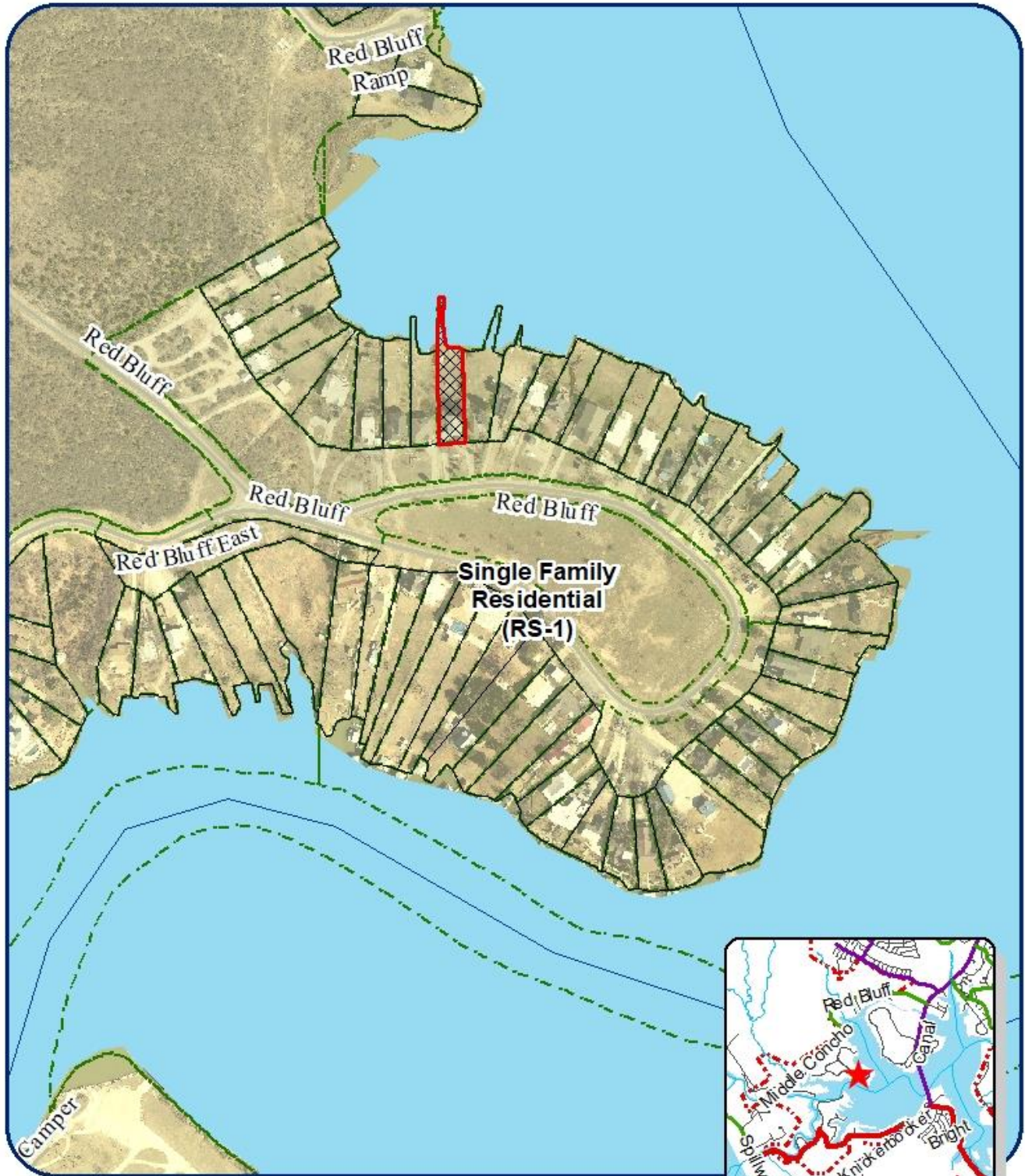
Recommendation:

Staff's recommendation is for the Zoning Board of Adjustment (ZBA) to **APPROVE** a variance from Section 501.A of the Zoning Ordinance to allow for a front yard setback of 13 feet in lieu of the required minimum front yard setback of 25 feet, for a single-family dwelling within the Single Family Residential (RS-1) Zoning District located at 2842 Red Bluff Circle, subject to the following **two conditions of Approval:**

1. The applicant shall obtain a new building permit from the Permits and Inspections Division for the proposed building expansion.
2. The variance shall limit the expansion to 383-square feet consistent with the footprint shown on the attached site plan provided by the applicant.

Attachments:

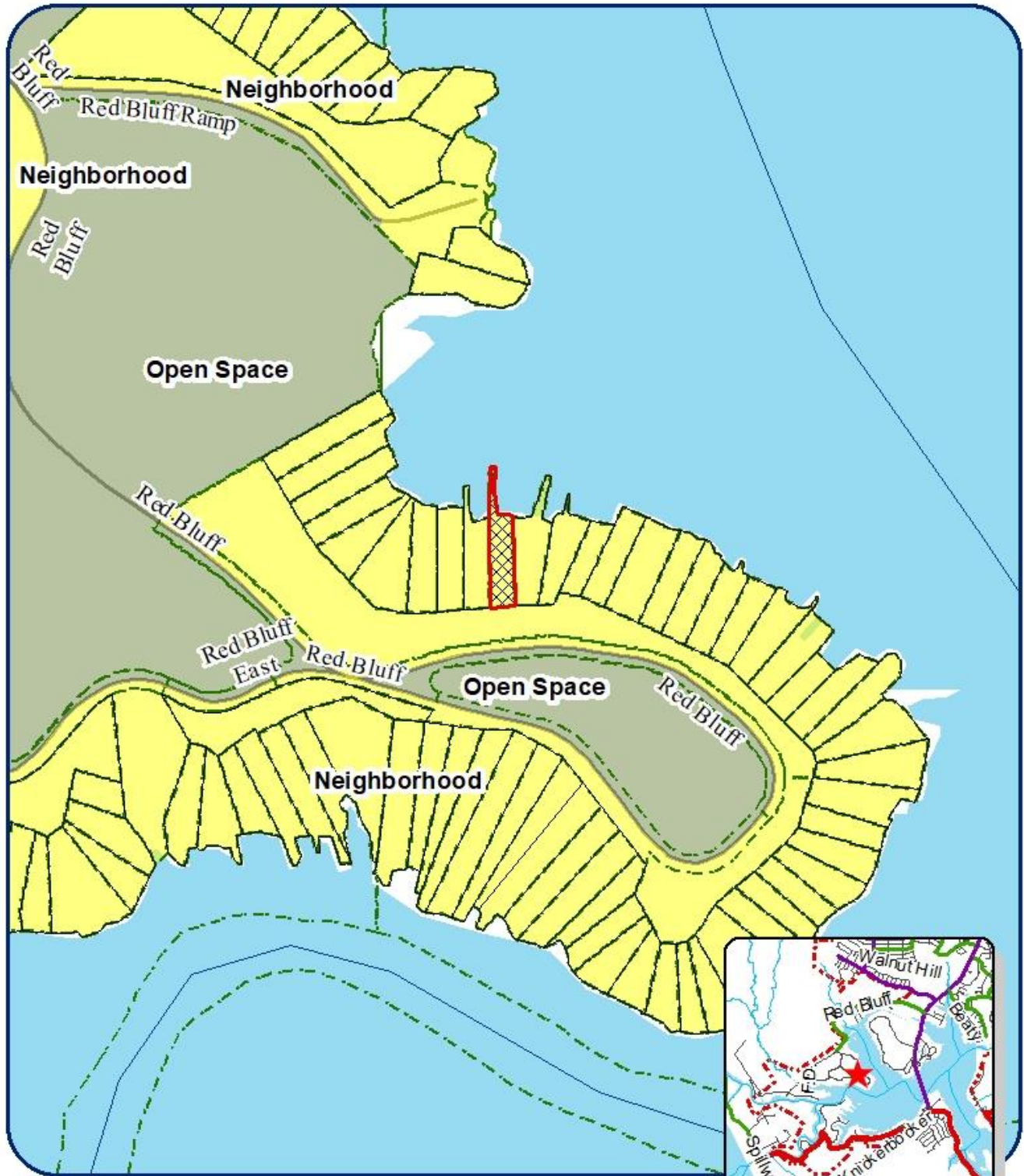
Aerial Map
Future Land Use Map
Zoning Map
Photographs
Response Letter
Letter from Lake Nasworthy HOA
Site Plan
Floor Plan and Elevations
Application



Variance: Front yard setback
ZBA 19-07: Biggerstaff
Council District: Tommy Hiebert District 1
Neighborhood: Nasworthy
Scale: 1" approx. = 325 ft
2842 Red Bluff Circle

Legend
Subject Properties:
Current Zoning: **Single-Family Residence District (RS-1)**
Requested Zoning Change: **N/A**
Vision: **Neighborhood**



Future Land Use

ZBA 19-07: Biggerstaff


Council District: Tommy Hiebert District 1

Neighborhood: Nasworthy

Scale: 1" approx. = 340 ft

2842 Red Bluff Circle

Legend

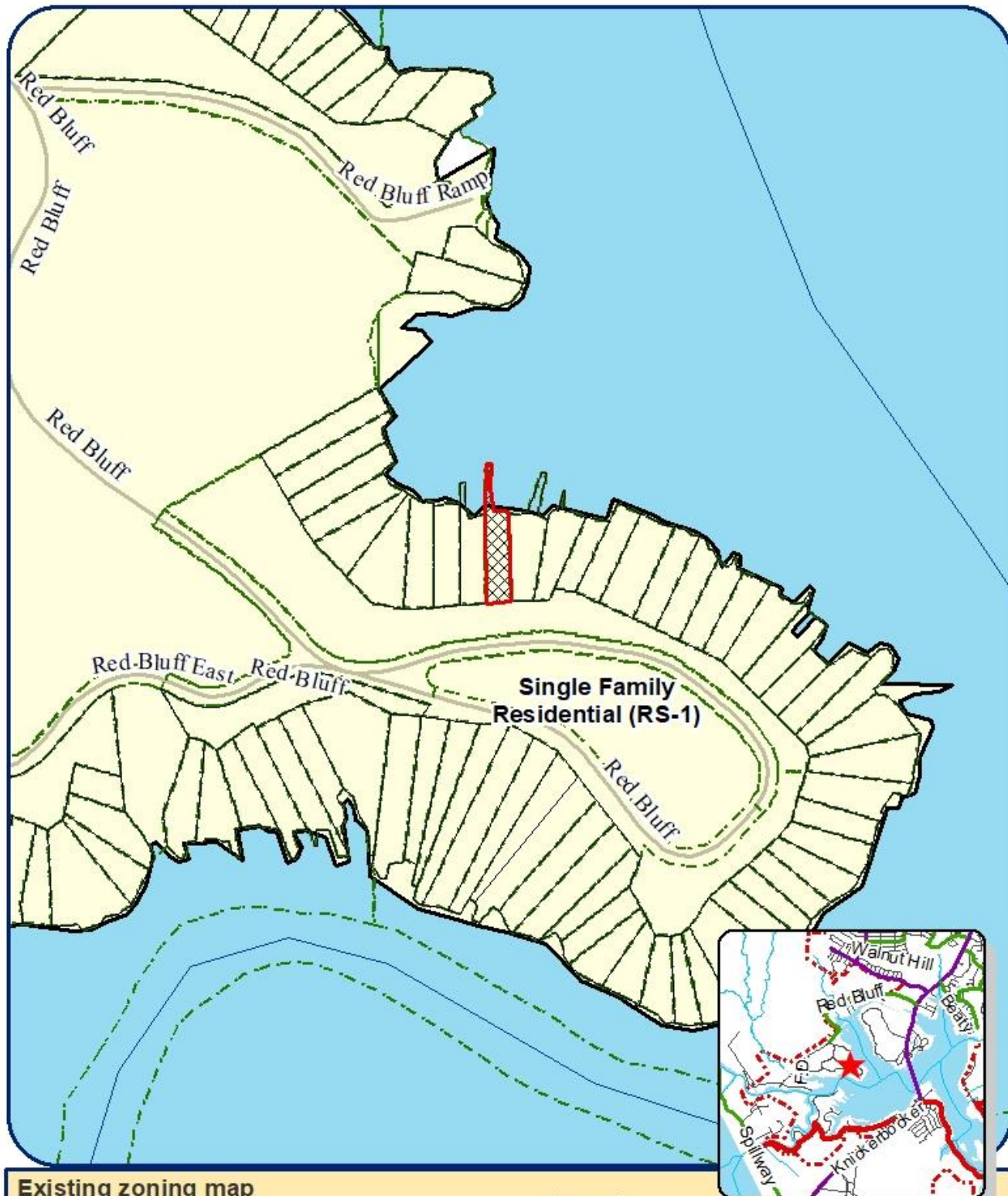
Subject Properties: 

Current Zoning: **Single-Family Residence District (RS-1)**

Requested Zoning Change: **N/A**

Vision: **Neighborhood**





Existing zoning map

ZBA 19-07: Biggerstaff

Council District: Tommy Hiebert District 1
Neighborhood: Nasworthy
Scale: 1" approx. = 340 ft
2842 Red Bluff Circle

Legend

Subject Properties: 
Current Zoning: **Single-Family Residence District (RS-1)**
Requested Zoning Change: **N/A**
Vision: **Neighborhood**



Photos of Site and Surrounding Area

WEST



EAST



SOUTH



NORTH



CLOSE-UP OF EXISTING HOME



EXISTING PORCH AND ONE-STORY ADDITION



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 72 W COLLEGE STREET IN SAN ANGELO, TEXAS 76903.

() IN FAVOR () IN OPPOSITION

REASON(S) This is a minor variance
that will have no negative
effect on nearby neighbors.

NAME: Anthony Strappel

ADDRESS: 2838 Red Bluff Circle
San Angelo, TX 76904

SIGNATURE: Anthony J. Strappel

ZBA 19-07: Biggerstaff
Property owner number: 8

If you have any questions about these proceedings, please call Sherry Bailey, Primary Planner, with the City of San Angelo's Planning Division at (325) 657-4210 or by email at sherrybailey@cosatx.us.

city

LAKE NASWORTHY HOMEOWNERS ASSOCIATION
P.O. BOX 60884
SAN ANGELO, TX 76906

Architectural Control Committee

March 12, 2019

To: Michael Dixon & Loren Ammerman
2842 Red Bluff Circle
San Angelo, TX 76904

Reference: CONSTRUCTION AT 2842 Red Bluff Circle
Scope of work: Removing & rebuilding front of house

Dear Michael & Loren;

The LNHA would like to take this opportunity to thank you for making improvements to your property. The changes on the front of your house per your plans at the location above meets all the requirements and setbacks for the project.

You will need to obtain a construction permit from the city permit office for the construction.

We ask that you please place a numbered address (2842) in 4" letters facing the lake for emergency measures.

Good luck with your construction and do not hesitate to call if you have any questions.

Sincerely,



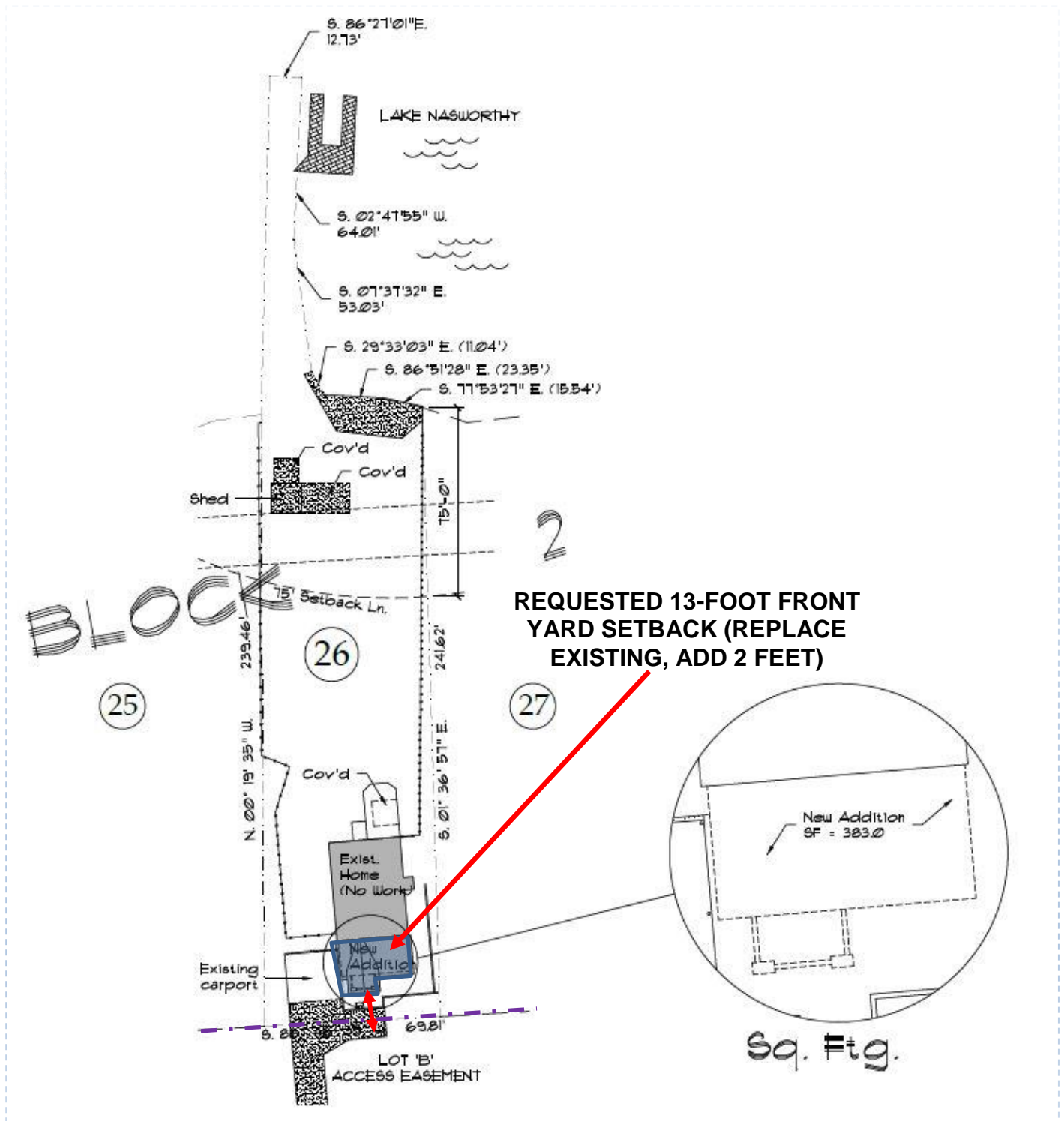
T.R. Logan
Chairman, Architectural Control Committee
L.N.H.A. Inc.

LNHOA
ARC. CON. COMM.

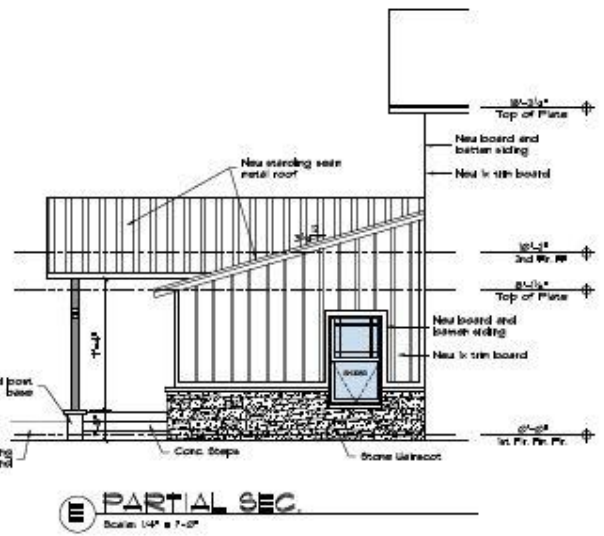
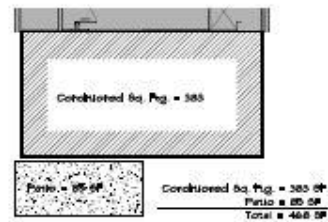
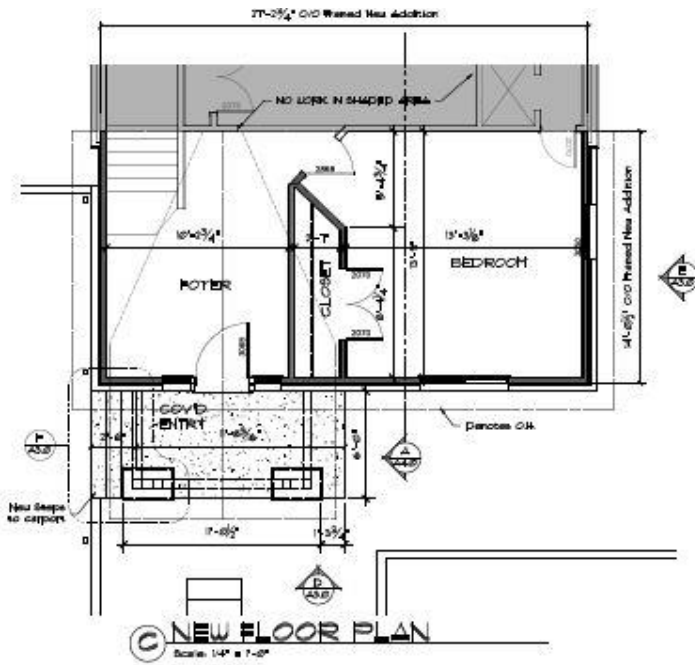

LNHOA
ARC. CON. COMM.


LNHOA
ARC. CON. COMM.


Site Plan



Proposed Floor Plan and Elevations



2A-07
 219-0K

Effective January 3, 2017



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): GARY Biggerstaff 777 Custom homes + Remodeling
 Owner Representative (Notarized Affidavit Required)

Mailing Address: P.O. Box 451 Christoval, TX 76930
City State Zip Code

Contact Phone Number: 325-656-3863 Contact E-mail Address: 777customhomes@gmail.com

Subject Property Address and/Location: 2842 Red Bluff San Angelo, TX 76904
City State Zip Code

Legal Description (can be found on property tax statement or at www.tcomgreencat.com):
Acres, 421, Blk: 2, Sudd: LAke Nasworthy, Red, Bluff, Lot 26 Sec 2
First R/P of Lots 16 to 36

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: 501A to allow variance for front yard setback of
 Describe variance: 13' in lieu of the required 25 feet.
- 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: 2842 Red Bluff currently as built does not conform to the 25' front
setback requirement. The front single story portion is sitting on a broken
stem wall footer and must be taken down to rebuild to same dimensions
it currently is, but with S&G engineered concrete footers. S&G also
engineered drainage to help with large slope towards home.

Effective January 3, 2017

Section 3 continued: Variance Request Criteria

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

Explanation: Michael Dixon & Loren Ammerman the current owners purchased home as it sets today.

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: City owns property in front of home and as such makes it difficult/impossible to purchase more frontage to meet setback requirements.

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: Customer is not asking to increase size of current footprint of home only to remedy a substantial foundation problem to reduce water and mold damage to their home.

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

Explanation: We just would like to be granted the variance to fix a foundation issue under the front 1-story only portion of the home.

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

Explanation: At this moment in time home especially the front single story is un-inhabitable due to faulty foundation and request variance to be made in order to help customer have a quality home.

Effective January 3, 2017

Section 4: Applicant(s) Acknowledgement

Please initial the following:

AS 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;

AS 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;

AS 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

AS 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.

Ray Biggerstaff
 Signature of licensee or authorized representative

4/5/19
 Date

Gary Biggerstaff
 Printed name of licensee or authorized representative

777 Custom Homes & Remodeling
 Name of business/Entity of representative

FOR OFFICE USE ONLY:

Reviewed/Accepted by: J. Fisher

Date: 4, 5, 2019

Case No.: ZBA: 19 - 06

ZBA Hearing Date: 8, 16, 2019

Fully-Dimensioned and scaled Site Plan: Yes No

Date of Application: 4, 5, 2019

Non-Refundable Fee: \$ 250.00 Receipt #: 199797

Date paid: 4, 5, 2019

Ordinance section(s) from which variance(s) is/are requested: 501.A

ZONING BOARD OF ADJUSTMENT – MAY 06, 2019

STAFF REPORT



APPLICATION TYPE:		CASE:	
Variance		ZBA19-08: McCrory	
SYNOPSIS:			
A request for approval of a Variance from Section 501.A of the Zoning Ordinance to allow for a 16-foot rear yard setback in lieu of 20 feet for a house within the Single Family Residential (RS-1) Zoning District.			
LOCATION:		LEGAL DESCRIPTION:	
2630 Coleman Street		Lot 9, Block 38, Hatcher Addition	
SM DISTRICT /	ZONING:	FUTURE LAND USE:	SIZE:
SMD #2 – Tom Thompson Bluffs Neighborhood	RS-1 – Single-Family Residential	Neighborhood	0.106 acre
THOROUGHFARE PLAN:			
<p><u>Hatcher Street</u> – Urban Local Street – ROW 50’ Required (60’ Existing) – Pavement Width 40’ or 36’ with 4’ Sidewalk Required (30’ Existing)</p> <p><u>Coleman Street</u> – Urban Local Street – ROW 50’ Required (60’ Existing) – Pavement Width 40’ or 36’ with 4’ Sidewalk Required (30’ Existing)</p>			
NOTIFICATIONS:			
23 notifications were mailed within a 200-foot radius on April 22, 2019. Zero responses have been received in support or in opposition.			
STAFF RECOMMENDATION:			
Staff recommends APPROVAL of a variance from Section 501.A of the Zoning Ordinance to allow for a 16-foot rear yard setback in lieu of 20 feet for a house within the Single Family Residential (RS-1) Zoning District.			
PETITIONER:			
Cole McCrory			
STAFF CONTACT:			
Hillary Bueker, RLA Planning Manager (325) 657-4210, Extension 1547 hillary.bueker@cosatx.us			

Variance: Section 207(F) of the Zoning Ordinance requires that the Zoning Board of Adjustments consider six (6) factors in determining the appropriateness of any Variance request.

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 existing lot was platted prior to current zoning regulations which limit the buildable area to a very small home footprint, but a 16 foot setback would allow the home to maintain an average size on the smaller lot. To this end, this section of land which was platted in the 1920's has remained vacant, unlike much of the surrounding properties, and as such, has special circumstances uniquely peculiar to it.
2. **These special circumstances are not the result of the actions of the applicant.** Since the lot was platted in 1927, the owner today is left with a limited building area due to the 20-foot setback requirement in the Zoning Ordinance which was first approved by City Council in the 1950's.
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.** With the current setbacks in the zoning ordinance, the buildable area of the lot would be 20 foot wide by 47 foot deep, thus only allowing for a maximum 940-square foot home. This would be inconsistent with the surrounding area where homes range from approximately 1,200 square feet to 2,000 square feet in size.
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 believes that this would be the minimum action needed in order to develop the property in manner consistent with the submitted plans. The applicant has asked for a variance to allow for a 16-foot rear yard setback in lieu of 20 feet. Staff believes that the reduced setback would still accommodate for the substandard lot depth, allow a reasonable use of the property consistent with nearby properties, while maintaining the spirit of the ordinance requirement in this situation.
5. **Granting the variance will not adversely affect adjacent land in a material way.** The variance will not adversely affect the adjacent land since the reduced rear yard setback will leave a smaller back yard not immediately visible to the public.
6. **Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.** The purpose of the ordinance setbacks is to provide sufficient open space and separation between structures. This variance would maintain open space while accommodating reasonable use of the property consistent with surrounding properties. The substandard lot depth creates a situation that warrants a balancing of these needs.

Allowed Variances:

In exercising its authority to grant a variance, per Section 207.D of the Zoning Ordinance, the Zoning Board of Adjustment must affirmatively find that one or more of the following circumstances applies:

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 because the original lot was platted in 1927 and since a Zoning Ordinance had not yet been adopted by City Council, no development standards were in place which would restrict the placement of a structure consistent with specific setback requirements.

2. **OVERRIDING PUBLIC INTEREST.** *If the variance 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.*
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.*

Recommendation:

Staff recommends that the Zoning Board of Adjustments **APPROVE** of a variance from Section 501.A of the Zoning Ordinance **to allow for a 16-foot rear yard setback in lieu of 20 feet** for a house within the Single Family Residential (RS-1) Zoning, subject to the following **Condition of Approval:**

1. The applicant shall obtain necessary permits from the Permits and Inspections Division.

Attachments:

Aerial Map
Future Land Use Map
Zoning Map
Application
Site Plan
Photos of the Site
Notification Map

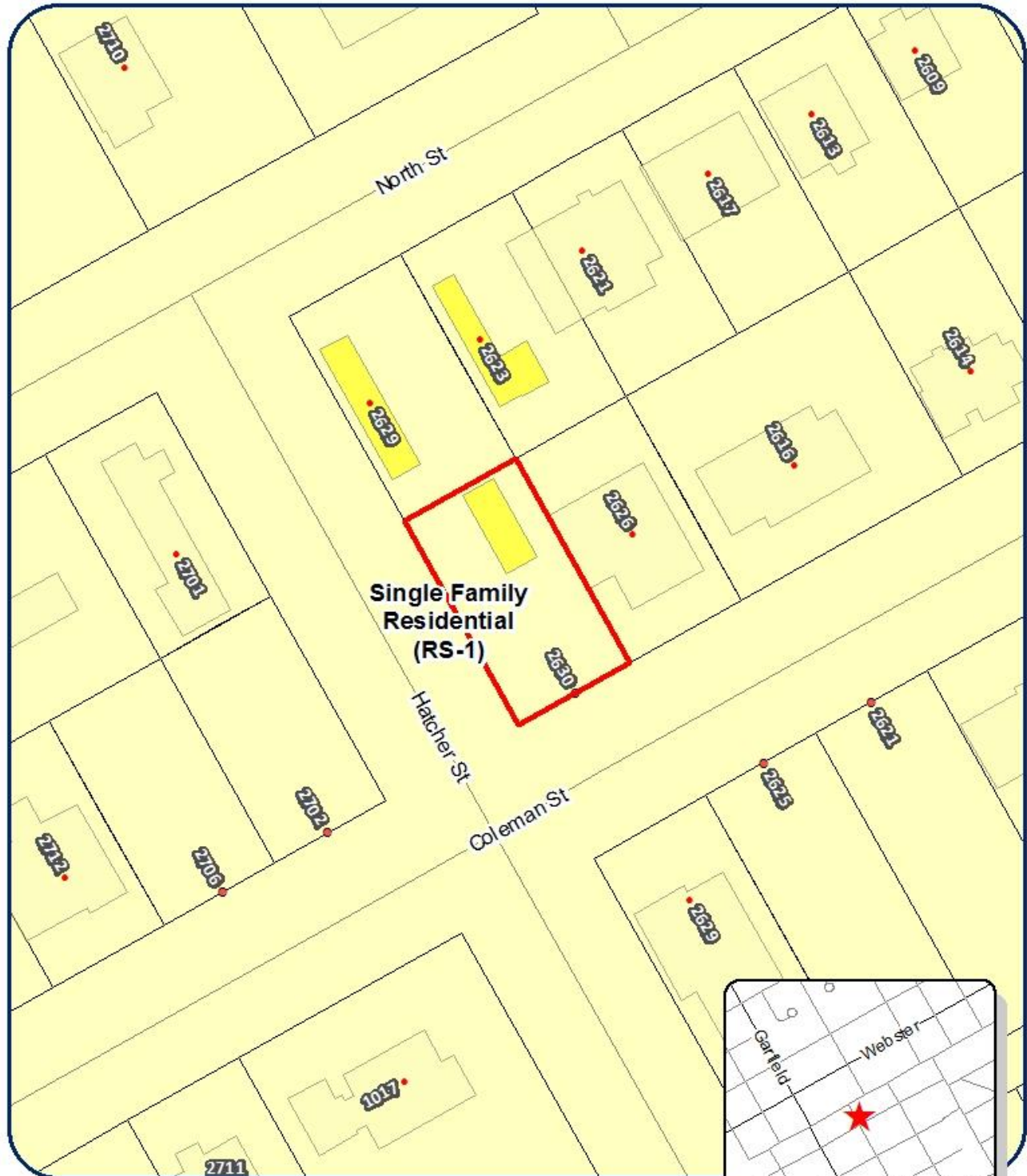


ZBA 19-08: McCrory
2630 Coleman Street

Council District: SMD #2 - Tom Thompson
Neighborhood: Bluffs
Scale: 1" approx. = 50 ft

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

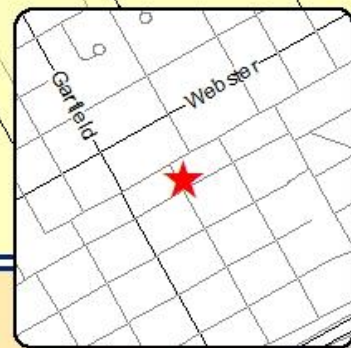




ZBA 19-08: McCrory
2630 Coleman Street

Council District: SMD #2 - Tom Thompson
Neighborhood: Bluffs
Scale: 1" approx. = 50 ft

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



Effective January 3, 2017



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): Cole McCrory
 Owner Representative (Notarized Affidavit Required)

4201 Kensington Creek San Angelo Tx 76904
 Mailing Address City State Zip Code

325-656-9082 c385662@yahoo.com
 Contact Phone Number Contact E-mail Address

2630 Coleman San Angelo Tx 76901
 Subject Property Address and/Location City State Zip Code

Acres: 0.106, Lot: 9, Bk: 38, Subd: Hatcher Addition
 Legal Description (can be found on property tax statement or at www.tamarencad.com)

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:

1. Zoning Ordinance section: S01
 Describe variance: Reduced rear set back of 11' 2.5" in lieu of required 20' setback

2. Zoning Ordinance section: "S01"
 Describe variance: Reduced setback of 5'6" in lieu of required 25' setback on double frondage
lot on hatcher
side of lot

3. Zoning Ordinance section: _____
 Describe variance: _____

4. 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: I would build the We built a home last year at 2702 Coleman
with the same lot dimensions and house dimensions as this one, as
well we were approved to build that with our exact same
variance requests.

Effective January 3, 2017

Section 3 continued: Variance Request Criteria

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

Explanation: Property was platted in the 1920s & hasn't
been altered since.

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: Keeps anyone from building a home like all of the
existing ones around it due to the double frontage
lot set backs.

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 this variance will not affect any public interest.

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

Explanation: Granting this will make this home the same as the
other adjacent properties

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

Explanation: Yes

Effective January 3, 2017

Section 4: Applicant(s) Acknowledgement

Please initial the following:

CM 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;

CM 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;

CM 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

CM 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.

Cole McCrory
Signature of licensee or authorized representative

4/8/19
Date

Cole McCrory
Printed name of licensee or authorized representative

McCrory Homes
Name of business/Entity of representative

FOR OFFICE USE ONLY:

Reviewed/Accepted by: _____

Date: ____/____/____

Case No.: ZBA: 19-08

ZBA Hearing Date: 5, 06, 19

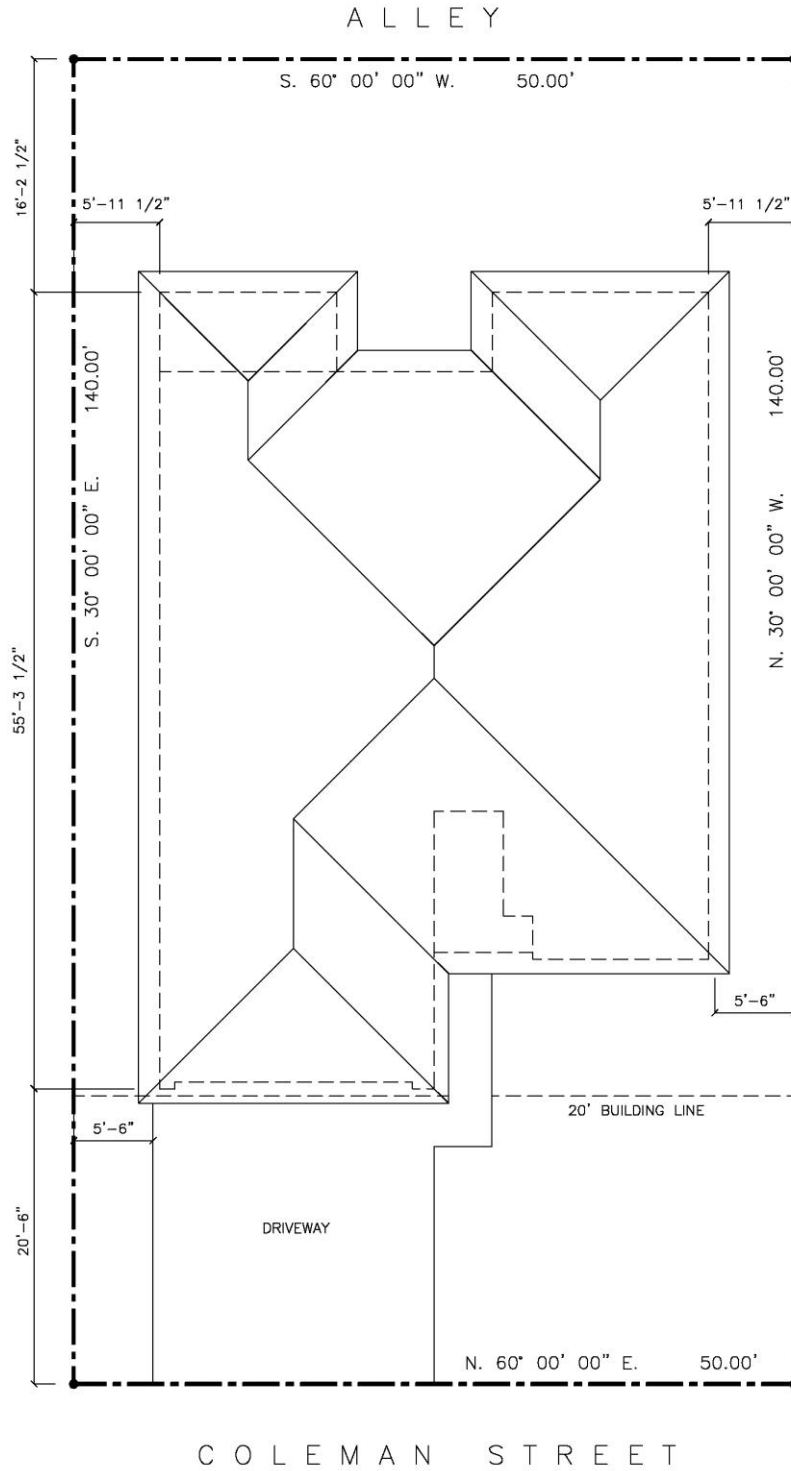
Fully-Dimensioned and scaled Site Plan: Yes No

Date of Application: ____/____/____

Non-Refundable Fee: \$ 250.00 Receipt #: 203406

Date paid: 4, 10, 19

Ordinance section(s) from which variance(s) is/are requested: _____



2630 COLEMAN STREET
LOT 9, BLOCK 38,
HATCHER ADDITION
SAN ANGELO, TOM GREEN CO., TEXAS

PLOT PLAN
SCALE: 1/8" = 1'-0"

Photos of the Site



2630 Coleman St.



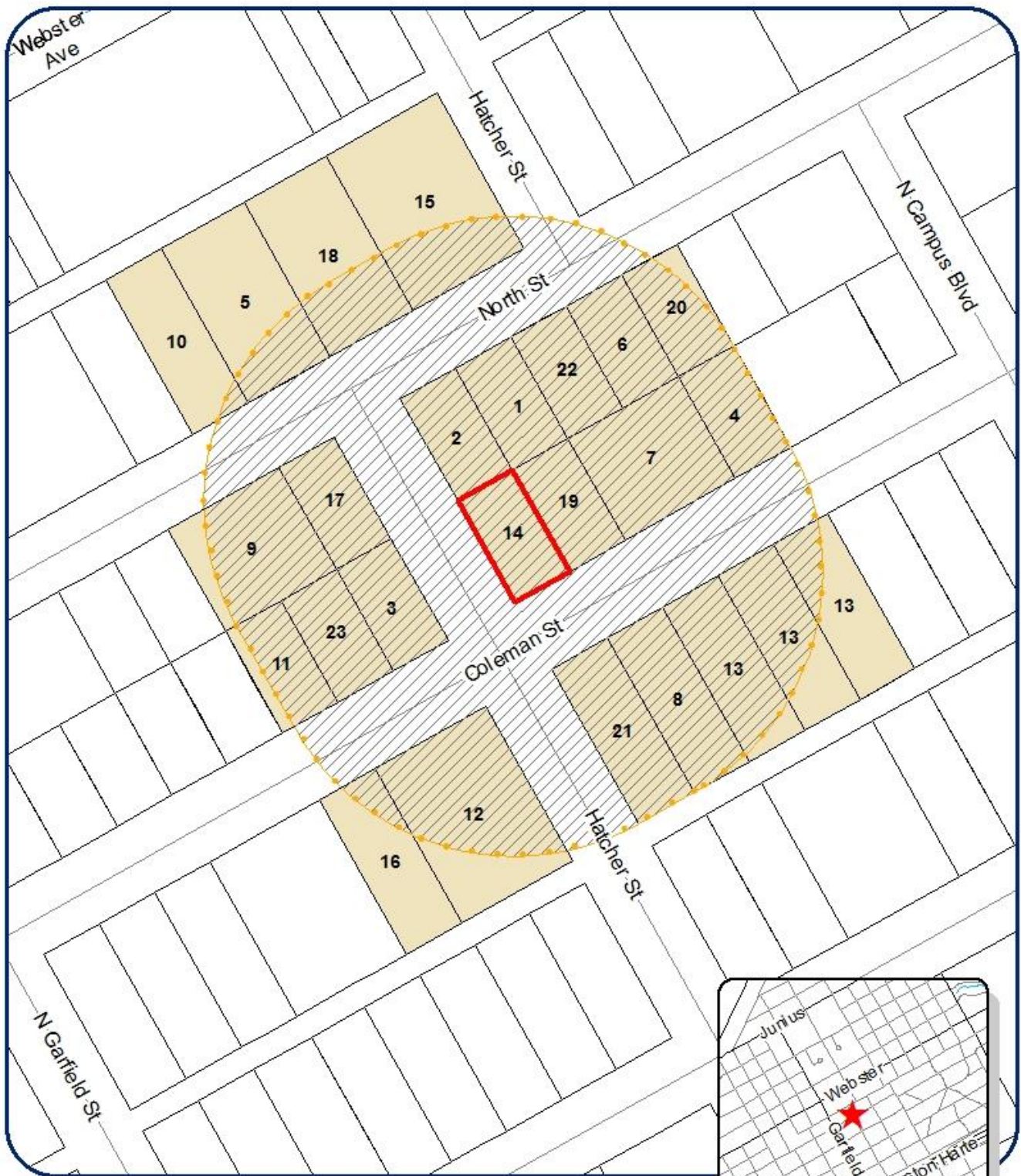
Property directly adjacent to rear yard



Rear of lot looking toward Coleman St.




2626 Coleman St. – Adjacent Backyard



ZBA19-08: McCrory
2630 Coleman Street

Council District: SMD #2 - Tom Thompson
Neighborhood: Bluffs
Scale: 1" approx. = 100 ft

Legend

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



ZONING BOARD OF ADJUSTMENT – MAY 06, 2019

STAFF REPORT



APPLICATION TYPE:		CASE:					
Variance		ZBA19-09: Rodgers					
SYNOPSIS:							
<p>A request for approval of three Variances from Section 501.A of the Zoning Ordinance to allow for a 20 foot front yard setback on W. Washington Dr. in lieu of the required 25 feet for a corner house within the Two-Family Residential (RS-2) Zoning District, a 15 foot front yard setback in lieu of the required 25 feet for S. David St., and a 15 foot back yard setback in lieu of the required 20 feet for a house within the Two-Family Residential (RS-2) Zoning District located at 602 W. Washington Drive.</p>							
LOCATION:		LEGAL DESCRIPTION:					
602 W. Washington Dr.		E1/2 of Lot 10 & the E ½ of the S ½ of Lot 9, Blk 15 Park Heights Addition					
SM DISTRICT /		ZONING:		FUTURE LAND USE:		SIZE:	
SMD #5 – Lane Carter Santa Rita Neighborhood		RS-2 Two-Family Residential		Neighborhood		0.138 acre	
THOROUGHFARE PLAN:							
<p><u>David Street</u> – Urban Local Street – ROW 50’ Required (70’ Existing) – Pavement Width 40’ or 36’ with 4’ Sidewalk Required (40’ Existing)</p> <p><u>Washington Drive</u> – Collector Street – ROW 60’ Required (80’ Existing) – Pavement Width 50’ existing</p>							
NOTIFICATIONS:							
12 notifications were mailed within a 200-foot radius on April 18, 2019. Two responses have been received in support, none in opposition.							
STAFF RECOMMENDATION:							
Staff recommends APPROVAL of a variance from Section 501.A of the Zoning Ordinance to allow for a 20-foot front yard setback in lieu of 25 feet on W. Washington Dr.; to allow for a 15 foot front yard setback in lieu of the required 25 feet on a corner lot on S. David St.; and a setback of 15 feet in lieu of a 20 foot back yard setback within the Two Family Residential (RS-2) Zoning District.							
PETITIONER:							
John Rodgers							
STAFF CONTACT:							
Sherry L. Bailey Principal Planner (325) 657-4210, Extension 1546 sherry.bailey@cosatx.us							

Variance: Section 207(F) of the Zoning Ordinance requires that the Zoning Board of Adjustments consider six (6) factors in determining the appropriateness of any Variance request.

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 existing lot was platted in 1906 prior to current zoning regulations which limit the buildable area to a small home footprint. The original house was built in 1925 on the present site configuration. When the house burnt it made rebuilding on the existing site without multiple variances almost impossible. The lot itself is 75 ft. by 80 ft. but has been that size since 1925.
2. **These special circumstances are not the result of the actions of the applicant.** The present owner of the land purchased it for her use unaware that the existing lot setbacks would prohibit an average sized home to be built on the lot. The average home in this area was built between 1918 and 1959.
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.** Almost no homes in this area are built on the original platted lots. Most homes are built on very small pieces of lots or large combined lots. This is an area where infill development is all that is available, and yet the area is a thriving transitional residential district.
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 believes that the requested variances are necessary to allow a useable home and garage site. None of the requested variances are extreme. A 20 ft. front yard setback versus the required 25 ft. on Washington Dr., a 15 ft side yard (2nd front yard) in lieu of the 25 ft. on David St. and a 15 ft. back yard setback in lieu of the required 20 back yard setback required would result in a 2200 sq. ft. buildable area for a house and garage. If the buildable area was held to the required setbacks the resulting buildable area would be around 1225 sq ft. for a house and garage combined.
5. **Granting the variance will not adversely affect adjacent land in a material way.** The variance will not adversely affect the adjacent land since the norm for the area is a mix of large homes on small lots and large homes on very large lots along with commercial just a block away that is creeping into the area. This is a fluid transitional area.
6. **Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.** The purpose of the ordinance setbacks is to provide sufficient open space and separation between structures. This variance would maintain open space while accommodating reasonable use of the property consistent with surrounding properties. There is also a recognition that certain areas become transitional mixed use areas and greater flexibility is encouraged in those areas.

Allowed Variances:

In exercising its authority to grant a variance, per Section 207.D of the Zoning Ordinance, the Zoning Board of Adjustment must affirmatively find that one or more of the following circumstances applies:

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 because the original lot was platted in 1906 and development occurred almost immediately that facilitated parceling off portions of lots. Since a Zoning Ordinance had not yet been adopted by City Council, no development standards were in place which would restrict the placement of a structure consistent with specific setback requirements.

2. **OVERRIDING PUBLIC INTEREST.** *If the variance 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.*
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.*

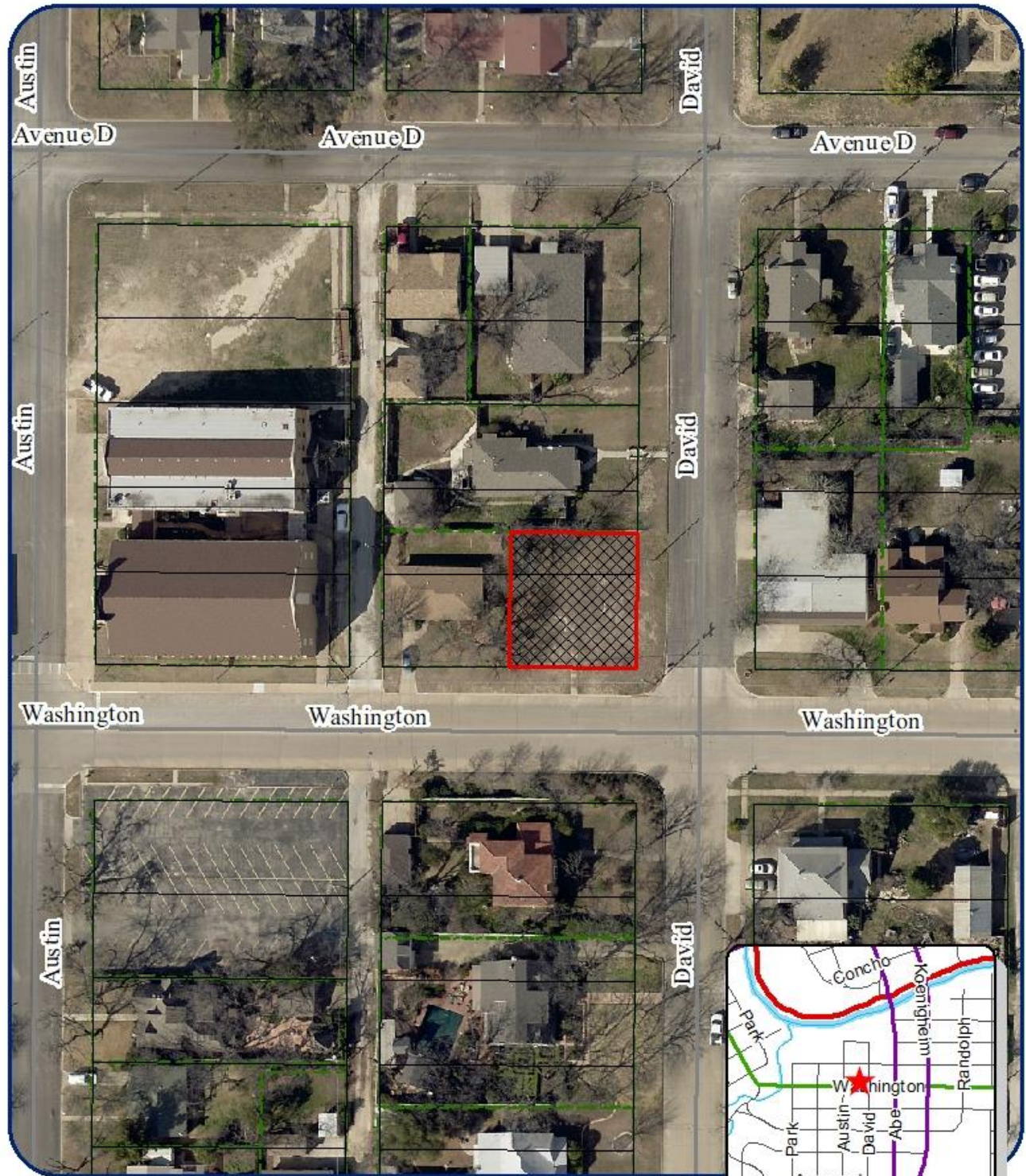
Recommendation:

Staff recommends that the Zoning Board of Adjustments **APPROVE** of a variance from Section 501.A of the Zoning Ordinance **to allow for a 20-foot front yard setback in lieu of 25 feet on Washington St.; to allow a 15-foot front yard setback in lieu of 25 feet setback on David St. and to allow a 15 foot back yard setback in lieu of 20 ft.** for a house within the Two Family Residential (RS-2) Zoning, subject to the following **Condition of Approval:**

1. The applicant shall obtain necessary permits from the Permits and Inspections Division.

Attachments:

Aerial Map
Future Land Use Map
Zoning Map
Application
Site Plan
Photos of the Site
Notification Map



Variance Request - Aerial Map

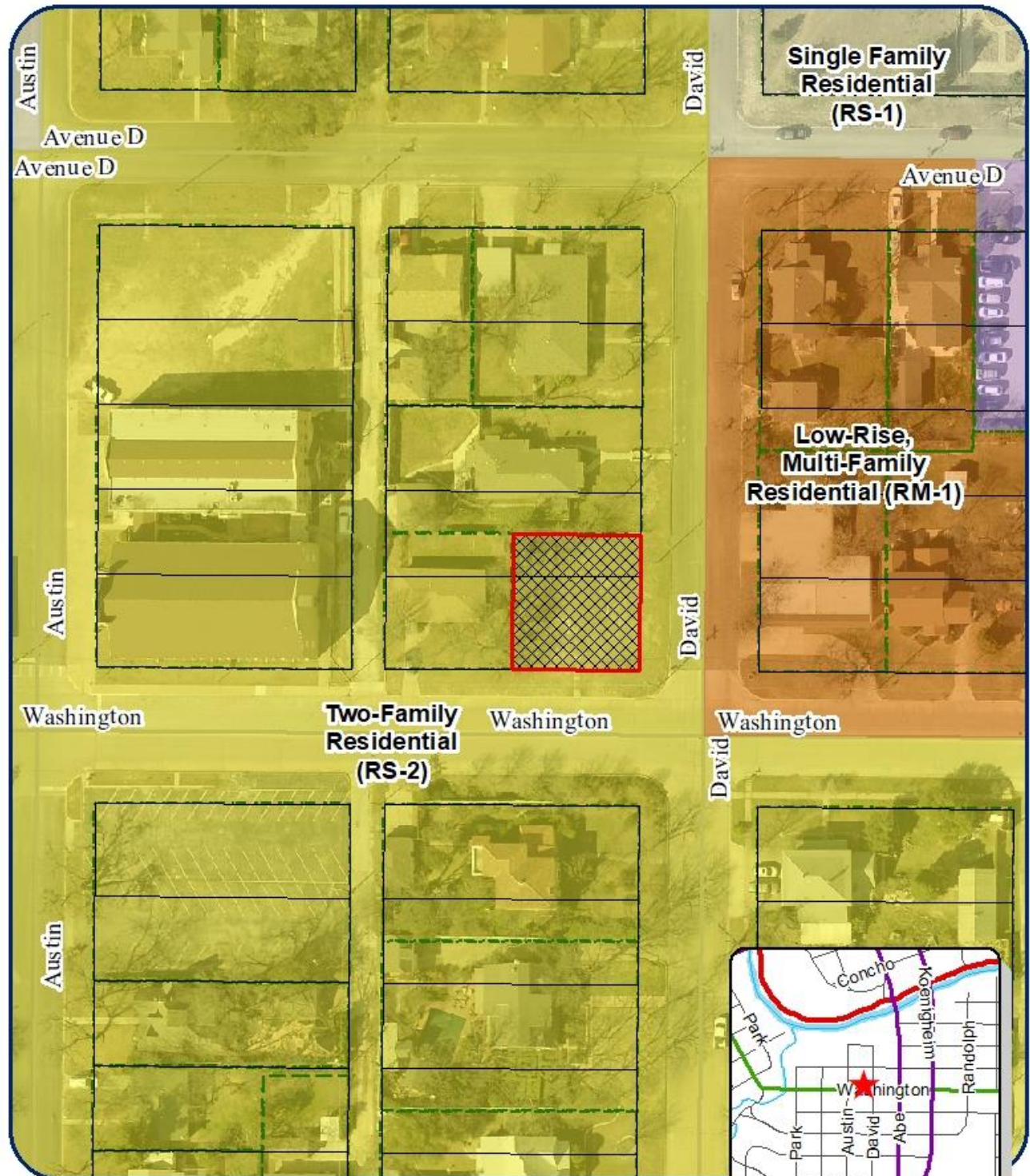
ZBA19-09:Rodgers

Council District 5 - Lane Carter
Neighborhood: Santa Rita
Scale: 1" approx. = 75 ft
602 W. Washington St.

Legend

Subject Properties: 
Current Zoning: **Two-Family Residence District (RS-2)**
Requested Zoning Change: **N/A**
Vision: **Neighborhood**





Variance Request - Aerial Map

ZBA19-09:Rodgers

Council District 5 - Lane Carter
Neighborhood: Santa Rita
Scale: 1" approx. = 75 ft
602 W. Washington St.

Legend

Subject Properties: 
Current Zoning: **Two-Family Residence District (RS-2)**
Requested Zoning Change: **N/A**
Vision: **Neighborhood**





Variance Request - Aerial Map

ZBA19-09:Rodgers

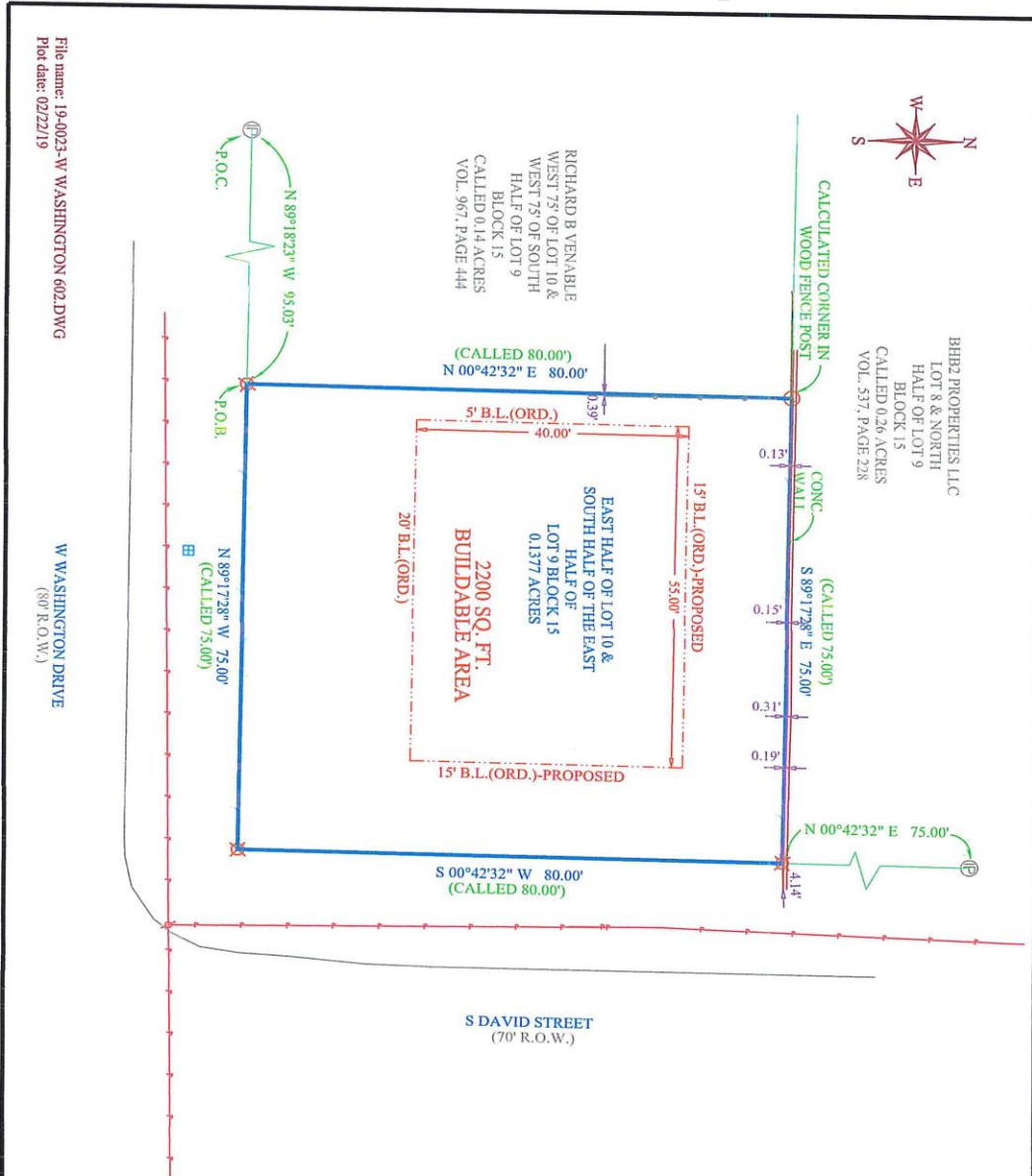
Council District 5 - Lane Carter
Neighborhood: Santa Rita
Scale: 1" approx. = 75 ft
602 W. Washington St.

Legend

Subject Properties: 
Current Zoning: **Two-Family Residence District (RS-2)**
Requested Zoning Change: **N/A**
Vision: **Neighborhood**



SITE PLAN



File name: 19-0023-W WASHINGTON 602.DWG
 Plot date: 02/22/19

W WASHINGTON DRIVE
 (80' R.O.W.)

S DAVID STREET
 (70' R.O.W.)

SURVEY LEGEND

- SUBJECT PROPERTY LINE
- ADJOINING PROPERTY LINE
- ORDINANCE BUILDING LINE (L.)
- PLATTED BUILDING LINE (L.)
- RESTRICTIONS BUILDING LINE (L.)
- CHAINLINK FENCE
- COVERED CONC.
- WATER METER
- FOURER POLE

1/2" IRON ROD W/ MARKON PLASTIC CAP MARKED "RHS 6132 - ATM SURV SET"

1/2" IRON PIPE ROUND

Survey Notes:

- The bearings of this survey are based on the Texas State Plane Coordinate System, Central Zone, NAD83(2011) EPOCH 2010, and boundary referenced to 1/2" iron pipes referred to the previous recorded plat.
- Drawing Scale is 1"=20'
- Drawn by: Adam Wallace
- Said lot does not appear to be under the 100 year flood plain, as identified by the Federal Emergency Management Agency on Community Panel No. 48451C0480E effective date, 06-19-2012

I, Adam Wallace, Registered Professional Land Surveyor No. 6132, do hereby certify that this is a true and correct representation of an actual survey made on February 21st, 2019, made under my supervision and that there are no encroachments or overlaps unless otherwise shown.

Adam Wallace
 Texas Registered Professional
 Land Surveyor, Number 6132

SURVEY PLAT

LOT: EAST-HALF(2) OF LOT TEN(10) & BLOCK: FIFTEEN(15)
 SOUTH-HALF(S/2) OF THE
 EAST-HALF(E/2) OF LOT NINE(9)
 ACREAGE: 0.1377 ACRES
 SUBDIVISION: PARK HEIGHTS ADDITION
 STREET ADDRESS: 602 W. WASHINGTON DRIVE
 CITY: SAN ANGELO, TEXAS COUNTY: TOM GREEN
 SURVEYED FOR: KR CONSTRUCTION

ATM Surveying
 P.O. Box 10313, College Station, TX 77840
 PHONE: (979)209-9291 email: Adam@ATMSurveying.com
 www.ATMSurveying.com - FRM #101784-00

THIS SURVEY COMPLETED WITHOUT THE BENEFIT OF A TITLE COMMITMENT

Effective January 3, 2017



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): JOHN RODGERS

Owner Representative (Notarized Affidavit Required)

PO BOX 60282 SAN ANGELO TX 76906
 Mailing Address City State Zip Code

(325) 374-8195 JOHN@BUILD.SANANGELO.COM
 Contact Phone Number Contact E-mail Address

602 W WASHINGTON SAN ANGELO TX 76903
 Subject Property Address and/Location City State Zip Code

ACRES: 0.138 BLK 15 SUBD PARK HEIGHTS ADDITION E 1/2 OF LOT 18 & E 1/2 OF S 1/2 OF LOT 9
 Legal Description (can be found on property tax statement or at www.tomgreencad.com)

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:

1. Zoning Ordinance section: _____
 Describe variance: _____
2. Zoning Ordinance section: _____
 Describe variance: _____
3. Zoning Ordinance section: _____
 Describe variance: _____
4. 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: THE LOT HAD A STRUCTURE THAT WAS REMOVED DUE TO A HOUSE FIRE. WHEN THE STRUCTURE WAS REMOVED, NEW ORDINANCES ARE NOW APPLICABLE RESULTING IN THE INABILITY TO PLACE A SINGLE FAMILY RESIDENCE WITH A GARAGE DUE TO BUILDABLE AREA BEING TOO LIMITED.

Effective January 3, 2017

Section 3 continued: Variance Request Criteria

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

Explanation: THE APPLICANT PURCHASED THE LOT UNAWARE OF
THE NEW BUILDING SETBACKS. THE LOT DIMENSIONS DID NOT
EQUATE TO THE TRUE BUILDABLE AREA OR LOT SIZE.

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: THE ENFORCEMENT OF 25' SIDE/FRONT SETBACK WOULD
GLIMSWARE THE ABILITY TO PLACE A COVERED PARKING AREA
FOR AN AUTOMOBILE.

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 WOULD ALLOW A NEW
RESIDENCE TO BE BUILT AND BE IN LINE WITH
SURROUNDING STRUCTURES.

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

Explanation: THE STRUCTURES ADJACENT TO THIS PROPERTY
WOULD NOT BE AFFECTED DUE TO THEIR SETBACKS
FALLING UNDER THE OLDER ORDINANCES.

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

Explanation: GRANTING THE VARIANCE WILL BEAUTIFY THE
AREA & BE CONSISTENT WITH ORDINANCES.

Effective January 3, 2017

Section 4: Applicant(s) Acknowledgement

Please initial the following:

JR 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;

JR 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;

JR 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

JR 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.

[Signature]
Signature of licensee or authorized representative

29 MAR 2019
Date

JOHN RODGERS
Printed name of licensee or authorized representative

KVR CONSTRUCTION
Name of business/Entity of representative

FOR OFFICE USE ONLY:

Reviewed/Accepted by: _____

Date: ____/____/____

Case No.: ZBA: 19 - 09

ZBA Hearing Date: 5, 06, 19

Fully-Dimensioned and scaled Site Plan: Yes No

Date of Application: ____/____/____

Non-Refundable Fee: \$ 250. Receipt #: 203413

Date paid: 4, 10, 19

Ordinance section(s) from which variance(s) is/are requested: _____

Photos of the Site



At property facing north.



Neighbor across W. Washington Street has setback of 13 feet. Home in the middle of the block has 10 feet on Washington.



Neighbor to the east has zero setback on S. David St.



Looking west, this home has 25 foot setback.



Variance - 200 Ft. Notification

ZBA19-09: Rodgers
 Council District #5: Lane Carter
 Neighborhood: Santa Rita
 Scale: 1" approx. = 125 ft
602 W. Washington St.

Legend
 Subject Properties: █
 Current Zoning: **Two-Family Residence District (RS-2)**
 Requested Zoning Change: **N/A**
 Vision: **Neighborhood**




BY-LAWS OF THE ZONING BOARD OF ADJUSTMENT OF THE CITY OF SAN ANGELO

Article 1. General Governing Statutes, Ordinances and Rules

1.01 **Restated Articles.** These bylaws restate in their entirety and supersede the bylaws of the Board in effect upon their adoption and shall be effective upon approval by the City Council for the City of San Angelo.

1.02 **Governing law.** The Zoning Board of Adjustment shall be governed by the following statutes, ordinances and rules, as amended and supplemented from time to time and to the extent that such statutes, ordinances and rules remain in force and effect.

- Chapter(s) 211 of Texas Local Government Code.
- Article(s) 2.07 “Boards, Committees and Boards, Division I and Division 3 of the Code of Ordinances, City of San Angelo, Texas (hereinafter “Code of Ordinances”).
- Chapter 12 of the Code of Ordinances, Exhibit “A” Zoning Ordinance
- Appendix A to the Code of Ordinances, Fee Schedule
- Bylaws of the Zoning Board of Adjustment

Article 2. Membership of the Board

The following additional rules shall apply to the Board:

- 3.01 *Removal For Cause.* In compliance with Chapter 211 of the Texas Local Government Code, the City Council may remove a regular Board member or alternate Board member for cause, on a written charge and after a public hearing on the matter.
- 3.02 *Resignation.* When members propose to resign, they shall give notice of their intent to the Board chair and secretary. When any member resigns or a position otherwise becomes vacant for other causes, the secretary shall promptly indicate to the City Council that a vacancy exists.
- 3.03 *Board Members Record.* The City Clerk shall maintain a record of Board members that includes the Board member’s designation as regular or 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.

Article 4. Meeting date, time and place.

Regular meetings of the Zoning Board of Adjustment shall be on the first Monday of each month, beginning at 1:30 p.m. in the City Council chambers of City Hall or other appropriate location in San Angelo, Texas.

- 4.01 Meeting Schedule. The number of meetings per month and schedule of meeting dates, as well as the place of meetings, may be altered or changed at any regularly scheduled meeting or upon call of the Chair or Secretary.
- 4.02 Special Meetings. Special meetings may be held at any time, upon the call of the Board chair or upon written request of three (3) Board members, following at least seventy-two hours' notice to each member of the Board. Call of special meeting to be held at a stated time and place, for a stated purpose, made at a regular meeting on the record shall be sufficient notice thereof to all Board members in attendance. Board members not then in attendance shall be provided written notice thereof. If a special meeting is called on a matter requiring notice of hearing, the required notice provisions for the hearing shall be met.

Article 5. Conduct of Meetings

- 5.01 Motion Approval. The concurring vote of a simple majority of members present (and constituting a quorum) is required to approve any motion on a matter except as otherwise required under Article 2.07 of the Code or Ordinance or Chapter 211 of the Texas Local Government Code.
- 5.02 Chair Vote. It shall be customary for the chair to vote on all matters pending before the Zoning Board of Adjustment except in case of recusal for conflict of interest.
- 5.03 Agenda Order. The following order of procedure shall generally be observed for the presentation of relevant evidence and information; however, it may be rearranged by the chair for individual items, if necessary for the expeditious conduct of business:
- a. The chair shall introduce the matter described on the meeting agenda, summarizing the nature of the matter including location of subject property.
 - b. City staff shall describe in more detail the nature of the request and its relation to applicable ordinances and regulations. Other relevant evidence may be presented by staff and a recommendation made. If staff recommends approval of a variance, then one or more criteria incorporated by reference in subsection 11.01 of these bylaws shall be identified as the basis for its recommendation.

- c. The Board may ask questions of the staff, concerning its presentation and report.
 - d. The applicant/appellant shall outline the nature of the request and present supporting evidence including witnesses, if so desired.
 - e. Board members may ask questions of the applicant/appellant and supporting witnesses.
 - f. Members of the public in attendance shall be provided an opportunity to speak and present evidence in favor of or in opposition to the request.
 - g. Staff may make rebuttal or add points not previously covered.
 - h. The applicant/appellant may also cross-examine any witness or member of the staff.
 - i. At the discretion of the Chair, members of the public are given a second opportunity to make rebuttal or add points not previously covered.
 - j. Board members may ask final questions of the applicant/appellant or staff, and proceed with deliberation and making a decision on the matter.
- 5.04 Orderly Procedure. The applicant, staff, witnesses, representatives, and members of the public shall speak only after being recognized by the chair to proceed. Interruption of persons so recognized shall be avoided.
- 5.05 Questions during Hearing. During the hearing, the chair, Board members and the staff may ask questions and make appropriate comment pertinent to the case; however, no member should debate or argue an issue with the applicant.
- 5.06 Question Pertaining to Facts. The chair and Board members may direct any questions to the applicant/appellant or to any person speaking, in order to bring out all relevant facts, and may call for questions from members of the staff.
- 5.07 Evidence Procedure. The Board shall not be bound by strict rules of evidence, or be limited to consideration of such evidence as would be admissible in a court of law, but may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The chair shall rule on all questions relating to admissibility of evidence, but may be overruled by a majority of board members present.
- 5.08 Motion Requires a Show of Hands. All decisions of the Board shall be made at a public meeting by a motion made and seconded, and by a show of hands.
- 5.09 Chair's Hearing Discretion. The chair may elect, subject to being overruled by a majority of

the Board members in attendance, on a motion duly passed, to:

- a. Proceed immediately to determination and decision, on conclusion of the hearing on the particular case; or
- b. Defer determination and decision until later in the same meeting; or
- c. Defer determination and decision until another specified regular or special meeting of the Board, in order to obtain additional information or for other good cause.

5.10 Recess. Any regular or special meeting may be recessed or adjourned from day to day, or to the time of any previously announced regular or special meeting.

5.11 Cancellation. If no business is scheduled before the Board, or if it is apparent that a quorum will not be available, any meeting may be canceled by the chair.

Article 6. Minutes

6.01 Minute Book. The Board shall maintain a minute book which shall be kept posted to date. In the minute book shall be recorded the Board's proceedings, showing attendance and all absences, any disqualifications of members, the records of its examinations and all other official actions, as well as the vote of each member voting on every question.

6.02 Approval of Draft Minutes. The draft minute record of a Board meeting shall be presented for approval at a subsequent scheduled meeting of the Board. The draft minute record must be approved by a majority of the members who were present at the meeting for which the minutes are transcribed. If this not possible due to resignations, deaths, or the fact that alternate members were present at the applicable meeting and not present at the current meeting, then a majority of the members present and voting shall be all that is necessary to approve the minutes.

6.03 Filed Minutes. The minutes shall be considered filed after each of the following has occurred: a) the minutes have been approved by the Board, b) the Chair or Vice Chair has signed the minutes, and c) the Secretary has posted the minutes in the record book kept in the office of the Planning and Development Services Department.

Article 7. Requests to Withdraw, to Defer or Continue Hearings, or to Amend Applications and Appeals

7.01 Withdrawn Appeal. On written request from the applicant/appellant or authorized agent, an application or appeal may be withdrawn at any time before the Board makes its decision in the case.

7.02 Deferral or Continuance. On its own motion, or on approval of request by an applicant/appellant or authorized agent, the Board may defer the hearing or provide for continuance. Deferral or continuance of a hearing shall be permitted only for good cause, stated in the motion, shall require re- notice, and shall be conditioned upon repayment of fees by applicant/appellant when deferral or continuance is at the applicant's/appellant's request or is the result of applicant's/appellant's action.

7.03 (a) Application Amendment. An applicant/appellant or authorized agent, may amend an application or appeal as a matter of right on written notice of the amendment received by the secretary of the Board not less than fifteen (15) days prior to the scheduled hearing date. An applicant/appellant or authorized agent may submit a written motion to the Board to accept an amendment to an application or appeal less than fifteen (15) days prior to the scheduled hearing date. The Board, shall consider potential prejudice to any other interested party or the public and consider if there is just cause in support of the applicant's/appellant's motion. Granting of such motion shall require the vote of at least four of the Board members present.

(b) Amendment Once Advertised. On deliberation of an applicant's/appellant's motion to amend, the Board shall make findings regarding: (1) whether there is a substantive difference between the matter as described in public notice and as amended; and, (2) whether the motion to amend includes more restrictive conditions than described in the public notice. If the motion substantively amends the pending application such that prior public notice of the purpose of the hearing is deemed ineffective by the Planning Department Director, re-notice of hearing shall be required, and additional fees shall be paid by the applicant/appellant. Counsel and Planning Department staff shall be permitted to file an amended or updated report and recommendation to the Board prior to deliberation and decision of the Board on an amended application or appeal. Should the Board determine that the proposed amendment involves no substantive change or seeks more restrictive conditions than the application or appeal initially filed, then the Board may waive re- notice and proceed with the hearing as scheduled.

Article 8. Second Hearings

Second Application or Appeal. The Director of the Planning and Development Services Department, or his/her designee, shall determine whether a second application is substantially different from an application or appeal which has been denied during the previous six months and which affects the same piece of property. If the second application or appeal is determined by the Director to be substantively different from and not the same as the former application, it may be deemed by the Director as being an initial application for different relief rather than a second application for the same relief .

Article 9. Officers

- 9.01 Election of Chair and Vice-Chair. Annually, as the first item of new business at the first regular meeting of the Board, the Board shall elect a chair and vice-chair. The election shall be determined by a majority vote of those members present and constituting a quorum at said meeting. If such regular meeting is canceled or a quorum is lacking, the election shall be held at the next regular meeting of the board, subject to call of a special meeting for that purpose. If no quorum can be obtained within thirty-six (36) days of the first regularly scheduled annual meeting, the secretary shall notify the City Council which shall appoint a chair and vice-chair to serve until the next annual regular election.
- 9.02 Succession of Vice-Chair to office of Chair. If the chair resigns his office or the office of chair otherwise becomes vacant, the vice-chair shall succeed to office of chair for the remainder of the chair's term. If the vice-chair succeeds to the office of chair and resigns his office, or the office of vice-chair otherwise becomes vacant, a special election shall be held at the next regular meeting of the Board to select a vice-chair to serve for the remainder of the term.
- 9.03 Presiding at Meetings. (a) The chair shall preside at all meetings and hearings. If the chair is absent or unable to preside, the vice-chair shall preside. If both the chair and vice-chair are absent or unable to preside, the members present shall by majority vote appoint a temporary chair to preside.
- (b) In accordance with these and other applicable rules, the presiding officer shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on motion duly made and passed. The presiding officer shall maintain order and decorum, and to that end, may order removal of disorderly or disruptive persons. Subject to exception for presentations by city staff, the presiding officer shall administer oaths to all witnesses or arrange for such oaths to be administered before a person authorized to administer oaths.
- 9.04 Other Responsibilities and Duties of Chair. The chair shall have additional duties to:
- a. Designate members of the Board to make personal inspections of premises, when necessary or desirable for the proper consideration of matters coming before the Board.
 - b. Assign duly appointed alternates to serve in the absence or disability of regular Board members, or refer this duty to the secretary of the Board.
 - c. Appoint such committees as may be found desirable by the Board relating to duties of the Board or matters coming before the Board.

- 9.05 Delegation to Vice-Chair. The chair may delegate specific duties generally to be performed by the vice-chair, or may authorize the vice-chair to perform specific duties of the chair, during the chair's absence or disability, so that necessary Board functions are performed in a timely manner. The vice-chair shall perform all duties so delegated. In case of absence or incapacity of the chair, and on approval by a majority of the Board, the vice-chair shall perform any or all duties of the chair, whether or not so delegated.
- 9.06 Appointment of Secretary; Duties. The Director of the Planning and Development Department, or designee, shall serve as secretary to the Zoning Board of Adjustment. The secretary shall attend to all correspondence of the Board; provide for service or cause to be published all notices required; attend all Board meetings and hearings (except when excused by the chair and with temporary services arranged); receive and distribute staff reports; assist the Board in articulating and transcribing proper findings and motions; scrutinize all matters to assure compliance with the Zoning Ordinance and these rules; compile all required records; maintain the necessary scheduled, files and indexes; and generally, perform or supervise all clerical work of the Board.

Article 10. Conduct of Board Members

- 10.01 Expressions of Bias, Prior to Hearing. Board members may receive information from the Secretary, counsel to the Board or staff serving the Board, as well as from applicants or appellants, prior to public hearing; however, a Board member shall not express an opinion, bias, or prejudice on a matter coming before the Board prior to its consideration in an open meeting.
- 10.02 No Representation by a Board Member. No member of the Board shall represent an applicant or appellant on any matter that may come before the Board. This provision does not limit the right of a Board member to represent himself or herself, on his or her own application or appeal.
- 10.03 Members Not to Vote Unless Present at Hearing. A Board member shall not vote on any matter deciding an application or appeal, except upon attending the scheduled public hearing on the application or appeal. Should an application or appeal be decided at a meeting of the Board other than when heard at the scheduled public hearing, a board member not being in attendance at the scheduled hearing and not voting pursuant to this provision shall not participate in the Board discussion or deliberation on the matter for a vote, but shall remain and be counted for quorum purposes.

Article 11. Findings and Other Considerations for Approval of Variances from Zoning

Regulations

- 11.01 *Criteria.* In exercising its power to grant a variance in accordance with zoning regulations, the Zoning Board of Adjustment, in making its findings, shall articulate and reflect in its minute record the specific findings required in support of its decision as required under applicable provisions of the Zoning Ordinance.

Article 12. Miscellaneous

- 12.01 *Submission Deadline.* The deadline for submission of a complete application for consideration of an appeal, variance or special exception shall be no less than twenty-one (21) days before the regularly scheduled meeting of the Zoning Board of Adjustment at which application is to be considered. A complete application fee, as determined by City Council must accompany the application.
- 12.02 All maps, plats, site plans, photographs or any other exhibits (or copies thereof) presented to the Board shall become the property of the City and maintained by the Board as part of the file record for that matter subject to city policies for retention and disposal.

Article 13. Amendment of Bylaws

- 13.01 *Amending Bylaws.* These bylaws may be amended at any regular or special called meeting of the Zoning Board of Adjustment, by a majority of a quorum of Board members present, provided that each of the following conditions is met:
- a. The amendment is not in conflict with applicable State law or City ordinance.
 - b. Written notice of the proposed amendment is furnished to each Board member at least seven (7) days prior to the open meeting at which the amendment is to be considered.
 - c. The amendment is approved by city council.

13.02 *Suspension of Rule of Procedure.* A rule of procedure set forth in the bylaws may be suspended at any meeting by a majority vote of all Board members present, unless suspension of the procedure would be in conflict with applicable State law or City ordinance.

DULY ADOPTED by the Zoning Board of Adjustment,

SUBJECT TO APPROVAL of the City Council of the City of San Angelo, Texas,
this 18th day of March, 2019.

, Chairperson
Date: March 18, 2019

APPROVED AND ADOPTED BY the City Council for the City of San Angelo, Texas,
this 19th day of March, 2019.

Brenda Gunter, Mayor

ATTEST:

Julia Antilley, City Clerk

APPROVED AS TO CONTENT

APPROVED AS TO FORM

Jon Janes, Planning and Development
Services Director

Dan Saluri, Deputy City Attorney

ORDINANCE 2018-121

AN ORDINANCE AMENDING THE CODE OF ORDINANCES FOR THE CITY OF SAN ANGELO, TEXAS BY DELETING AND REPLACING CHAPTER 2 "ADMINISTRATION AND PERSONNEL", ARTICLE 2.07 "BOARDS, COMMITTEES, AND COMMISSIONS"; DELETING CHAPTER 4 "BUILDING AND CONSTRUCTION"; ARTICLE 4.02 "ADMINISTRATION", SECTION 4.02.01 "CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS"; DELETING SECTION 4.02.002 "APPEALS"; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

BE IT ORDAINED BY THE CITY OF SAN ANGELO:

- 1) **THAT**, Chapter 2, Article 2.07, is hereby deleted and replaced as shown on Exhibit "A".
- 2) **THAT**, Chapter 4, Article 4.02, Sections 4.02.001 and 4.02.002 be deleted in the entirety.
- 3) **THAT**, all Boards and Commissions of the City of San Angelo are hereby instructed to revise their bylaws to conform with these changes within six months of the passage of this ordinance.
- 4) **THAT** the City Clerk is hereby instructed to create staggered terms for the City of San Angelo Development Corporation Board and to adjust all other boards as necessary to ensure appropriate of members.

5) **THAT**, all remaining provisions not amended by this ordinance remain in full force and effect.

6) **THAT**, the following severability clause is hereby adopted with this amendment:


SEVERABILITY:

That the terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance shall be declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

7) **THAT**, this Ordinance shall be effective on, from, and after the date of its passage and publication as required by law.


INTRODUCED on the 18th day of September, 2018, and finally **PASSED, APPROVED and ADOPTED** on this the 2nd day of October, 2018.

THE CITY OF SAN ANGELO:

DocuSigned by:


85CC121DADBB40F...
 Brenda Gunter, Mayor

ATTEST:

DocuSigned by:


EE8995EDA4E1475...
 Bryan Kendrick, City Clerk

APPROVED AS TO FORM:

DocuSigned by:


E822428D610A4D4...
 Theresa James, City Attorney

Exhibit A**ARTICLE 2.07 BOARDS, COMMITTEES AND COMMISSIONS****Division 1. Generally**

Sec. 2.07.001 Organization and Procedure. Unless otherwise required by statute or this article, all boards and commissions shall be governed as follows:

(1) *Appointment.* Members shall be appointed by a vote of City Council. One member shall be nominated by the mayor. Each of the six remaining member seats shall be designated for a single member district one through six respectively, to be filled by nomination of the councilmember representing the designated single member district. Should any nominee not secure at least four affirmative votes of councilmembers, the mayor or single member district city council member having made the nomination shall schedule a new nomination for vote of the council.

(2) *Attendance.* Any member who fails to attend at least 2/3 of the meetings in a rolling one year period shall be deemed to have automatically resigned from office unless such absences are considered excused as set forth in the board or commission's bylaws.

(3) *Number of members.* Boards shall be composed of seven members.

(4) *Compensation.* All members shall serve without compensation.

(5) *Conflict of interest.*

(A) No member of the board shall participate in any case in which he or she has financial or personal interest in the property concerned, or will be directly affected by the decision, or has any other conflict of interest as defined by applicable law. The determination of "substantial" interest in a business entity, as well as rules affecting participation of board members in cases affected thereby, are described in chapter 171 in the Texas Local Government Code, as amended.

(B) No member of the city council, or person related to a councilmember within the second degree by consanguinity or affinity, shall be eligible for a grant or assistance from any board during his/her tenure or for six months thereafter.

(C) None of the following persons or entities shall be eligible for a grant or assistance from any board during his/her tenure or for six months thereafter.

1) The member of the board;

2) A person related to a board member within the second degree by consanguinity or affinity;

3) A legal entity owned by or under the control of the board member or for which the board member serves as an officer, director or member;

4) A legal entity owned by or under the control of a person related to the board member within the second degree by consanguinity or affinity or for which such person serves as an officer, director or member.

(D) No employee of the department associated with the board, or person related to an employee or supervisor of this department within the second degree by consanguinity or

affinity, shall be eligible for assistance from the board during his/her employment or for six months thereafter.

(E) A member may disqualify himself/herself from voting whenever any requestor, or his/her agent, has sought to influence the vote of the member in any setting, other than in the public meeting.

(6) *Election of Officers.* Each board shall include in the adopted bylaws the manner in which officers and committees will be selected. Each board shall have at a minimum a chair, vice-chair, and secretary.

(7) *Meetings.* Each board shall hold regular monthly meetings on a day to be selected by the commission and on other such occasions as may be called by the chairman. Additional meetings may be called as needed. Meetings may be cancelled in months where there is no business to be transacted. All meetings shall be open to the public and held in accordance with the Texas Open Meetings Act. All meetings shall be held within the city limits.

(8) *Minutes.* Board liaisons shall keep a permanent record of all minutes.

(9) *Qualifications.* Members shall be at least 18 years of age and a resident of the City.

(10) *Quorum.* A quorum shall consist of a simple majority of the appointed members, excluding any ex-officio members.

(11) *Removal.* Members may be removed at any time by a 2/3 vote of the City Council without cause.

(12) *Rules, regulations and bylaws.* Each board shall have the power to make rules, regulations and bylaws for its own government and in conformity with the laws of the state and this article. All said rules, regulations, and bylaws shall be approved by the city council.

(13) *Term:* The term of office for each member of the boards shall be two years.

(14) *Term Limit.* No member may serve more than 3 consecutive terms, not including an unexpired term. Members who term out of a position are eligible for reappointment after one year. For the purposes of this Article, the current number of terms held as of the date of passage of this Article stands, with respect to established term limits.

(15) *Vacancies.* All vacancies shall be filled for unexpired terms in the same manner as original appointment. Vacancies for unexpired terms shall be filled for the remainder of the unexpired term.

Secs. 7.02.002 through 7.02.010 Reserved

Division 3. Zoning Board of Adjustment

Sec. 2.07.026 Creation and Appointment of Members

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

(1) Four alternate board member seats shall be designated to be filled by nominations of the mayor and mayor pro-tem with each nominating two of the alternates

(b) Each case before the zoning board of adjustment must be heard by at least six (6) members.

(c) 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.

(d) Removal for Cause. The city council may remove a regular board member or alternate board member for cause on a written charge after a public hearing.

Sec. 2.07.027 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 six (6) 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. 2.07.028 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 a reasonable time as determined by the rules of the board. On receiving the notice, the official from whom the appeal is taken shall immediately 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 except as may otherwise be directed by consensus of the board:

- (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.
- (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.