

**ZONING BOARD OF ADJUSTMENT – June 5’ 2023
STAFF REPORT**



APPLICATION TYPE:		CASE:	
Variance		ZBA23- 08: 1974 & 1994 Beaty Road	
SYNOPSIS:			
<p>The applicant has submitted a request for approval of a variance from Section 502.B of the Zoning Ordinance to allow for a 15-foot setback in lieu of the required 25-foot setback for a second front yard.</p>			
LOCATION:		LEGAL DESCRIPTION:	
1974 & 1994 Beaty Road		First Replat of 16-D Bentwood Country Club Estates Lots 53 & 58 Blk.101	
SM DISTRICT / NEIGHBORHOOD:	ZONING:	FUTURE LAND USE:	SIZE:
SMD District #1 – Tommy Hiebert Country Club Neighborhood	RM1 (Low Rise Multi-Family)	Neighborhood	0.3939 acres
NOTIFICATIONS:			
<p>26 notifications were mailed within a 200-foot radius on May 17, 2023. No letters have been received to date in support or opposition.</p>			
STAFF RECOMMENDATION:			
<p>Staff’s recommendation is for the Zoning Board of Adjustment (ZBA) to APPROVE a variance from 502.B of the Zoning Ordinance to allow for a street front setback of 15 feet, in lieu of the required minimum 25 feet for a second front yard setback.</p>			
PROPERTY OWNER/PETITIONER:			
Applicant: Dave Wells			
STAFF CONTACT:			
Sherry Bailey Senior Planner (325) 657-4210, Extension 1546 sherry.bailey@cosatx.us			

Additional Information: Staff has been working with the applicant to review the history of this property.

Variations: 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.** This variance request relates to what is considered as the second frontage being the perpetual unobstructed access, emergency vehicle, drainage, and utility easement. (the “Flag Lot” frontage side).
2. **These special circumstances are not the result of the actions of the applicant.**
The applicant purchased the City approved lots in their current platted configuration.
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 unnecessary and undue hardship.** This interpretation is contrary to those lots with homes constructed with similar conditions, that have this secondary frontage. This interpretation limits the buildable area on the lots, which Staff believes creates an unnecessary and undue 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.** Granting the variance will allow the construction of an appropriately sized residence, which is not contrary to the public interest. The front 25’ front yard building setback along Beaty Road meets the spirit and intent of the Zoning Ordinance.
5. **Granting the variance will not adversely affect adjacent land in a material way.** In Staff’s opinion, granting the variance would not have an adverse effect on adjacent land.
6. **Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.** Section 104.2 of the Zoning Ordinance states that the purpose of the Ordinance is to “Protect the character and the established pattern of development in each area.” Staff believes that granting this variance will not disrupt the pattern of development in this area.

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 applicant believes the property is handicapped of development due to the irregularly shaped and oriented lots (Flag Lot), and the double frontage setback issue created by the layout & design of the subdivision.

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.*

The applicant believes that the literal enforcement of the Zoning Code will deprive him of providing a good home to buyers, as granting this variance will not disrupt the pattern of development in this area. The use will continue as the similar pattern of residential homes.

Recommendation:

Staff's recommendation is for the Zoning Board of Adjustment (ZBA) to **APPROVE** a variance from 502.B of the Zoning Ordinance to allow for a building setback of 15 feet in lieu of the required 25-foot setback, for a second front yard.

Attachments:

Aerial Map
Photographs

Notification Map



200' Notification Map
ZBA23-08 1974 & 1994 Beaty Rd
 Council District: #1 Tommy Hiebert
 Neighborhood: Country Club
 Scale: 0.000501 0.02 0.03 0.04 Miles

Subject Properties: —
 200' Buffer: —
 Notified Properties: —

N

Photos of Site and Surrounding Area



Adjacent property built as the applicant intends with a 25-foot front yard setback off the “flag lot” drive

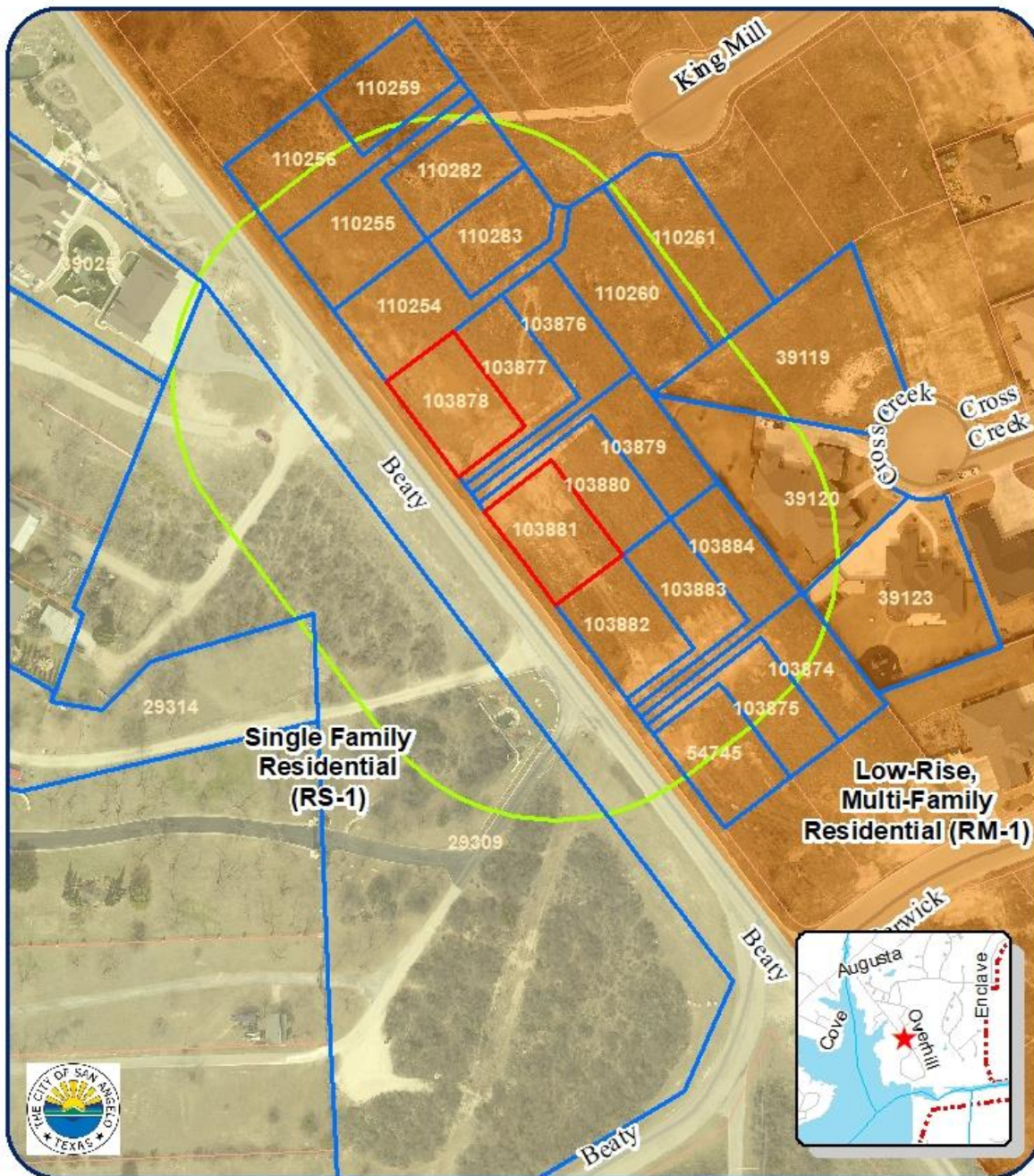


Applicant's property



View showing a 15-foot street side front yard setback

Zoning Map



Zoning Map ZBA23-08 1974 & 1994 Beaty Rd Council District: #1 Tommy Hiebert Neighborhood: Country Club Scale: 0.005 0.01 0.02 0.03 0.04 Miles		Subject Properties: — 200' Buffer: — Notified Properties: —	N
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ZONING BOARD OF ADJUSTMENT – June 5, 2023
STAFF REPORT

APPLICATION TYPE:	CASE:
Variance	ZBA23-09: 6610 Clarice Court

SYNOPSIS:
The applicant presented a request for a variance from Section 402 A.2 of the Zoning Ordinance to allow for an accessory structure greater than the allowed maximum accessory building floor area to construct a personal shop/storage/game area/sleepover building to the rear of a residence within the Single-Family Residence (RS-1) Zoning District located at 6610 Clarice Court. The owner’s residence/attached garage is 3,432 sq. ft. He would be allowed an accessory structure of 1,716 Sq. ft. He would like a building at least 3,000 sq. ft. to accommodate all the uses he envisions. Although the zoning is RS-1, his lot is 0.7 acres in size. He is asking for a 1,500 sq. ft. variance to allow him to build a structure of around 3,000 sq. ft.

LOCATION:	LEGAL DESCRIPTION:		
6610 Clarice Court	Being Lot 16 N, Block 2, SUNSET RANCH ESTATES, 1 st R/P in B Blk 2		
SM DISTRICT / NEIGHBORHOOD:	ZONING:	FUTURE LAND USE:	SIZE:
SMD District #1 – Tommy Hiebert Country Club Neighborhood	Single-Family Residential (RS-1)	N – Neighborhood	0.7 acres

THOROUGHFARE PLAN:
Clarice Court – Urban Local Streets, required: 50’ right-of-way, 40’ pavement or 36’ with a 4’ wide sidewalk, Provided: 40’ pavement

NOTIFICATIONS:
16 notifications mailed within a 200-foot radius on April 27, 2023. No responses have been received to date.

STAFF RECOMMENDATION:
Staff’s recommendation is for the Zoning Board of Adjustment (ZBA) to **APPROVE** a variance from Section 402.A.2 of the Zoning Ordinance to allow a variance for an accessory structure greater than the allowed maximum accessory building floor area.

PROPERTY OWNER/PETITIONER:

Owner: Michael & Cara Kratzer

STAFF CONTACT:

Sherry Bailey, Senior Planner
(325) 657-4210, Extension 1546
sherry.bailey@cosatx.us



Additional Information: The project is in the Country Club neighborhood. This area is zoned RS-1 (Single-Family) Residential, but the homes on this side of the street back up to the Heavy Commercial (CH) and Office Warehouse (OW) area off Highway 277. The owner and applicant has a larger lot (0.7 acres) than many of the other home lots in the neighborhood. This extra lot area allows him plenty of room for the addition of the accessory use, separation from his home and the homes of the adjoining neighbors, and still be able to buffer the noise of the commercially zoned areas. His vision is a large, 3000 sq. ft. structure that will house his shop, some storage area, a game area, and a sleepover kitchenette/bathroom area for when his teenage children have friends over. It becomes a safe area removed from the house but still protected. He intends to construct an accessory building with a compatible building style to his existing home. This building will be about 80 ft. from his home, giving him the 20 ft. rear setback from the rear property line and at least 25 ft. on each side of the building to the side property lines.

Allowed Variances:

In addition to the six (6) criteria in the City's Zoning Ordinance, 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 properties 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 the reasonable use of the land or building. On September 1, 2021, the State of Texas has amended the Texas Local Government Code, Section 211.009 to include the following five criteria as grounds for a hardship:*
 - (1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;
 - (2) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
 - (3) compliance would result in the structure not complying with a requirement of a municipal ordinance, building code, or other requirement;
 - (4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
 - (5) the municipality considers the structure to be nonconforming structure.
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.*

Planning Staff believes that #3 is applicable to this request. The construction of the new accessory structure that meets his needs will not be detrimental to the neighboring properties, and strict application of the Zoning Ordinance will result in extraordinary impact on the owners.

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.** See rationale above.
2. **These special circumstances are not the result of the actions of the applicant.** The owner is asking for a use that is in keeping with the size and use of this lot.
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.** As indicated, strict adherence to the accessory building size restriction in this case would not be considering the lot size and the existing commercial zones that are adjacent to this property and that impact the owner(s) property in a negative way.
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 request is what the owner would like to have to allow better use of the land and a more complete use of his property. Denying the proposed use does not seem to be in keeping with the best use of the land criteria.
5. **Granting the variance will not adversely affect adjacent land in a material way.** The accessory use will not disturb adjacent property owners on either side of the owners' home because he is placing the accessory building far enough to the rear to not affect the neighbors. The adjacent commercial uses will not be affected by the residential use of the property.
6. **Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.** Section 104.2 of the Zoning Ordinance states that the purpose of the Ordinance is to

“Protect the character and the established pattern of development in each area”. The use, for the reasons above, will maintain the established development pattern of the area.

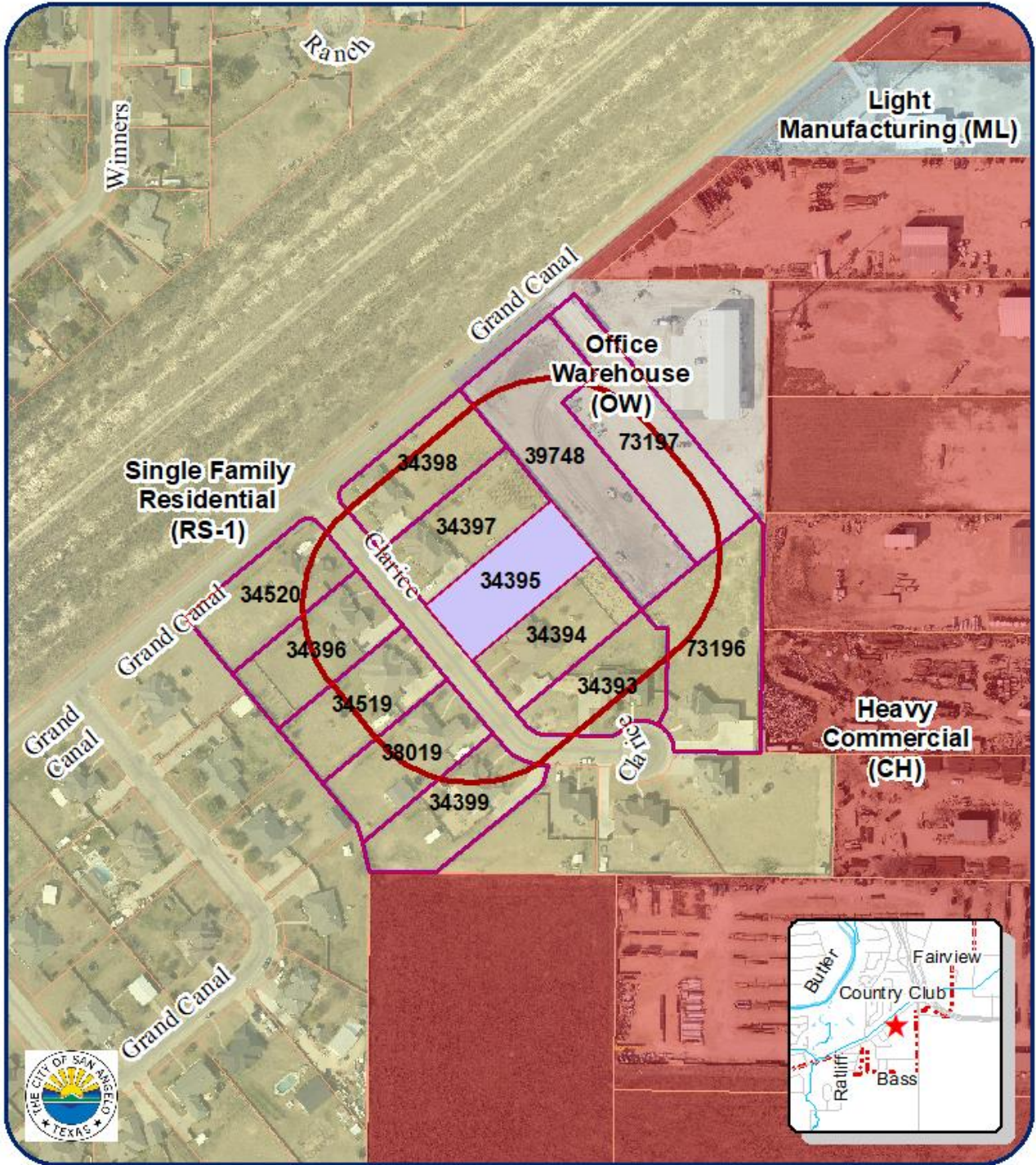
Recommendation:

Staff recommends that the Zoning Board of Adjustment (ZBA) **APPROVE** a variance from Section 402. A.2, to allow for an accessory structure greater than the allowed maximum accessory building floor area to construct a personal shop/storage/game area/sleepover building to the rear of a residence within the Single-Family Residence (RS-1) Zoning District located at 6610 Clarice Court, subject to **two conditions** of approval:

1. The proposed building is built providing setbacks from adjacent property lines as described above.
2. The applicant obtains all appropriate permits for the new accessory use structure.

Attachments:

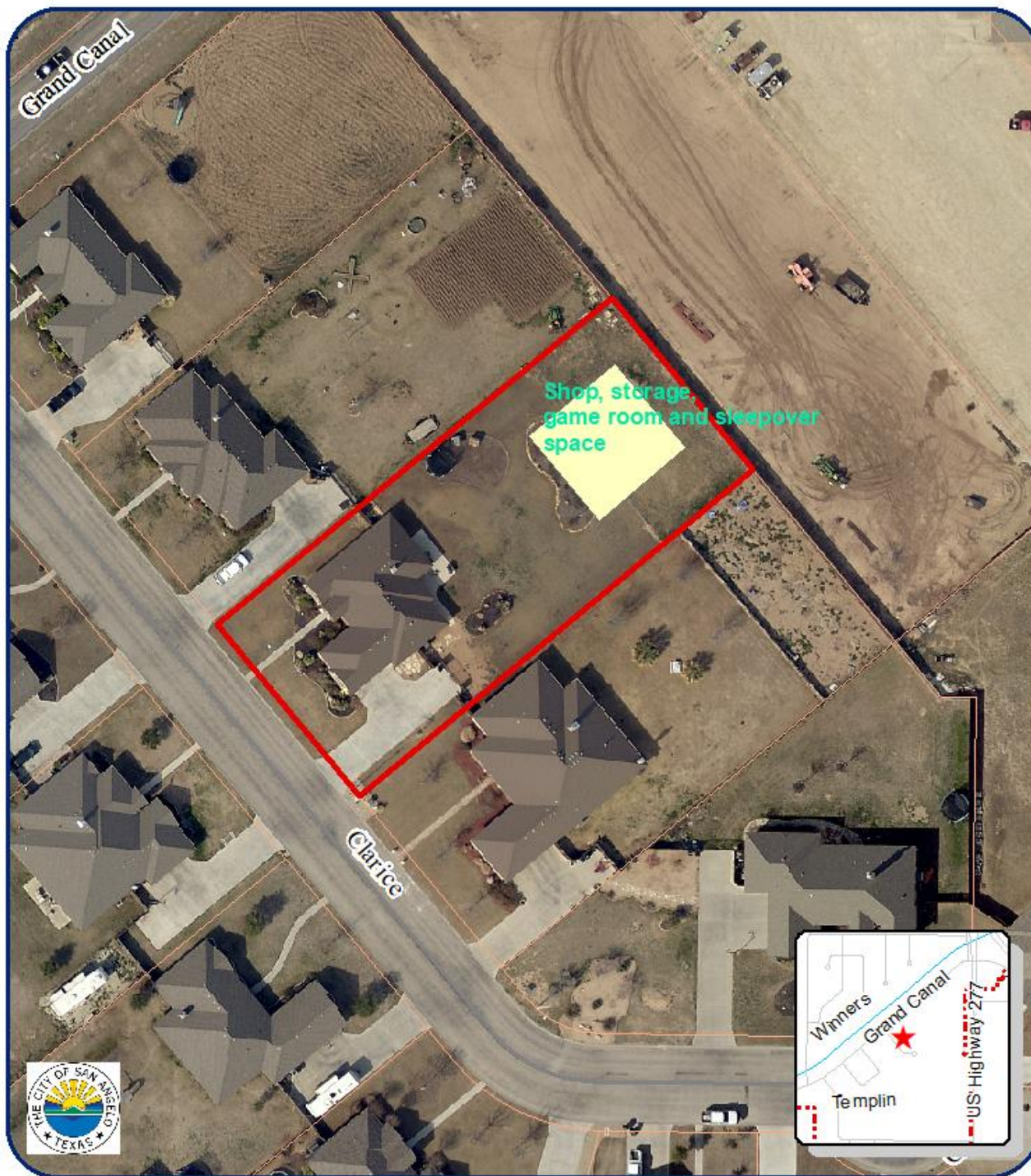
Aerial Map
Zoning Map
Photographs
Concept Plan
Application



200' Notification Map
6610 Clarice Ct. ZBA23-09
 Council District: #1 Tommy Hiebert
 Neighborhood: Country Club
 Scale: 0 0.01 0.02 0.04 0.06 0.08 Miles

Subject Properties: —
 200' Buffer: —
 Notified Properties: —

N



Aerial Map
6610 Clarice Ct. ZBA23-09
Council District: #1 Tommy Hiebert
Neighborhood: Country Club
Scale: 0.00825 0.013 0.0195 0.026
Miles

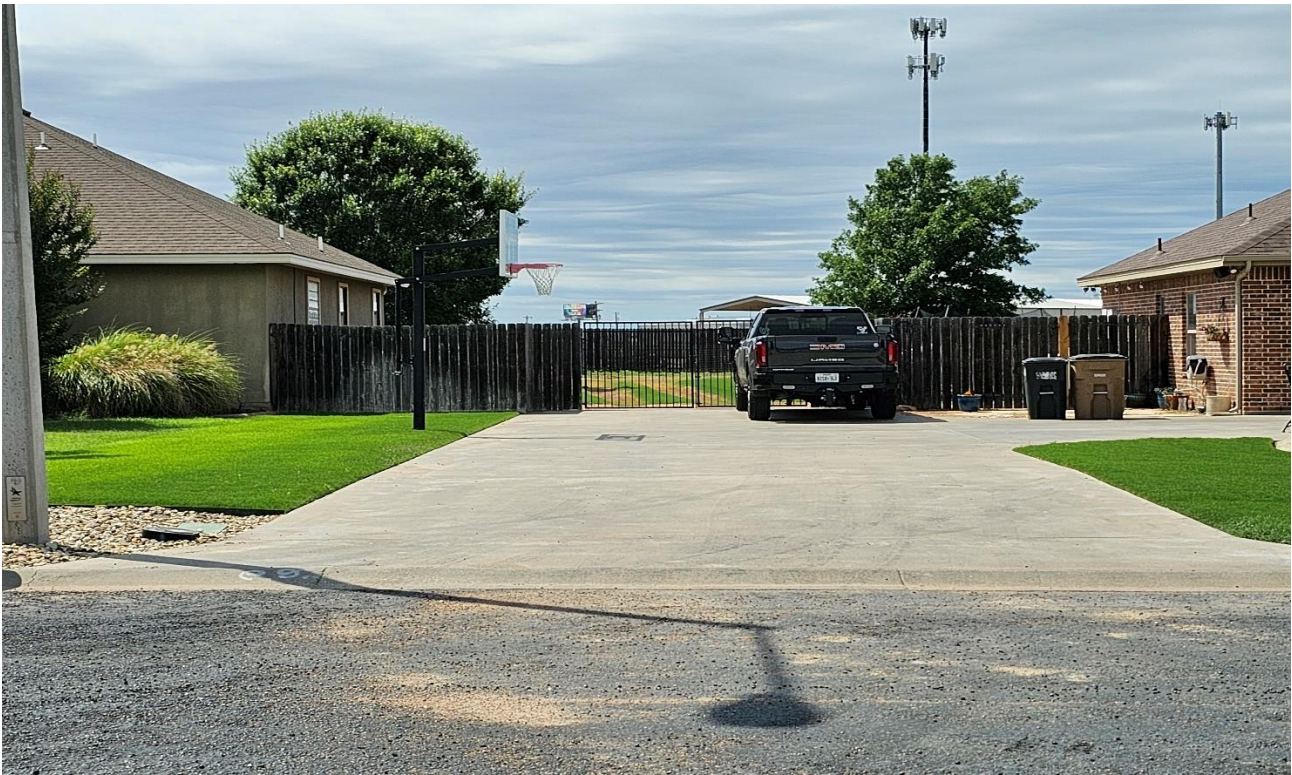
Subject Properties: ——— (red line)
200' Buffer: - - - - - (dashed line)
Notified Properties: - - - - - (dotted line)



Photos of Site and Surrounding Area

SUBJECT PROPERTY





Drive entrance for access to the new building