

**NOTICE FOR POSTING**  
**MEETING OF**  
**BOARD OF ADJUSTMENT, PANEL A**  
**TUESDAY, APRIL 19, 2022**

**BRIEFING:** **9:00 a.m.** via **Videoconference and** in **Council Chambers**, Dallas City Hall, 1500 Marilla Street

**HEARING:** **11:00 a.m.** via **Videoconference and** in **Council Chambers**, Dallas City Hall, 1500 Marilla Street

\* The Board of Adjustment hearing will be held by videoconference and in Council Chambers at City Hall. Individuals who wish to speak in accordance with the Board of Adjustment Rules of Procedure **by joining the meeting virtually**, should register online at <https://form.jotform.com/210537186514151> or contact the Planning and Urban Design Department at 214-670-4209 **by the close of business Monday, April 18, 2022. All virtual speakers will be required to show their video in order to address the board.** The public is encouraged to attend the meeting virtually, however, City Hall is available for those wishing to attend the meeting in person following all current pandemic-related public health protocols. Public Affairs and Outreach will also stream the public hearing on Spectrum Cable Channel 96 or 99; and [bit.ly/cityofdallastv](http://bit.ly/cityofdallastv) or [YouTube.com/CityofDallasCityHall](http://YouTube.com/CityofDallasCityHall) and the WebEx link: <https://bit.ly/BDA041922>

**Purpose:** To take action on the attached agenda, which contains the following:

1. Board of Adjustment appeals of cases the Building Official has denied.
2. And any other business which may come before this body and is listed on the agenda.

**Handgun Prohibition Notice for Meetings of Governmental Entities**

*"Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun."*

*"De acuerdo con la sección 30.06 del código penal (ingreso sin autorización de un titular de una licencia con una pistola oculta), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola oculta."*

*"Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly."*

*"De acuerdo con la sección 30.07 del código penal (ingreso sin autorización de un titular de una licencia con una pistola a la vista), una persona con licencia según el subcapítulo h, capítulo 411, código del gobierno (ley sobre licencias para portar pistolas), no puede ingresar a esta propiedad con una pistola a la vista."*



**CITY OF DALLAS**  
**BOARD OF ADJUSTMENT, PANEL A**  
**TUESDAY, APRIL 19, 2022**  
**AGENDA**

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**BRIEFING:** 9:00 a.m. via Videoconference and in Council Chambers  
Dallas City Hall, 1500 Marilla Street

**HEARING:** 11:00 a.m. via Videoconference and in Council Chambers  
Dallas City Hall, 1500 Marilla Street

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**Andreea Udrea, PhD, AICP, Assistant Director**  
**Jennifer Muñoz, Chief Planner/Board Administrator**  
**Pamela Daniel, Senior Planner**  
**LaTonia Jackson, Board Secretary**

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**PUBLIC TESTIMONY**

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**MISCELLANEOUS ITEM**

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The Board of Adjustment Panel A will meet in a closed executive session to seek the advice of its attorney about pending or contemplated litigation regarding BDA 212-018(JM). [Tex. Gov't Code § 551.071] (Room 5BN) M1

Approval of the March 22, 2022 Board of Adjustment Panel A Public Hearing Minutes M2

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## HOLDOVERS

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<b>BDA212-028(JM)</b>	11411 E. Northwest Hwy., Suite 111 <b>REQUEST:</b> Application of Matthew Morgan represented by Roger Albright to appeal the decision of the administrative official	1
<b>BDA212-013(PD)</b>	1134 Mountain Lake Road <b>REQUEST:</b> Application of Diana Flores represented by Alfredo Pena, for a variance to the floor area ratio regulations, and for a special exception to the single-family regulations	2
<b>BDA212-017(PD)</b>	4715 Reiger Avenue <b>REQUEST:</b> Application of Joseph F. DePumpo for variances to the side yard setback regulations	3
<b>BDA212-019(PD)</b>	536 W. 9 <sup>th</sup> Street <b>REQUEST:</b> Application of Mark Drumm represented by Nate Parrott of KFM Engineering and Design for a special exception to the landscape regulations	4
<b>BDA212-020 (PD)</b>	1218 N. Clinton Avenue <b>REQUEST:</b> Application of Stephen Marley represented by Alfred Pena for 1) a variance to the side yard setback regulations; 2) a variance to the single-family use regulations	5

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## UNCONTESTED CASES

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<b>BDA212-026(PD)</b>	2603 Hondo Avenue <b>REQUEST:</b> Application of Victor Morales for a special exception to the fence standards regulations and a special exception to the visibility obstruction regulations	6
<b>BDA212-027(JM)</b>	1822 W. 10TH ST <b>REQUEST:</b> Application of Rob Baldwin of Baldwin Associates for a special exception to the fence height regulations	7
<b>BDA212-031(JM)</b>	1805 S. Edgefield Avenue <b>REQUEST:</b> Application of German G. Sierra for a variance to the parking regulations	8
<b>BDA212-034(PD)</b>	9207 Sunnybrook Lane <b>REQUEST:</b> Application of Rob Baldwin for special exceptions to <b>1)</b> the fence height regulations; <b>2)</b> the fence standards regulations; and, <b>3)</b> the visibility obstruction regulations	9

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## REGULAR CASES

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None

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## EXECUTIVE SESSION NOTICE

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A closed executive session may be held if the discussion of any of the above agenda items concerns one of the following:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex Govt. Code §551.087]
7. deliberating security assessments or deployments relating to information resources technology, network security information, or the deployment or specific occasions for implementations of security personnel, critical infrastructure, or security devices. [Tex. Govt. Code §551.089]

**FILE NUMBER:** BDA212-028(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Matthew Morgan represented by Roger Albright to appeal the decision of the administrative official at 11411 E. Northwest Hwy., Suite 111. This property is more fully described as Lot 1C, Block A/8043, and is zoned RR Regional Retail District, which requires that the building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

**LOCATION:** 11411 E. Northwest Highway, Suite 111

**APPLICANT:** Matthew Morgan represented by Roger Albright

**REQUEST:**

A request is made to appeal the decision of the administrative official, more specifically, the Building Official's authorized representative, the Assistant Building Official in Development Services, to deny an application for a Certificate of Occupancy for a restaurant and/or commercial amusement (inside) use determined to be a gambling place, which does not comply with other regulations.

**UPDATES:**

No new information was provided by the docket deadline on April 8, 2022.

**STANDARD FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:**

Dallas Development Code Sections 51A-3.102(d)(1) and 51A-4.703(a)(2) state that any aggrieved person may appeal a decision of an administrative official when that decision concerns issues within the jurisdiction of the Board of Adjustment.

The Board of Adjustment may hear and decide an appeal that alleges error in a decision made by an administrative official. Tex. Local Gov't Code Section 211.009(a)(1).

Administrative official means that person within a city department having the final decision-making authority within the department relative to the zoning enforcement issue. Dallas Development Code Section 51A-4.703(a)(2).

### **STAFF RECOMMENDATION:**

Staff does not make a recommendation on appeals of the decisions of administrative officials.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

<u>Site:</u>	RR Regional Retail District
<u>Northwest:</u>	R-7.5(A) Single Family District
<u>North:</u>	MF-1(A) Multifamily District
<u>East:</u>	MC-4 Multiple Commercial District
<u>South:</u>	MC-4 Multiple Commercial and CR Community Retail Districts
<u>West:</u>	RR Regional Retail District

#### **Land Use:**

The subject site is developed with a mix of commercial uses within multiple suites. Surrounding land uses include single-family to the northwest; multifamily to the north; and commercial uses to the east, south, and west.

#### **Zoning/BDA History:**

There have not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

### **GENERAL FACTS/STAFF ANALYSIS:**

The board shall have all the powers of the administrative official on the action appealed. The board may in whole or in part affirm, reverse, or amend the decision of the official.

- CO No. 2105031098 for a commercial amusement (inside) use issued on 6/22/21.
- CO revoked by Assistant Building Official Megan Wimer on 12/17/21.
  - Issued in error.
  - In violation of the Texas Penal Code Section 47.04, "Keeping a Gambling Place."
  - Pursuant to Paragraph (1) of Section 306.5, "Denial," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code, the building official shall deny an application for a CO if determined that the request does not comply with the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws of regulations.

## **Timeline:**

- February 2, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- February 14, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 15, 2022: The Board of Adjustment Chief Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the deadline to submit additional evidence for staff to factor into their analysis; and the deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the appeal of a decision of an administrative official procedure outline; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- February 28, 2022: The applicant’s attorney submitted additional evidence for consideration (**Attachment A**).
- March 2, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board. No review comment sheets were submitted in conjunction with this application.
- March 11, 2022: The City’s attorney submitted additional evidence for consideration (**Attachment B**).
- April 8, 2022: No new information was provided by the docket deadline.



**BOARD OF ADJUSTMENT ACTION: March 22, 2022**

**APPEARING IN FAVOR:**

Roger Albright 11411 W. NW Hwy. #111 Dallas, TX  
Matt Morgan 11411 W. NW Hwy #111 Dallas, TX

**APPEARING IN OPPOSITION:**

Gary Powell 1500 Marilla St. Dallas, TX  
Megan Wimer 320 E. Jefferson Blvd. Dallas TX

**MOTION: Lamb**

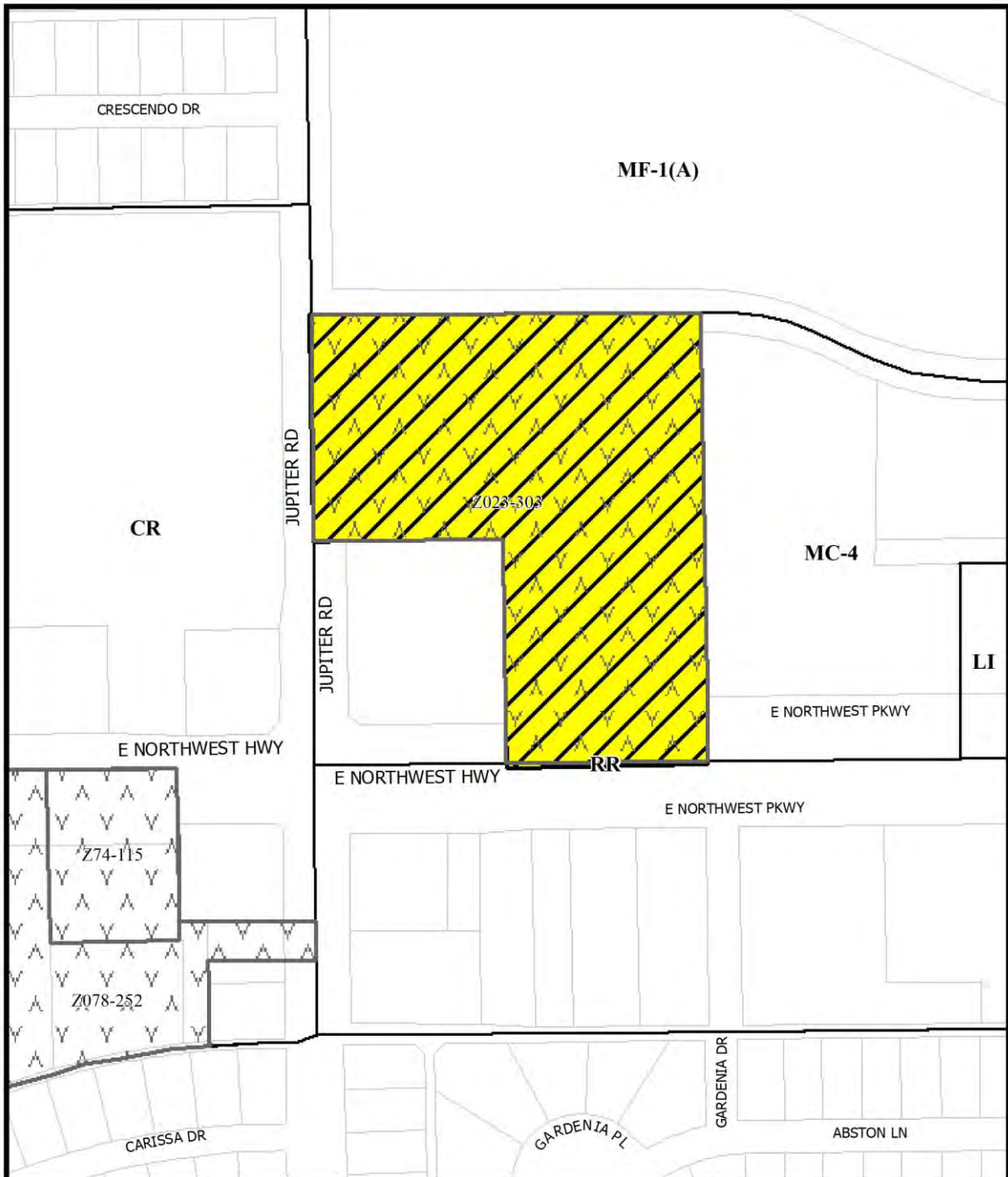
I move that the Board of Adjustment in request No. BDA 212-028, **hold** this matter under advisement until **April 19, 2022**.

**SECONDED: Halcomb**

**AYES:** 5 – Narey, Frankford Lamb, Halcomb, Neumann

**NAYS:** 0 -

**MOTION PASSED: 5-0 (unanimously)**

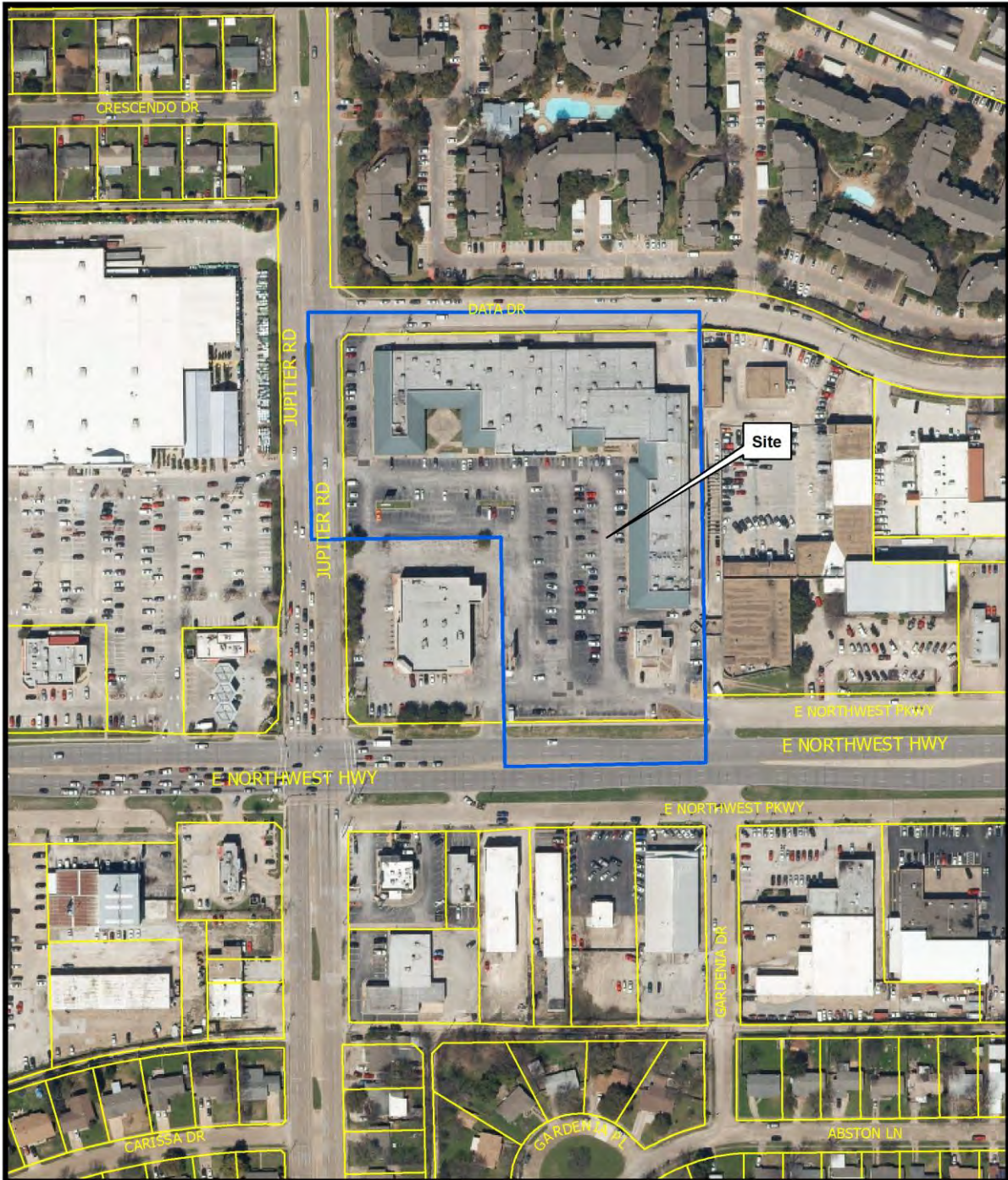


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# ZONING MAP

Case no: BDA212-028

Date: 3/2/2022

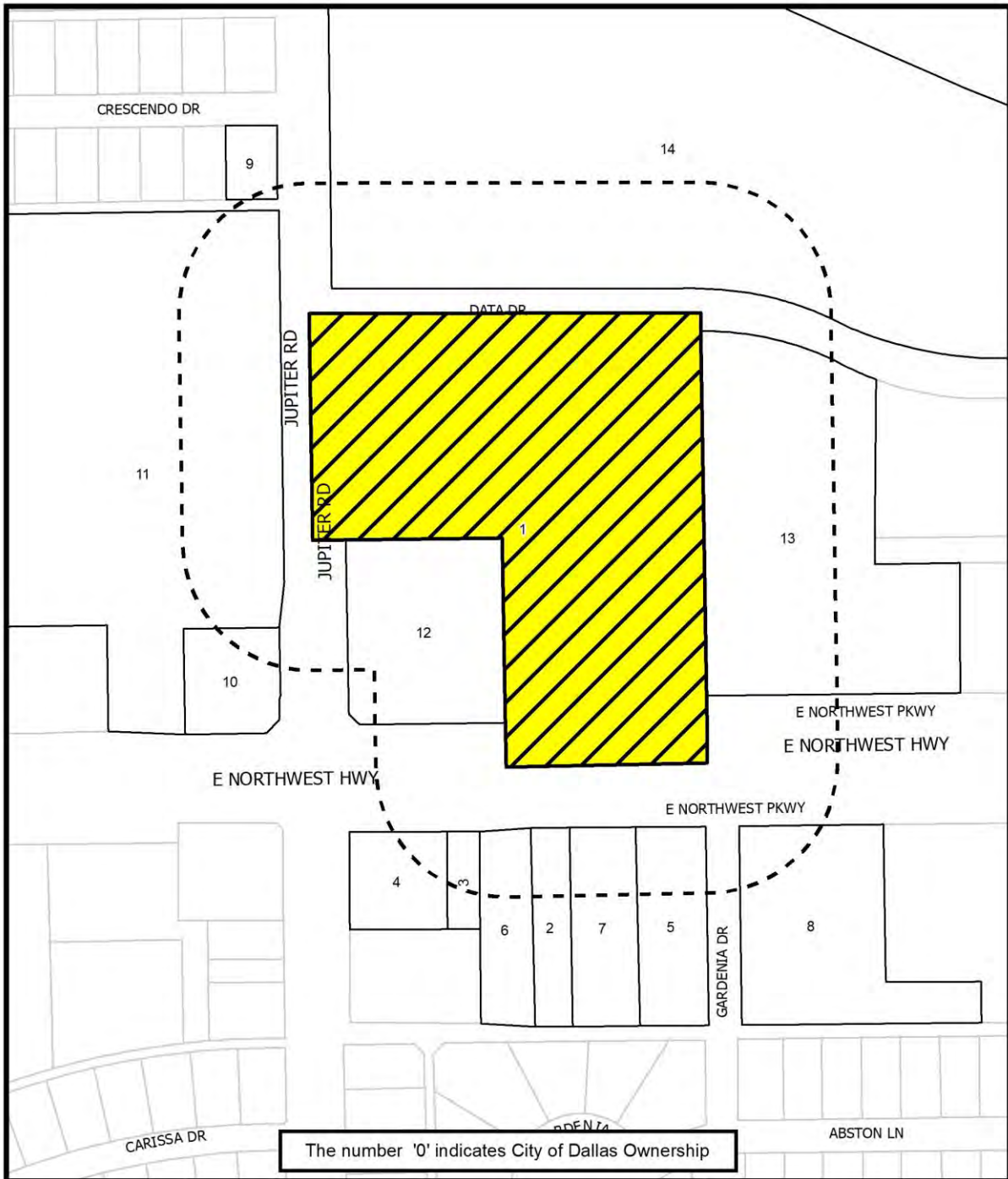


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# AERIAL MAP

Case no: BDA212-028

Date: 3/2/2022



1:2,400

# NOTIFICATION

**200'** AREA OF NOTIFICATION  
**14** NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA212-028**  
 Date: **3/2/2022**

03/02/2022

## ***Notification List of Property Owners***

***BDA212-028***

### ***14 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	11411 E NORTHWEST HWY	BLUMIN HIGHPOINT LTD
2	11426 E NORTHWEST HWY	LONESTARFLAG INVESTMENTS LLC
3	11414 E NORTHWEST HWY	HAWTHORN ROBERT P
4	11404 E NORTHWEST HWY	BURGER KING 757
5	11450 E NORTHWEST HWY	CAMPBELL JAMES R JR &
6	11420 E NORTHWEST HWY	BERHE SAMSON
7	11440 E NORTHWEST HWY	CAMPBELL JAMES R &
8	11540 E NORTHWEST HWY	KHALIL NAGY
9	11332 CRESCENDO DR	KNIGHT STACIE
10	11363 E NORTHWEST HWY	7-ELEVEN INC
11	11333 E NORTHWEST HWY	LOWES HOME CENTERS INC
12	11403 E NORTHWEST HWY	USSTABLEP1 11403 EAST NORTHWEST
13	11501 E NORTHWEST HWY	AVOUE MARCHAND INV INC
14	12610 JUPITER RD	WRC 12610 APARTMENTS LP



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 212-028

Data Relative to Subject Property:

Date: ~~01 26 2022~~ 2-2-22

Location address: 11411 E. Northwest Hwy., Suite 111 Zoning District: RR

Lot No.: 1C Block No.: A/8043 Acreage: 5.980 Census Tract: 130.10

Street Frontage (in Feet): 1) 550 ft 2) 314 ft 3) 310 ft 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Blumin-Highpoint, Ltd., a Texas limited partnership

Applicant: Matthew Morgan Telephone: (512)423-9881

Mailing Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_

E-mail Address: mkmorgan83@gmail.com

Represented by: Roger E. Albright Telephone: 972-644-8181

Mailing Address: 1701 N. Collins Blvd., Ste 1100, Richardson, TX Zip Code: 75080

E-mail Address: roger@sheilswinnubst.com

Affirm that an appeal has been made for a Variance \_\_, or Special Exception \_\_, of \_\_\_\_\_  
Appeal the decision of building official to revoke Certificate of Occupancy.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:  
Applicant submitted complete permit and CO application and all requested documents, including a notarized land use statement. Building Official did not indicate that land use statement was inconsistent with state law and proceeded to issue the CO on 6/22/21. No further inquiry of the applicant regarding land use or operation details of the business since issuance of CO until revocation letter. The Building Official has not provided to the applicant any information or specific reason to support its determination that this use is violates Section 47.04(b) of the Texas Penal Code.

**Note to Applicant:** If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

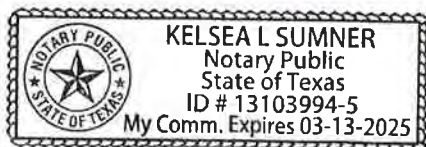
Before me the undersigned on this day personally appeared Matthew Morgan  
(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature]  
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 26 day of January, 2022

[Signature]  
Notary Public in and for Dallas County, Texas



MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

I hereby certify that Matthew Morgan  
represented by Roger Albright  
did submit a request to appeal the decision of the administrative official  
at 11411 E. Northwest Hwy Suite 111

BDA212-028. Application of Matthew Morgan represented by Roger Albright to appeal the decision of the administrative official at 11411 E NORTHWEST HWY Suite 111. This property is more fully described as Lot 1C, Block A/8043, and is zoned RR, which requires that the building official shall revoke a certificate of occupancy if the building official determines that the certificate of occupancy was issued on the basis of false, incomplete, or incorrect information; the use is being operated in violation of the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations. The applicant proposes to appeal the decision of an administrative official in the revocation of a certificate of occupancy.

Sincerely,

  
David Session, Building Official



CITY OF DALLAS

AFFIDAVIT

Appeal number: BDA 212-028

I, Blumin-Highpoint, Ltd, Owner of the subject property  
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 11411 E. Northwest Highway  
(Address of property as stated on application)

Authorize: Matthew Morgan  
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

Specify: Appeal Building Official's decision to revoke Certificate of Occupancy

CRAIG Blumin  
Print name of property owner or registered agent

[Signature]  
Signature of property owner or registered agent

Date 2/01/2022

Before me, the undersigned, on this day personally appeared CRAIG Blumin

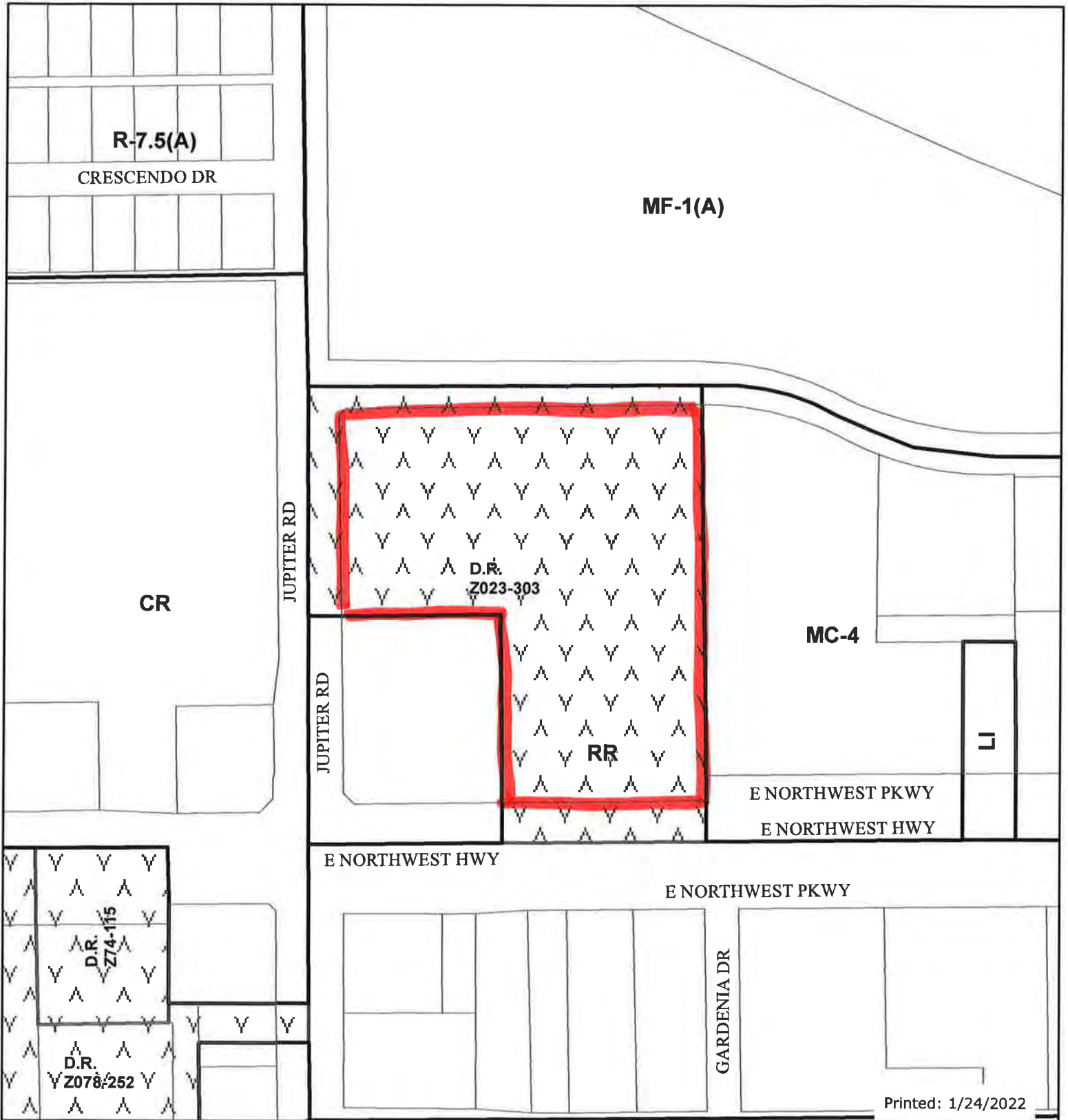
Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 1<sup>ST</sup> day of FEBRUARY, 2022



[Signature]  
Notary Public for Dallas County, Texas  
Commission expires on 7/27/2023





Printed: 1/24/2022

**Legend**

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay                |
| Peak's Branch        | SPSP Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)





Printed: 1/24/2022

### Legend

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay                |
| Peak's Branch        | SPSP Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

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CITY OF DALLAS

December 17, 2021

CERTIFIED MAIL NO. 7020 1290 0000 3631 0129

Matthew Morgan, Owner  
11411 W. Northwest Highway #111  
Dallas, TX 75218

**RE: Revocation of Certificate of Occupancy No. 2105031098 for a commercial amusement (inside) use, dba Shuffle 214 at 11411 W. Northwest Highway #111 ("the Property")**

Dear Mr. Crow:

This letter is to inform you that the above-referenced certificate of occupancy issued on June 22, 2021 is hereby revoked. The building official is required to revoke a certificate of occupancy if he or she determines that it was issued in error.<sup>1</sup>

Upon rereview of the attached land use statement submitted with the certificate of occupancy application, it has been determined that the described operations violate Texas Penal Code Section 47.04, "Keeping a Gambling Place." Therefore, Certificate of Occupancy No. 2003031040 was issued in error.

Any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.<sup>2</sup> The commercial amusement (inside) use may not operate until a new certificate of occupancy is issued that complies with all relevant codes. Pursuant to Paragraph (1) of Section 306.5, "Denial," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code, the building official shall deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations.

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<sup>1</sup> Paragraph (1) of Section 306.13, "Revocation of Certificate of Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

<sup>2</sup> Section 51A-1.104, "Certificate of Occupancy," of Chapter 51A of the Dallas Development Code; Subsection 306.1, "Use or Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.



CITY OF DALLAS

This decision is final unless appealed to the Board of Adjustment in accordance with Section 51A-4.703 of the Dallas Development Code before the 20<sup>th</sup> day after written notice of the above action.<sup>3</sup> If you have any questions, please contact me at 214-948-4501.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Megan Wimer'.

Megan Wimer, AICP, CBO, Assistant Building Official  
Building Inspection Division

cc: Dr. Eric Johnson, Chief of Economic Development and Neighborhood Services  
David Session, CBO, Interim Building Official  
Tammy L. Palomino, First Assistant City Attorney  
Major Devon Palk, Dallas Police Department  
Lieutenant Lisette Rivera, Dallas Police Department

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<sup>3</sup> Section 51A-4.703(a)(2), "Board of Adjustment Hearing Procedures," of Chapter 51A of the Dallas Development Code.



# Land Use Statement

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6/7/2021

Regarding the property we have leased located at 11411 E. Northwest Highway #111 Dallas, TX 75218, our intended use is to operate a membership-based private club with normal operating hours of 10am-5am daily. Our day-to-day business operations involve facilitating the game of poker. We operate as a private club and thus charge a membership fee prior to becoming a member. In doing so, we operate and abide by all local, state and federal laws. Pursuant to Chapter 47 of the Texas Penal Code, we understand and operate our business whereby no person may receive any economic benefit other than personal winnings at our location. Our sister company, Shuffle 512 operates in the exact same manner and has been in operation since June 2018 in Austin, Texas. We are in good standing with the Texas State Comptroller's office and are up to date on all applicable taxes.

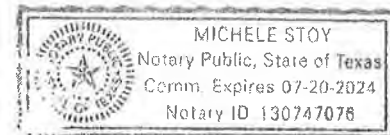
No food or beverages will be prepared or sold on site by our business. We will not be selling or serving alcohol. There will be no live entertainment or dancing on site. Live poker will be the game of skill played in our establishment by our members in a social club atmosphere. There will be no game or amusement machines/computers used on site. The product we sell is membership to our social club and members pay for the amount of time they spend in our establishment. Our use and intended plans have been approved by our Landlord prior to leasing the space.

Sincerely,

Matthew Morgan

Owner, Shuffle 214

512.423.9881



*Michele Stoy*  
6/8/2021

Help

# Product Tracking & Reporting



Home Search Reports Manual Entry Rates/Contributions PTR / SLW USPS Corporate Accounts **Friday, 12/22/2021**

## USPS Tracking Intranet Tracking Number Result

Result for Domestic Tracking Number 7020 1290 0000 3631 0129

Tracking Expires On December 21, 2023

**Destination and Origin**

**Destination**

City: 75218 State: DALLAS TX

**Origin**

City: State:

**Tracking Number Classification**

**Class/Service**

Class/Service: Certified Mail  
 Class of Mail Code/Description: -1 / Unknown

**Destination Address Information**

Address: 11411 E NORTHWEST HWY STE 111  
 City: DALLAS  
 State: TX  
 5-Digit ZIP Code: 75218  
 4-Digit ZIP Code add on: 1441  
 Delivery Point Code: 36  
 Record Type Code: Building/Apartment  
 Delivery Type: Business, CBU

**Service Delivery Information**

PO Box: N  
 Other Information: [Service Calculation Information](#)

[Agent Information](#)

[Request internal USPS Tracking Plus Statement](#)

### Extra Services

#### Extra Services Details

Service Code	Service Description
01	Certified Mail

### Events

Code	Event Code	Event Date	Event Time	Location	Input Method	Signature ID	Signature Name	Scanning Date / Time / Agent	Other Information
DELIVERED, LEFT WITH INDIVIDUAL	01	01/19/2022	16:24	DALLAS, TX 75218	Scanned	MDD TR C357A05477 (interface type - wireless)	Scanned by route 5218C019	01/19/2022 18:29:06	Facility Finance Number: 482232 <a href="#">Request Delivery Record</a> <a href="#">View Delivery Signature and Address</a> QSR Location Data Available
DELIVERED, LEFT WITH INDIVIDUAL	01	12/22/2021	12:29	DALLAS, TX 75218	Scanned	MDD TR D009A05530 (interface type - wireless)	Scanned by route 5218C013	12/22/2021 12:33:05	Facility Finance Number: 482232 <a href="#">Request Delivery Record</a>



Event	Event Code	Event Date	Event Time	Location	Input Method	Scanner ID	Carrier Route	Printing Date / Time (Central Time)	Other Information
									<a href="#">View Delivery Signature and Address</a> <small>Geo Location Data Available</small>
OUT FOR DELIVERY	OF	12/22/2021	08:21	DALLAS, TX 75218	System Generated			12/22/2021 08:21:17	
SORTING/PROCESSING COMPLETE	PC	12/22/2021	08:11	DALLAS, TX 75218	System Generated			12/22/2021 08:21:17	
ARRIVAL AT UNIT	07	12/22/2021	08:10	DALLAS, TX 75218	Scanned	PASS-001	Destined to route: G013	12/22/2021 08:21:10	OFD Same Day
DEPART USPS FACILITY	EF	12/22/2021	04:52	DALLAS, TX 75260	System Generated			12/22/2021 08:16:08	Dispatch Label ID: <a href="#">DS14.4118.4333.2112.205.5533.000</a>
ENROUTE/PROCESSED	10	12/21/2021	21:23	DALLAS, TX 75260	Scanned	DBCS-066	Destined to route: 75218144130	12/21/2021 21:27:52	
ENROUTE/PROCESSED	10	12/21/2021	08:21	DALLAS, TX 75260	Scanned	DBCS-073	Destined to route: 75218144130	12/21/2021 08:28:10	
ENROUTE/PROCESSED	10	12/20/2021	21:43	COPELL, TX 75025	Scanned	AFCS200-009		12/20/2021 21:58:11	

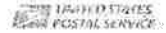
Enter up to 35 items separated by commas.

Select Search Type:

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January 18, 2022

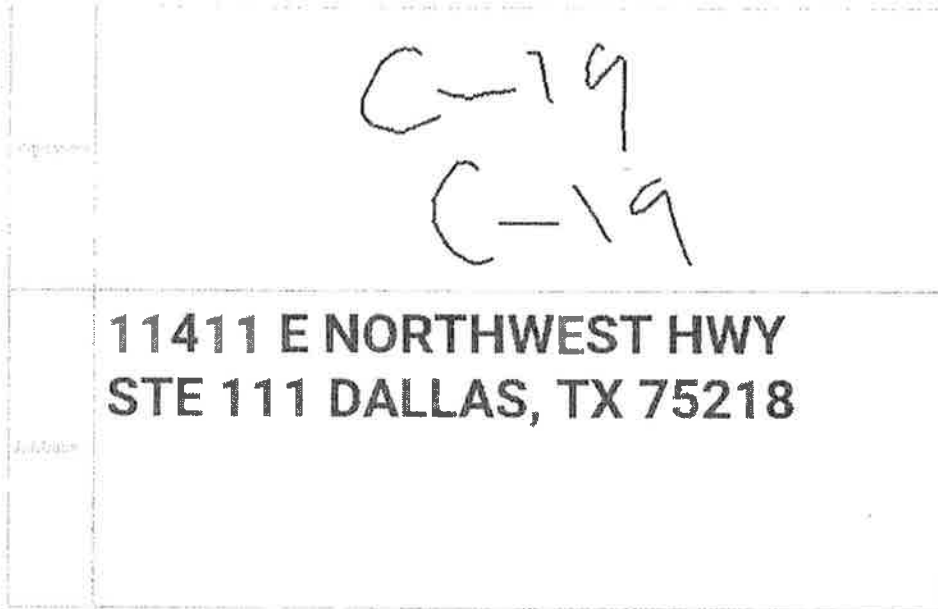
USPS Tracking Intranet

Delivery Signature and Address

Tracking Number: 7020 1290 0000 3631 0129

This item was delivered on 12/22/2021 at 12:29:00

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January 19, 2022

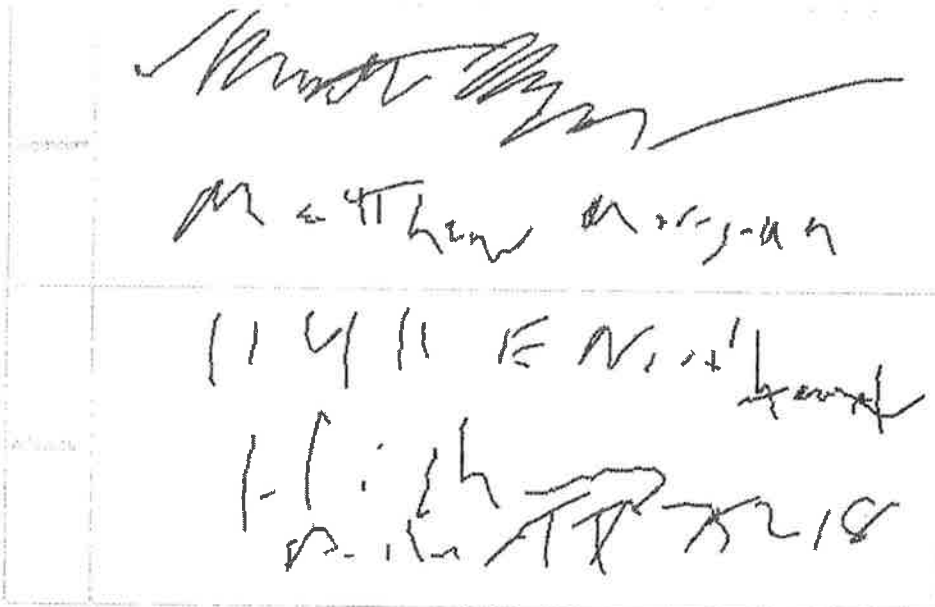
USPS Tracking Intranet

Delivery Signature and Address

Tracking Number: 7020 1290 0000 3631 0129

This item was delivered on 01/19/2022 at 16:24:00

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# BDA212-028\_ATTACHMENT\_A

Law Offices of Roger Albright, LLC

of counsel to:

**SHEILS WINNUBST PC**

UTAH | ANDREWS

*Attorneys and Counselors*

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(972) 644-8181

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FACSIMILE (972) 644-8180

February 28, 2022

*via email*  
jennifer.munoz@dallascityhall.com

Hon. Chair and Members  
Zoning Board of Adjustment, Panel A  
c/o Ms. Jennifer Munoz, Chief Planner/Board Administrator  
Current Planning  
Department of Sustainable Development and Construction  
City of Dallas 1500 Marilla Street, Room 5BN  
Dallas, Texas 75201

Re: *BDA 212-028; 11411 E. Northwest Highway, Suite 111*  
*Appeal of Administrative Official Decision*

To the Chair and Members of Panel A:

**1. Introduction.** We represent Shuffle 214, the Applicant in this appeal from the decision of the Building Official to revoke an existing and validly-issued Certificate of Occupancy (“C.O.”) for a use which is clearly permitted by right. We believe this decision has been made in error. Since this is an appeal of an administrative decision no Staff recommendation will be made. Accordingly, we would like to explain the basis for our appeal, supported by the relevant attachments which we will further explain and support at our hearing before you on March 22, 2022.

**2. Background.** Shuffle 214 submitted an application (attached as **Exhibit 1**) to Building Inspection on April 5, 2021 for a “general remodel for new use C.O.”. Shuffle 214 then submitted an application for an “Inside Commercial Amusement, Card Room” use on April 9, 2021 (**Exhibit 2**). This use is allowed by right in the MC-4 zoning classification district in which 11411 E. Northwest Highway is located (*see* **Exhibit 3**).

As requested by City staff, the applicant submitted a Land Use Statement on April 12, 2021 (**Exhibit 4**). Staff then raised questions regarding the impact of the Chapter 47 of the Penal Code. As a result, on June 7, 2021 Shuffle 214 fully responded and filed a more detailed Land Use Statement (**Exhibit 5**). This resolved all of the Building Officials’ concerns and a C.O. for a Commercial Amusement (Inside) use was issued on June 22, 2021 (**Exhibit 6**).

**3. Location/Revocation.** The subject site is located at 11411 E. Northwest Highway, Suite 111, within a larger retail center. There is no issue as to the condition of the building, adequacy of parking, or any other matter other than the legality of the use itself. MC-4 zoning also

allows by right the “Private recreation center, club, or area” use, defined in Sec. 51A-4.208(2) as “An area providing private recreational facilities such as playgrounds, parks, game courts, swimming pools, and playing fields”. Nonetheless, Shuffle 214 was informed by letter dated December 17, 2021, that the Building Official, without explanation, had reversed its decision and revoked the Certificate of Occupancy. Apparently, the Building official at some point long past its thorough review of Shuffle 214’s application, the issuance of its C.O. and despite no changes in its operation determined that Shuffle 214 was a “Gambling place”.

**4. Description of Operation of Use.** Shuffle 214’s expanded Land Use Statement describes in detail the existing business operation, but to summarize briefly, the model is the same as every other approved card room location in Dallas and all other legally-operating card rooms throughout Texas. Entry into the use is by membership only. Guests must sign up for memberships. Time is charged for being seated at a table, *but no “rake” is taken from the pot at all.* In other words, this is in no way anything resembling a casino or gaming-type establishment, much less any kind of “underground” operation, in either of which scenarios the house gets a cut of the pot, that is, a “rake”.

**5. Not “Gambling” Under State Law.** Shuffle 214 is fully confident that its operation as permitted, C.O.d, and ongoing as a Commercial amusement (inside) use is completely legal under relevant Texas law. The applicable state law provision in this instance is Sec. 47.02 of the Texas Penal Code on “Gambling” (Chapter 47 attached as **Exhibit 7**), which states the following:

*Sec. 47.02 GAMBLING.*

*(a) A person commits an offense if he:*

*(1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;*

*(2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or*

*(3) plays and bets for money or other thing of value at any game played with cards, dice balls, or any other gambling device.*

*(b) It is a defense to prosecution under this section that:*

*(1) the actor engaged in gambling in a private place (for example, a private club);*

*(2) no person received any economic benefit other than personal winnings (the operator of the premises would not a “person” for this purpose, see Subsection (a) above); and*

*(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants (also true here).*

What we want to strongly emphasize, and what we will discuss at our hearing in connection with applicable Texas statutory and case law that the Applicant’s use and operations falls squarely within this safe harbor provision, as evidenced, in part, by similar successful operations of other

locations in Texas.

In addition, this specific business model has been thoroughly reviewed for legality and counsel has found that it is clearly legal under the safe harbor provision. We have attached a lengthy analysis by Kelly, Hart & Hallman, one of the leading firms in Fort Worth and Austin (**Exhibit 8**) and an opinion from Austin-based administrative and regulatory law specialists Rentea & Associates (**Exhibit 9**). You will, of course, be told something different by the City Attorney's Office, but please be aware that much of what they present to you will be based on very different fact situations, such as the *Gaudio* case where money was collected from players to pay for apartment rental, or Texas Attorney General Opinion GA-0335, where the location in question was a bar/restaurant with a TABC license.

**6. Vested Rights Under State Law.** We are also aware that consideration has been given to the possibility of amending the *Dallas Development Code* to add a Specific Use Permit requirement for a to-be-defined "poker room" use, as discussed below. Without debating at this time the merits of that effort, our position is quite clear, and is explicitly supported by Texas law: any application for any use, including this use, must be considered and acted upon under the provisions of the *Dallas Development Code* in effect at the time of such application. This appears to have not been done in this instance. This is required by Section 245.002 of the *Texas Local Government Code*, also known as the "Vested Rights" statute, which says:

*Sec. 245.002. UNIFORMITY OF REQUIREMENTS.*

*(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirement in effect at the time:*

*(1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or*

*(2) a plan for development of real property or plat application is filed with a regulatory agency. (See Chapter 245 of the Texas Local Government Code, Exhibit 10).*

**7. The C.O. was Revoked in Error and Should be Reinstated.** Shuffle 214's C.O. was revoked not because of a misunderstanding of the proposed business operation, but more likely for other political reasons such as religious beliefs and Oklahoma Casino lobbying which we will discuss in the public hearing.

**A. City Attorney's Original Advice was that This is a Legal Use.** Interestingly, it was only after media and political attention beginning last August that the City began to deny poker houses these C.O.s and ultimately, in Shuffle 214's case, revoke their C.O. that had already been issued in 2021. This is not coincidental. These uses have been denied C.O.s, ostensibly on the basis of alleged "illegality", even though the City Attorney personally told the city Council, at the podium in a public meeting that these uses as constituted are legal under applicable Texas law.

**B. The City has Completely Reversed its Position.** For the last 9 months, this Applicant, in particular, has consistently been completely transparent and above board about their

February 28, 2022

Page 4

prospective operation, their business model, and their operational plan and rules. The city of Dallas has reviewed this proposal multiple times by Current Planning Staff, the City Attorney's Office, Building Inspection, and the Dallas Police Department and at every turn allowed this Applicant to proceed at, by the way, its great expense.

**8. Conclusion.** Therefore, we are appealing the action of the Building Official in revoking the C.O., as the existing zoning clearly permits by right the use and the C.O. which was originally properly issued for this legal use. The Board of Adjustment has the power and obligation to overturn the political decision of the Building Official and approve and uphold the issuance of the C.O. pursuant to Sec. 51A-4.703(d)(d) of the *Dallas Development Code*, which says: *(3) The board shall have all the powers of the administrative official on the action appealed from. The board may in whole or in part affirm, reverse, or amend the decision of the official.*

We very much look forward to our opportunity to appear before you at your public hearing on March 22, 2022, at which time we will discuss this matter in additional detail, offer witness testimony, and then respectfully ask you to grant our appeal and uphold the issuance of Shuffle's C.O. Thank you very much.

Sincerely,

*/s/ Roger E. Albright*

Roger E. Albright

Enclosures

cc: Client

DATE: 04-05-2021

APPLICATION TYPE  
 REGULAR  EXPRESS

# PERMIT APPLICATION

PLEASE TYPE OR PRINT CLEARLY



City of Dallas

JOB NO: (OFFICE USE ONLY)

PERMIT NO: (OFFICE USE ONLY)

STREET ADDRESS OF PROPOSED PROJECT <b>11411 E. Northwest Hwy</b>		SUITE/BLDG/FLOOR NO <b>111</b>		USE OF PROPERTY <b>Inside Commercial Amusement</b>	
APPLICANT <b>Vickie Rader</b>		ADDRESS <b>3904 Elm Street, Suite B</b>		CITY <b>Dallas</b>	STATE <b>Texas</b>
DBA (IF APPLICABLE) <b>Shuffle 214</b>		PHONE NO <b>(214) 824-7949</b>		E-MAIL ADDRESS (MAY BE USED FOR OFFICIAL COMMUNICATION) <b>vicki@baldwinplanning.com</b>	
CONTRACTOR-INDIVIDUAL		CONTRACTOR NUMBER <b>99790</b>	PIN <b>1111</b>	COMPANY NAME <b>Baldwin Associates</b>	
CURRENT HOME REPAIR LICENSE ON FILE? <input type="radio"/> YES <input type="radio"/> NO	IF YES, LIST NUMBER	PHONE NO		E-MAIL ADDRESS (MAY BE USED FOR OFFICIAL COMMUNICATION)	
PROPERTY OWNER (INDIVIDUAL CONTACT) <b>Matt Morgan</b>		ADDRESS <b>11411 E. Northwest 111</b>		CITY <b>Dallas</b>	STATE <b>Texas</b>
PROPERTY OWNER (COMPANY NAME) <b>Shuffle 214</b>		PHONE NO <b>(512) 423-9881</b>		E-MAIL ADDRESS (MAY BE USED FOR OFFICIAL COMMUNICATION) <b>mkmorgan83@gmail.com</b>	
DESCRIPTION OF PROPOSED PROJECT <b>General remodel for new use CO</b>				VALUATION (\$)	CONST AREA (sq ft)
				NEW CONST <b>29,000</b>	NEW CONST <b>6,340</b>
				MFD OTHER	MFD OTHER
				REMODEL	REMODEL
				TOTAL VALUATION <b>29,000.00</b>	TOTAL AREA <b>6,340</b>

PLEASE INDICATE ALL TYPES OF WORK THAT WILL BE PART OF THIS PROJECT BY CHECKING THE APPROPRIATE BOX

- BUILDING     PLUMBING     FENCE     DRIVE APPROACH     BACKFLOW     BARRICADE     ENERGY  
 ELECTRICAL     FIRE SPRKLR     SIGN     SWIMMING POOL     CUSTOMER SVC     GREEN     PAVING/GRADING  
 MECHANICAL     FIRE ALARM     LANDSCAPE     LAWN SPRINKLER     FLAMMABLE LIQUID     OTHER:

All food service establishments require a grease interceptor to be installed on site. Is there a grease interceptor on site?  YES  NO

The following is applicable to all applications for building permits that are accepted and routed for any reviews. As required by Texas Local Government Code Section 214.904, the City of Dallas will grant (Approve) or deny your building permit application to erect or improve a building or other structure no later than the 45<sup>th</sup> day after the application is submitted. Denial of a permit application due to time constraints may be avoided by agreeing to allow the City the following additional time to review the application:

I hereby agree to a deadline of 14 days to grant or deny the permit after the date of the approval of all of the following reviews, as applicable, where the applicant has provided the plans examiners the requested corrections, plans and actions; and, the contractor has been named on the permit:

Zoning, Building Code, Electrical Code, Plumbing/Mechanical Code, Green Building Code, Health, Historical/Conservation District, Engineering/Flood Plain, Water Utilities, Fire Code, Landscaping and Aviation.

If the permit is granted (Approved) within this deadline the City will retain and/or assess all fees. If the permit is denied within this deadline, the City will retain all plan review fees and 20 percent of the permit fees. If the permit application is not granted or denied within the agreed additional time of review, the City will refund any permit fees that have been collected and the City may not collect any permit fees associated with the application.

I AGREE.                       I DO NOT AGREE.

I UNDERSTAND THAT THIS PERMIT APPLICATION WILL EXPIRE IN 180 DAYS FROM THE APPLICATION DATE. I MAY REQUEST IN WRITING AN ADDITIONAL 180 DAY EXTENSION OF THE PERMIT APPLICATION PRIOR TO THE APPLICATION EXPIRATION. IF THE APPLICATION IS ALLOWED TO EXPIRE, IT MAY ONLY BE REACTIVATED BY THE FILING OF A NEW APPLICATION INCLUDING APPLICABLE PLANS AND FEES

I HAVE CAREFULLY READ THE COMPLETED APPLICATION AND KNOW THE SAME IS TRUE AND CORRECT AND HEREBY AGREE THAT IF A PERMIT IS ISSUED ALL PROVISIONS OF THE CITY ORDINANCES AND STATE LAWS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT. I AM THE OWNER OF THE PROPERTY OR THE DULY AUTHORIZED AGENT. PERMISSION IS HEREBY GRANTED TO ENTER PREMISES AND MAKE ALL INSPECTIONS. I ALSO AFFIRM THAT THE EMAIL ADDRESS GIVEN ABOVE MAY BE USED FOR OFFICIAL COMMUNICATION CONCERNING THIS APPLICATION AND PERMIT.

APPLICANT'S SIGNATURE: **Vicki Rader**                      Digitally signed by Vicki Rader  
 Date: 2020.04.16 17:20:38 -05'00'

DATE OF APPLICATION SUBMISSION





**FOR OFFICE USE ONLY**

STREET ADDRESS OF PROPOSED PROJECT	SUITE/BLDG/FLOOR NO	PROJECT/PERMIT NUMBER
------------------------------------	---------------------	-----------------------

<b>ZONING</b>				<b>BUILDING</b>		<b>MISCELLANEOUS</b>	
LAND USE	TYPE OF WORK	BASE ZONING	PD	CONSTRUCTION TYPE	OCCUPANCY	ACTIVITY	OWN
LOT	BLOCK	REQUIRED PARKING	PROPOSED PARKING	SPRINKLER	OCCUPANT LOAD	FLOOD PLAIN	AIRPORT
LOT AREA	BDA	SUP	RAR	STORIES	DWELLING UNITS	SPECIAL INSPECTIONS	HISTORICAL
DIR	EARLY RELEASE	DEED RESTRICTION	PARKING AGREEMENT	NUMBER BEDROOMS	NUMBER BATHROOMS	DRY	LL

ROUTE TO	REVIEWER	DATE	APPLICATION REMARKS	FEE CALCULATIONS (\$)
PRE-SCREEN				PERMIT FEE
ZONING				SURCHARGE
BUILDING				PLAN REVIEW FEE
ELECTRICAL				PREQUALIFICATION REVIEW FEE
PLUMBING/MECHANICAL				EXPRESS PLAN REVIEW
GREEN BUILDING				HOURLY FEE TOTAL
HEALTH				HEALTH PERMIT APPLICATION FEE
HISTORICAL/CONS DIST				HEALTH PLAN REVIEW FEES
ENGINEERING				OTHER FEES
WATER				OTHER FEES
FIRE				TOTAL FEES
LANDSCAPING				\$
AVIATION				
OTHER _____				

**PLAN REVIEW NOTES**

STAFF AREA	
<input type="checkbox"/>	Approved By: _____
<input type="checkbox"/>	Not Approved

## Q-TEAM: MANDATORY REQUIREMENTS FOR PREQUALIFICATION

A prequalification Q-TEAM Review is required prior to your application for Q-TEAM Review being accepted. The prequalification allows for review of the "completeness" of documents submitted with the building permit application. The fee associated with this review covers the following tasks with a service level agreement of completion of four (4) working days.

Prequalification Review Fee Based on Square Feet		Review Fee (\$1,000/hour) Based on Square Feet	
Square Footage	Maximum Fee	Square Footage	Maximum Fee
0-10,000	\$500	0-10,000	\$2,000
10,001-50,000	\$750	10,001-50,000	\$12,500
50,001-100,000	\$1,000	50,001-100,000	\$27,500
100,001 and greater	\$1,250	100,001 and greater	\$50,000

**NOTICE:** The prequalification review **DOES NOT** include review of: Park land dedication, parking analysis, fire alarm, fire sprinkler, signs, pools, detail site review or engineering.

**Address of Submittal:** 11411 E. Northwest Hwy #111

**Have you held a pre-development meeting for this project?**

- Yes (DEV# \_\_\_\_\_)/Date (\_\_\_\_\_)
- No

**Are you platting the property?**

- Yes (S# \_\_\_\_\_)
- No

**Is there a development plan or Specific Use Permit (SUP) pending for this project?**

- Yes (Please provide a copy of the development plan or the ordinance # for the SUP)
- No

**Execute the remaining information**

- Review submittal information against the applicable permitting checklists
- Provide exiting or life safety plan
- Provide a copy of the plat

I, Vicki Rader, have read the above information and acknowledge that I have provided all of the required documents listed above. I understand that if I fail to meet the mandatory requirements for the prequalification Q-TEAM review that **ALL PRE-QUALIFICATION AND REVIEW FEES ARE NONREFUNDABLE**. Further, I understand that in order for a permit to be issued I must comply with all regulatory requirements, construction requirements, and have a legal building site (final plat or approved early release if platting).

Vicki Rader

4/5/21

(Applicant Signature)

(Date)

DATE: 04-09-2021

CO NO: (OFFICE USE ONLY)

# CERTIFICATE OF OCCUPANCY APPLICATION



City of Dallas

NAME OF BUSINESS (DBA) <b>Shuffle 211</b>			STREET ADDRESS OF BUSINESS <b>11411 E. Northwest Hwy</b>		BLDG AND SUITE NUMBER <b>111</b>
PROPERTY OWNER <b>Matt Morgan</b>			ADDRESS <b>11411 E. Northwest</b>		CITY <b>Dallas</b>
STATE <b>Texas</b>	ZIP CODE	PHONE NO <b>(214) 824-7949</b>	E-MAIL ADDRESS <b>mkmorgan83@gmail.com</b>		
MANAGER/OPERATOR OF USE OR BUSINESS <b>Matt Morgan</b>			ADDRESS <b>11411 E. Northwest #111</b>		CITY <b>Dallas</b>
STATE <b>Texas</b>	ZIP CODE <b>75235</b>	PHONE NO <b>(214) 824-7949</b>	E-MAIL ADDRESS <b>vicki@baldwinplanning.com</b>		
APPLICANT (if different from manager/operator) <b>Vicki Rader</b>			ADDRESS <b>3904 Elm St., Suite B</b>		CITY <b>Dallas</b>
STATE <b>Texas</b>	ZIP CODE <b>75226</b>	PHONE NO <b>(214) 824-7949</b>	E-MAIL ADDRESS <b>vicki@baldwinplanning.com</b>		

DESCRIBE THE PROPOSED USE OF PROPERTY (attach additional sheets if necessary)  
**Inside Commercial Amusement Card room**

What is the square footage of the tenant space or building? 8,340 square feet

<input checked="" type="radio"/> YES <input type="radio"/> NO	Is this a change in use of land, tenant space or building?	See <u>CO Checklist</u> for plan submittal requirements.
<input type="radio"/> YES <input checked="" type="radio"/> NO	Is the proposed use "personal services" (barber/beauty shop, shoe repair, tailor, instructional arts, laundry/dry cleaning pickup/dropoff, photo studio, handcrafted art work, etc.)?	Provide <u>Personal Services Affidavit</u> executed by business owner, see <u>CO Checklist</u> for additional requirements.
<input type="radio"/> YES <input checked="" type="radio"/> NO	Will potentially hazardous foods/open foods be sold and/or served?	<u>Food Establishment Permit Application</u> required (only available from City staff)
<input type="radio"/> YES <input checked="" type="radio"/> NO	Will alcohol be sold and/or served?	Provide completed <u>Alcohol Measurement Certification Application Checklist</u> and <u>Alcohol Certification Affidavit Forms</u>
<input type="radio"/> YES <input checked="" type="radio"/> NO	Will there be a dance floor?	Annual license fee charged to businesses operating a place where dancing is allowed (subject to approval from Dallas Police Vice Control, call 214-671-3230 for more information, Applications available from Special Collections at 1500 Marilla St, 2DS; M-F, 8 am to 5 pm, or call 214-670-3438.
<input type="radio"/> YES <input checked="" type="radio"/> NO	Is the proposed use a doctor's office, dentist office or other medical office or health care office?	Applicant must execute <u>Ambulatory Health Care Facility</u> form attesting to new or pre-existing conditions & facts pertaining to the health care model for any doctor's, dentist, or other medical offices (except hospitals, emergency rooms & care clinics).
<input type="radio"/> YES <input checked="" type="radio"/> NO	Will you display or offer for sale smoking paraphernalia commonly used, or commonly known to be used, for the inhalation of tobacco or illegal substances (except rolling papers, tobacco cigarettes or cigars)?	If 'YES' then a Specific Use Permit is required; or, if the use is nonconforming then applicant must provide verifiable proof that the that the display or sale or paraphernalia, etc. previously existed. Additionally, you must register under Chapter 12B of the Dallas City Code.

I HAVE CAREFULLY READ THE COMPLETED APPLICATION AND KNOW THE SAME IS TRUE AND CORRECT AND HEREBY AGREE THAT IF A PERMIT IS ISSUED ALL PROVISIONS OF THE CITY ORDINANCES AND STATE LAWS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT I AM THE OWNER OF THE PROPERTY OR THE DULY AUTHORIZED AGENT PERMISSION IS HEREBY GRANTED TO ENTER PREMISES AND MAKE ALL INSPECTIONS I ALSO AFFIRM THAT THE EMAIL ADDRESS GIVEN ABOVE MAY BE USED FOR OFFICIAL COMMUNICATION CONCERNING THIS APPLICATION AND PERMIT

APPLICANT'S SIGNATURE  
**Vicki Rader** Digitally signed by Vicki Rader  
 Date: 2020.03.18 14:45:59 -05'00'

### FOR OFFICE USE ONLY

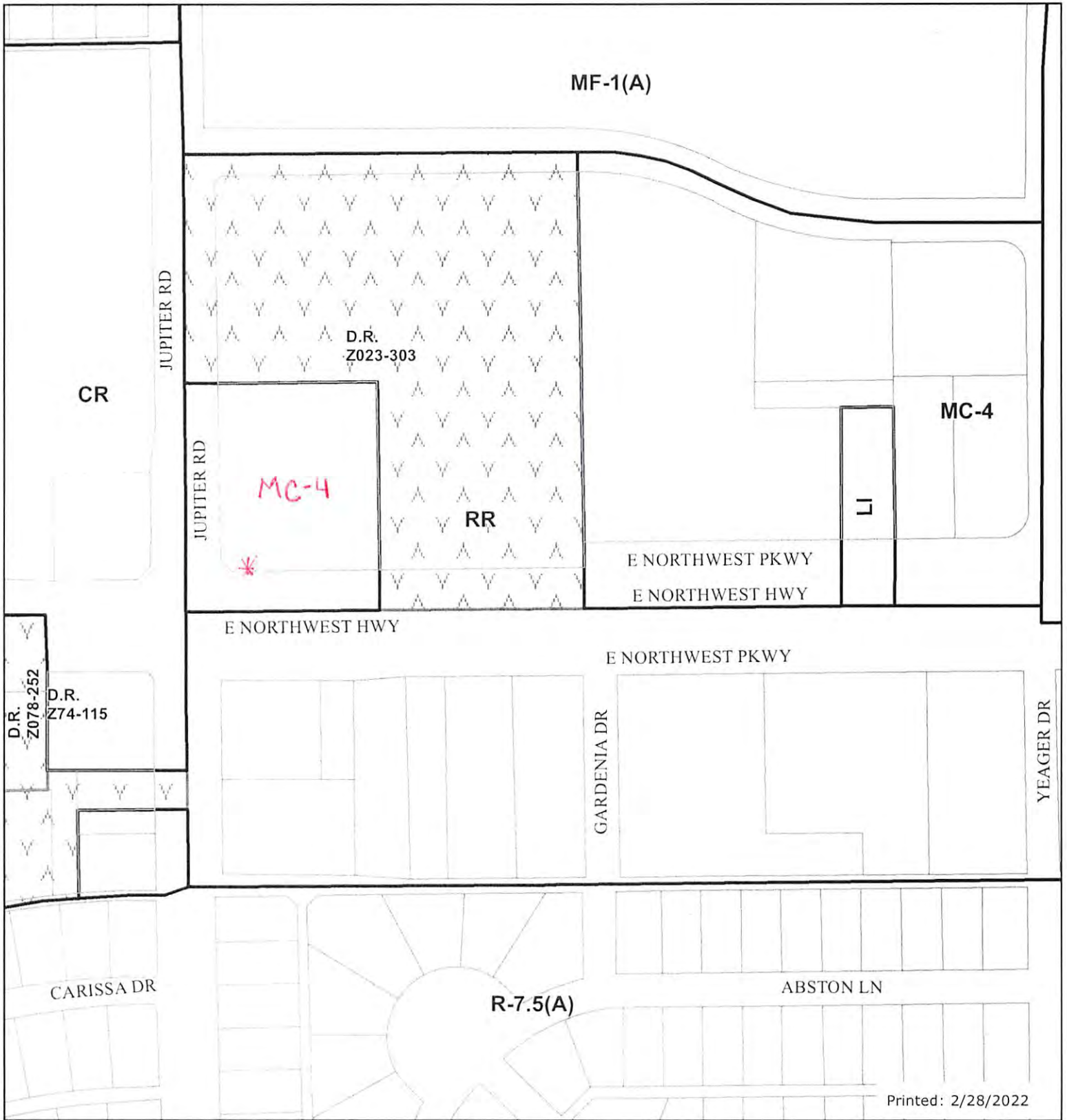
Change in Land Use?  YES  NO      Change in Occupancy?  YES  NO      Is Use Nonconforming?  YES  NO

Previous CO Number: \_\_\_\_\_ Related Permit Number: \_\_\_\_\_ Related Project Number: \_\_\_\_\_

ZONING				BUILDING		MISCELLANEOUS	
LAND USE	BASE ZONING	PD	SUP	CONSTRUCTION TYPE	OCCUPANCY	ACTIVITY	OWN
LOT	BLOCK	REQUIRED PARKING	PROPOSED PARKING	SPRINKLER	OCCUPANT LOAD	FLOOD PLAIN	AIRPORT
LOT AREA	CONSERVATION DIST	PARKING AGREEMENT	DELTA CREDITS	STORIES	DWELLING UNITS	BDA	HISTORIC DISTRICT

ROUTE TO	REVIEWED	DATE	COMMENTS	FEE CALCULATIONS (\$)
PRESCREEN				CO APP FEE
ZONING				CE INSP FEE
BUILDING				HEALTH PERMIT APP FEE
CODE				OTHER FEES
OTHER _____				TOTAL FEES
				\$





Printed: 2/28/2022

Legend

- |                      |                                |                       |                       |
|----------------------|--------------------------------|-----------------------|-----------------------|
| City Limits          | railroad                       | Dry Overlay           | CD Subdistricts       |
| School               | Certified Parcels              | D                     | PD Subdistricts       |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts      |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts      |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay           |
| Peak's Branch        | SPSD Overlay                   | MD Overlay            | Historic Subdistricts |
| X Protected by Levee | Deed Restrictions              | Historic Overlay      | Height Map Overlay    |
| Parks                | SUP                            | Historic Subdistricts | Historic Overlay      |
|                      |                                | Historic Overlay      | Historic Overlay      |
|                      |                                | Height Map Overlay    | Height Map Overlay    |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)



**EXHIBIT**  
**3**



# Land Use Statement

4/12/2021

Regarding the property we have leased located at 11411 E. Northwest Highway #111 Dallas, TX 75218, our intended use is to operate a membership-based private club with normal operating hours of 10am-5am daily. We will not be selling or serving alcohol. Our use and development plans have already been approved by our Landlord.

Regards,

Matthew Morgan  
Owner, Shuffle 214  
512.423.9881





# Land Use Statement

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6/7/2021

Regarding the property we have leased located at 11411 E. Northwest Highway #111 Dallas, TX 75218, our intended use is to operate a membership-based private club with normal operating hours of 10am-5am daily. Our day-to-day business operations involve facilitating the game of poker. We operate as a private club and thus charge a membership fee prior to becoming a member. In doing so, we operate and abide by all local, state and federal laws. Pursuant to Chapter 47 of the Texas Penal Code, we understand and operate our business whereby no person may receive any economic benefit other than personal winnings at our location. Our sister company, Shuffle 512 operates in the exact same manner and has been in operation since June 2018 in Austin, Texas. We are in good standing with the Texas State Comptroller's office and are up to date on all applicable taxes.

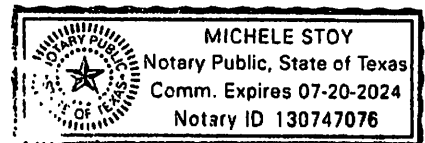
No food or beverages will be prepared or sold on site by our business. We will not be selling or serving alcohol. There will be no live entertainment or dancing on site. Live poker will be the game of skill played in our establishment by our members in a social club atmosphere. There will be no game or amusement machines/computers used on site. The product we sell is membership to our social club and members pay for the amount of time they spend in our establishment. Our use and intended plans have been approved by our Landlord prior to leasing the space.

Sincerely,

Matthew Morgan

Owner, Shuffle 214

512.423.9881



*Michele Stoy*  
6/8/2021



# Certificate of Occupancy

City of Dallas

Address: 11411 E NORTHWEST HWY Ste:111 75238

Issued: 06/22/2021

Owner: MATT MORGAN  
11411 E NORTHWEST HWY Ste:111  
DALLAS, TX

DBA: SHUFFLE#214

Land Use: (7396) COMMERCIAL AMUSEMENT (INSIDE)

Occupied Portion:

C.O.#: 2105031098

Lot:	1C	Block:	A/8043	Zoning:	RR	PDD:	SUP:
Historic Dist:		Consrv Dist:	61	Pro Park:	61	Req Park:	Park Agrmt: N
Dwlg Units:		Stories:	A3	Occ Code:	260707	Lot Area:	Total Area: 6050
Type Const:	I/A	Sprinkler:		Occ Load:	N	Alcohol:	Dance Floor:N

Remarks: UPDATED 06/09/2021  
TOTAL OL TO BE POSTED = 563 OCCUPANTS  
NO COIN-OPERATED MACHINES OR ELECTRONIC GAMES OF AMUSEMENT  
ON-SITE; NO PREPARING, SERVING OR SELLING OF FOOD OR BEVERAGES  
ON-SITE

*David Session*  
David Session, Building Official

This certificate shall be displayed on the above premise at all times.



**7. Texas Penal Code Chapter 47.**

## PENAL CODE

## TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

## CHAPTER 47. GAMBLING

Sec. 47.01. DEFINITIONS. In this chapter:

(1) "Bet" means an agreement to win or lose something of value solely or partially by chance. A bet does not include:

(A) contracts of indemnity or guaranty, or life, health, property, or accident insurance;

(B) an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest; or

(C) an offer of merchandise, with a value not greater than \$25, made by the proprietor of a bona fide carnival contest conducted at a carnival sponsored by a nonprofit religious, fraternal, school, law enforcement, youth, agricultural, or civic group, including any nonprofit agricultural or civic group incorporated by the state before 1955, if the person to receive the merchandise from the proprietor is the person who performs the carnival contest.

(2) "Bookmaking" means:

(A) to receive and record or to forward more than five bets or offers to bet in a period of 24 hours;

(B) to receive and record or to forward bets or offers to bet totaling more than \$1,000 in a period of 24 hours; or

(C) a scheme by three or more persons to receive, record, or forward a bet or an offer to bet.

(3) "Gambling place" means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the uses of which is the making or settling of bets, bookmaking, or the conducting of a lottery or the playing of gambling devices.

(4) "Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:



(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

(5) "Altered gambling equipment" means any contrivance that has been altered in some manner, including, but not limited to, shaved dice, loaded dice, magnetic dice, mirror rings, electronic sensors, shaved cards, marked cards, and any other equipment altered or designed to enhance the actor's chances of winning.

(6) "Gambling paraphernalia" means any book, instrument, or apparatus by means of which bets have been or may be recorded or registered; any record, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, lotteries, numbers, policy, or similar games.

(7) "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.

(8) "Private place" means a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops.

(9) "Thing of value" means any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., ch. 313, Sec. 1, 2, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 396, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd

Leg., ch. 774, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 19, eff. Sept. 1, 1995.

Sec. 47.02. GAMBLING. (a) A person commits an offense if he:

- (1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;
- (2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or
- (3) plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.

(b) It is a defense to prosecution under this section that:

- (1) the actor engaged in gambling in a private place;
- (2) no person received any economic benefit other than personal winnings; and
- (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) It is a defense to prosecution under this section that the actor reasonably believed that the conduct:

- (1) was permitted under Chapter 2001, Occupations Code;
- (2) was permitted under Chapter 2002, Occupations Code;
- (3) was permitted under Chapter 2004, Occupations Code;
- (4) consisted entirely of participation in the state lottery authorized by the State Lottery Act (Chapter 466, Government Code);
- (5) was permitted under Subtitle A-1, Title 13, Occupations Code (Texas Racing Act); or
- (6) consisted entirely of participation in a drawing for the opportunity to participate in a hunting, fishing, or other recreational event conducted by the Parks and Wildlife Department.

(d) An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under this section that a person played for something of value other than money using an electronic, electromechanical, or mechanical contrivance excluded from the definition of "gambling device" under Section 47.01(4)(B).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., 1st C.S., p. 101, ch. 11, Sec. 43, eff. Nov. 10, 1981; Acts 1989, 71st Leg., ch. 957, Sec. 2, eff. Jan. 1, 1990; Acts 1991, 72nd Leg., 1st C.S., ch. 6, Sec. 3; Acts 1993, 73rd Leg., ch. 107,

Sec. 4.04, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 774, Sec. 2, eff. Aug. 30, 1993. Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 14.53, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 20, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 931, Sec. 79, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1256, Sec. 124, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.834, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 2, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.08, eff. April 1, 2019.

Sec. 47.03. GAMBLING PROMOTION. (a) A person commits an offense if he intentionally or knowingly does any of the following acts:

- (1) operates or participates in the earnings of a gambling place;
- (2) engages in bookmaking;
- (3) for gain, becomes a custodian of anything of value bet or offered to be bet;

- (4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

- (5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery.

(b) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., ch. 313, Sec. 3, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.04. KEEPING A GAMBLING PLACE. (a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

(b) It is an affirmative defense to prosecution under this section that:

- (1) the gambling occurred in a private place;
- (2) no person received any economic benefit other than personal winnings; and
- (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 667, ch. 251, Sec. 1, eff. Aug. 29, 1977. Acts 1989, 71st Leg., ch. 1030, Sec. 1, eff. Sept. 1, 1989. Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.05. COMMUNICATING GAMBLING INFORMATION. (a) A person commits an offense if, with the intent to further gambling, he knowingly communicates information as to bets, betting odds, or changes in betting odds or he knowingly provides, installs, or maintains equipment for the transmission or receipt of such information.

(b) It is an exception to the application of Subsection (a) that the information communicated is intended for use in placing a lawful wager under Chapter 2027, Occupations Code, and is not communicated in violation of Section 2033.013, Occupations Code.

(c) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.09, eff. April 1, 2019.

Sec. 47.06. POSSESSION OF GAMBLING DEVICE, EQUIPMENT, OR PARAPHERNALIA. (a) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for

gambling purposes or any equipment that he knows is designed as a subassembly or essential part of such device.

(c) A person commits an offense if, with the intent to further gambling, the person knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.

(d) It is a defense to prosecution under Subsections (a) and (c) that:

(1) the device, equipment, or paraphernalia is used for or is intended for use in gambling that is to occur entirely in a private place;

(2) a person involved in the gambling does not receive any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the chance of winning is the same for all participants.

(e) An offense under this section is a Class A misdemeanor.

(f) It is a defense to prosecution under Subsection (a) or (c) that the person owned, manufactured, transferred, or possessed the gambling device, equipment, or paraphernalia for the sole purpose of shipping it to another jurisdiction where the possession or use of the device, equipment, or paraphernalia was legal.

(g) A district or county attorney is not required to have a search warrant or subpoena to inspect a gambling device or gambling equipment or paraphernalia on an ocean-going vessel that enters the territorial waters of this state to call at a port in this state.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 668, ch. 251, Sec. 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1865, ch. 741, Sec. 1, eff. Aug. 29, 1977; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(48), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 458, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1030, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 44, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 315, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 6, Sec. 4; Acts 1993, 73rd Leg., ch. 107, Sec. 4.05, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 284, Sec. 30, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.07. EVIDENCE. In any prosecution under this chapter in which it is relevant to prove the occurrence of a sporting event, a published report of its occurrence in a daily newspaper, magazine, or other

periodically printed publication of general circulation shall be admissible in evidence and is prima facie evidence that the event occurred.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Renumbered from Penal Code Sec. 47.08 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.08. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this chapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.  
Renumbered from Penal Code Sec. 47.09 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.09. OTHER DEFENSES. (a) It is a defense to prosecution under this chapter that the conduct:

(1) was authorized under:

- (A) Chapter 2001, Occupations Code;
- (B) Chapter 2002, Occupations Code;
- (C) Chapter 2004, Occupations Code;
- (D) Subtitle A-1, Title 13, Occupations Code (Texas Racing Act); or

(E) Chapter 280, Finance Code;

(2) consisted entirely of participation in the state lottery authorized by Chapter 466, Government Code; or

(3) was a necessary incident to the operation of the state lottery and was directly or indirectly authorized by:

- (A) Chapter 466, Government Code;
- (B) the lottery division of the Texas Lottery Commission;

(C) the Texas Lottery Commission; or

(D) the director of the lottery division of the Texas Lottery Commission.

(b) It is an affirmative defense to prosecution under Sections 47.04, 47.06(a), and 47.06(c) that the gambling device, equipment, or paraphernalia is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the device, equipment, or paraphernalia on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) at all times while the vessel is in the territorial waters of this state all devices, equipment, or paraphernalia are disabled, electronically or by another method, from a remote and secured area of the vessel in a manner that allows only the master or crew of the vessel to remove any disabling device;

(3) at all times while the vessel is in the territorial waters of this state any disabling device is not removed except for the purposes of inspecting or repairing the device, equipment, or paraphernalia; and

(4) the device, equipment, or paraphernalia is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.  
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.54, eff. Sept. 1, 1995;  
Acts 1997, 75th Leg., ch. 111, Sec. 1, eff. May 16, 1997; Acts 1997, 75th  
Leg., ch. 1035, Sec. 55, eff. June 19, 1997; Acts 1999, 76th Leg., ch.  
844, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec.  
14.835, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 3, eff. January 1,  
2016.

Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.10, eff. April  
1, 2019.

Acts 2017, 85th Leg., R.S., Ch. 978 (H.B. 471), Sec. 5, eff. November  
7, 2017.

Sec. 47.10. AMERICAN DOCUMENTATION OF VESSEL REQUIRED. If 18 U.S.C. Section 1082 is repealed, the affirmative defenses provided by Section 47.09(b) apply only if the vessel is documented under the laws of the United States.

Added by Acts 1989, 71st Leg., ch. 1030, Sec. 4, eff. Sept. 1, 1989. Renumbered from Penal Code Sec. 47.12 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(27), eff. Sept. 6, 1990. Renumbered from Penal Code Sec. 47.13 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.11. DEPOSITS IN CERTAIN ACCOUNTS NOT CONSIDERATION. For purposes of this chapter, opening or making a deposit in a savings account or other savings program subject to a savings promotion raffle under Chapter 280, Finance Code, does not constitute consideration.

Added by Acts 2017, 85th Leg., R.S., Ch. 978 (H.B. 471), Sec. 6, eff. November 7, 2017.



## 8. Kelly, Hart & Hallman Analysis.



ANDREW WEBER  
andrew.weber@kellyhart.com

TELEPHONE: (512) 495-6451  
FAX: (512) 495-6401

March 29, 2018

The Honorable Ken Paxton  
Office of the Attorney General  
Attn: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Re: RQ-0209-KP Regarding Texas Penal Code Chapter 47

Dear General Paxton:

I write on behalf of Texas Card House (“TCH”). TCH advocates for maintaining a legal landscape for the facilitation of private poker playing. To this end, I address the Opinion Request submitted by the Honorable Geanie Morrison on January 26, 2018.

### I. Operational Background—TCH

TCH is the premier private card club in the State of Texas. The first of its kind, TCH was founded in 2014 and runs two successful facilities in North and South Austin. Since its founding, TCH has led the industry in maintaining a high-end environment designed to attract an exclusive private membership of card-playing aficionados. Part of what attracts TCH’s members to this facility is that TCH has taken the following measures to ensure its operations fall soundly within the letter and spirit of the law:

- **Club Amenities:** TCH caters to individuals seeking to enjoy a variety of activities, including poker playing. In addition to facilitating neutral professional dealers and poker tables, TCH also provides members with billiards games, big-screen televisions playing sports and entertainment programs, and private event spaces. The membership’s exclusive access to these amenities not only justifies the cost of the membership dues and hourly fees, it also ensures the club does not base its revenue on taking a “rake.” Moreover, there is no time-based seat rental at TCH. Members are charged for the entire time they use the facilities, regardless of whether they play poker or pool—or watch television. This ensures the club’s revenues are completely divorced from a “rake,” whether defined as “a fee or a percentage of the value at risk,” or by a “time collection” mechanism. Moreover, this ensures the revenues are not derived from gaming—the

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AUSTIN OFFICE | 303 COLORADO STREET, SUITE 2000 | AUSTIN, TX 78701 | TELEPHONE: (512) 495-6400 | FAX: (512) 495-6401  
FORT WORTH OFFICE | 201 MAIN STREET, SUITE 2500 | FORT WORTH, TX 76102 | TELEPHONE: (817) 332-2500 | FAX: (817) 878-9280  
NEW ORLEANS OFFICE | 400 POYDRAS STREET, SUITE 1812 | NEW ORLEANS, LA 70130 | TELEPHONE: (504) 522-1812 | FAX: (504) 522-1813  
BATON ROUGE OFFICE | 301 MAIN STREET, SUITE 1600 | BATON ROUGE, LA 70801 | TELEPHONE: (225) 381-9643 | FAX: (225) 336-9763  
MIDLAND OFFICE | 508 W. WALL STREET, SUITE 444 | MIDLAND, TX 79701 | TELEPHONE: (432) 683-4158  
*Kelly Hart & Hallman, a Limited Liability Partnership | www.kellyhart.com*



club's revenue is tied to the amount of time a member spends in the club, regardless of what the member spends her/his time doing.

- **Private Membership:** TCH is a private social club. The public is restricted from access to the club's amenities by a lobby in which TCH processes membership applications and collects dues. The only way to proceed through the separated lobby is to become member in good standing, which includes applying, paying dues and receiving membership approval. Strict adherence to this policy ensures that the club remains a "private place" as defined by Texas Penal Code § 47.01(8).
- **Membership Dues and Personal Winnings Are Entirely Separate:** All monies wagered at TCH are between and settled directly by the club's private members. The billing occurs away from the tables to ensure there is no link between access to the club and the players' earnings. There is no "house"—only a professional poker dealer who is a salaried employee prohibited from taking tips for dealing or dealing hands for himself. Once members are inside TCH, all money exchanged stays on the table between participants. This ensures TCH receives no "economic benefit" from the members' personal winnings as required by Texas Penal Code § 47.02(b)(2). The club's only economic benefit derives from private-club membership fees and hourly onsite fees.
- **Chances of Winning are the Same for All Participants:** TCH only facilitates poker games in which the chances for any player to win are equal. None of the games played at TCH have "house odds," where there is an inherent advantage for some participants versus others. TCH offers no "poker insurance" which could skew the odds in favor of the participant. These measures ensure that the "chances for any player to win are equal except for the advantage of skill or luck" in a manner that conforms with Texas Penal Code § 47.02(b)(3).

## II. Applicability of "Social Gambling Defense" to TCH Operations

With this business model in mind, I turn to the question presented to you: "Are poker gambling enterprises that charge membership or other fees or receive other compensation from gamblers playing poker—but do not receive a "rake"—permitted under Texas Law?" Chairman Morrison recognized, more specifically, that the permissibility of these operations turns on the application of the "social gambling defense" to both "gambling" under section 47.02 of the Texas Penal Code and "keeping a gambling place" under section 47.04 of the Texas Penal Code. The "social gambling defense" applies when:

- (1) the actor engaged in gambling in a private place, or the gambling itself occurred in a private place;
- (2) no person received any economic benefit other than personal winnings; and
- (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

Tex. Penal Code §§ 47.02(b), 47.04(b). Given the parameters discussed above, TCH operates in a manner that satisfies all three of these elements. Thus, both the players and TCH function legally under the “social gambling defense.”

**A. The Gambling Occurs in a Private Place.**

As noted above, TCH is not open to the public. A lobby shields the club’s amenities from public view and the general public is allowed absolutely no access to poker or any other club amenity without the acceptance of a membership application and the payment of a membership fee. A membership committee meets once a month and approves and/or removes any memberships, which limits the ability of the general public from accessing the club off the street. For these reasons, TCH satisfies the statutory definition of “private place.” See Tex. Penal Code § 47.01 (defining “private place” as “a place to which the public does not have access”).

**1. “Bona Fide Social Clubs” Are Not Public Places According to Established Precedent.**

For over a century, Texas courts have held that playing cards in a “bona fide” club in which no one “but members and their guests could enter there, or share its privileges” does not constitute playing in a “public place.” *Koenig v. State*, 26 S.W. 835, 839 (1894); see also *Grant v. State*, 27 S.W. 127, 127–28 (1894) (recognizing that a social club in which “no one but its members or invited guests was permitted to visit it” was not a “public place”). Recognizing the reality that these decisions are entirely on point and favorable to private poker clubs, opponents have suggested that “earlier cases which had permitted gambling in certain social clubs [were] (sic) no longer entirely valid with the enactment of the 1973 Penal Code.” See March 1, 2018 Letter from Locke Lord LLP. This position is not accurate.

Opponents cite the State Bar Commentary adopted with the passage of the 1973 Penal Code for the proposition that pre-enactment caselaw is “no longer entirely valid.” See State Bar Committee on Revision of the Penal Code, A Proposed Revision of the Penal Code at 330 (Final Draft October 1970) (“[T]he committee’s main concern is to prohibit social gambling in public places ... the defense is not extended to clubs and locations that are only *nominally private* and to which, the public, *in fact*, has access.”) (emphasis added). The AG construed this commentary when asked to opine “as to whether quarters of fraternal and veterans’ organizations and private clubs are ‘private places’ within section 47.02(b) of the Penal Code.” Tex. Att’y Gen. Op. No. H-489 (1975). In so doing, the AG determined that fact-finding was required to determine the degree to which the public had access to the fraternal and veterans’ organizations. *Id.* Nowhere in this opinion did the AG suggest that the newly-enacted Penal Code invalidated caselaw pre-dating enactment. On the contrary, the AG has cited pre-1973 opinions in all relevant opinions construing Chapter 47 of the Texas Penal Code.<sup>1</sup>

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<sup>1</sup> See Tex. Att’y Gen. Op. No. DM-0344 (1995) (opining on whether persons may play and bet on card games using computers with modems or other transmission devices and citing *Comer v. State*, 10 S.W. 106 (1889) and *Heath v. State*, 276 S.W.2d 534 (Tex. Crim. App. 1955) for the proposition that “whether a place is private for [online gaming] purposes has been determined by the scope of access by others;” also citing *Morgan v. State*, 60 SW. 763, 764 (Tex. Crim. App. 1901) for proposition that a private

**2. Whether a Place is Public or Only “Nominally Private” Requires Fact Finding Beyond the Scope of This Opinion.**

Chairman Morrison’s request offers only two assumptions that speak to the first element of the “social gambling defense”: advertising to the public and conducting business in a commercial, non-residential area. But TCH engages in many measures to ensure the club remains private—none of which are addressed in Chairman Morrison’s hypothetical. Regardless, because no single factor can dispositively make a place “nominally private,” the AG should decline to engage in the fact-specific inquiry involved under the first element of the “social gambling defense” altogether. *See* Tex. Att’y Gen. Op. No. JM-1267 (1990) (questions of fact cannot be resolved in the opinion process); Tex. Att’y Gen. Op. No. H-489 (1975) (“In our opinion, whether quarters of private clubs ... are ‘private places’ for purposes of establishing one element of the [social gambling] defense ... depends on whether such quarters are in fact places to which the public does not have access, and are not only nominally private.”) (emphasis in original). Without this fact, the AG should decline to answer the question presented, or should at least assume TCH does not conduct business in a public place.

**B. Players Receive No Economic Benefit Other Than Personal Winnings.**

The crux of Chairman Morrison’s request is whether the “social gambling defense” is foreclosed when an entity facilitating a private poker game receives “economic benefit” that is entirely unrelated to the players’ “personal winnings.” The opposition encourages the AG to interpret the second “economic benefit” element of the defense broadly to encompass economic benefits to all “persons”—regardless of whether they are playing poker. This extension would necessarily include the private membership dues and hourly fees charged to access the club’s amenities within the undefined term, “economic benefit.” But this is an unreasonable extension of the term “economic benefit” for the following reasons.

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residence was not “private place” if public had access to gambling there); *see also* Tex. Att’y Gen. Op. No. KP-0057 (2016) (opining on two questions involving fantasy sports leagues and citing *City of Wink v. Griffith Amusement Co.*, 100 S.W.2d 695, 701 (Tex. 1936) (articulating elements necessary to constitute a “lottery” and for proposition that participation in contests that charge nothing to participate and pay nothing to winners involves no consideration and no bet, and as a result cannot constitute illegal gambling in Texas); also citing *Odle v. State*, 139 S.W.2d 595, 597 (Tex. Crim. App. 1940), *Melton v. State*, 124 S.W. 910, 911 (Tex. Crim. App. 1910), and *Mayo v. State*, 82 S.W. 515, 516 (Tex. Crim. App. 1904) for proposition that “the legal meaning of the term ‘bet’ is the mutual agreement and tender of a gift of something valuable, which is to belong to one of the contending parties, according to the result of the trial of chance or skill, or both combined”); Tex. Att’y Gen. Op. No. DGA-335 (2005) (opining on whether a business that holds an on-premises alcoholic beverage permit may host a poker tournament under two specific fact scenarios and citing *Odle*, 139 S.W.2d at 597 for proposition that legal meaning of bet includes a combination of skill and chance) and *Adams v. Antonio*, 88 S. W.2d 503,505 (Tex. Civ. App.—Waco 1935, writ ref d) for proposition that gaming statute was violated in instance in which chance predominates over skill).

**1. The Unambiguous Plain Language of the “Economic Benefit” Element Applies Only to a Person’s “Personal Winnings.”**

First, “economic benefit” is an undefined term, so the fundamental goal “is to ascertain and give effect to the Legislature’s intent.” *Cadena Comercial USA Corp. v. Texas Alcoholic Beverage Comm’n*, 518 S.W.3d 318, 325 (Tex. 2017). “Where text is clear, text is determinative of that intent.” *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009). Statutory interpretation should “look to and rely on the plain meaning of a statute’s words as expressing legislative intent unless a different meaning is supplied, is apparent from the context, or the plain meaning of the words leads to absurd or nonsensical results.” *Cadena*, 518 S.W.3d 325 (citing *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 389-90 (Tex. 2014)). “Words and phrases shall be read in context and construed according to the rules of grammar and common usage.” *Id.*

Here, the text could not be more clear: “economic benefit” references “personal winnings.” See Tex. Penal Code § 47.02(b)(2) (“no person received any economic benefit other than personal winnings” (emphasis added)). The only person who enjoys “personal winnings” in poker, at least under the TCH model, is the player, not the club operator. Thus, as a matter of plain language interpretation, the unambiguous terms in section (b)(2) apply narrowly to the “economic benefit” of the poker player.

Opponents challenge this narrow construction by arguing that the term “participant” would have been used had the Legislature intended to restrict “economic benefit” only to poker players. But the goal “when construing a statute is to recognize that the words the Legislature chooses should be the surest guide to legislative intent.” *Entergy*, 282 S.W.3d at 437. Here, rather than using the term “participant” in subsection (b)(2), the Legislature chose to modify the term “person receiv[ing] any economic benefit” with a narrowing limitation—“other than personal winnings.” This confirms the Legislature’s intent to apply “economic benefit” to a narrower category than to all persons generally. See *Cadena*, 518 S.W.3d at 328 (“[W]e presume the Legislature chooses a statute’s language with care, including each word chosen for a purpose, while purposefully omitting words not chosen.”).

*Cadena* is instructive on construing a statute that contains a “narrowing modifier” similar to the “other than personal winnings” language used in subsection (b)(2). There, the Supreme Court of Texas was asked to interpret Texas’s “tied house” statutes, which prohibit a person with “an interest in the business of a ... brewer” from owning “a direct or indirect interest in the business, premises, equipment, or fixtures of a retailer.” *Id.* at 328-330 (quoting Tex. Alco. Bev. Code § 102.07(a)). The issue was whether “interest” should be construed broadly or narrowly when used in the sentence, “interest in the business of a brewer.” *Id.* at 327-28.

On the outset, the *Cadena* court noted that the term “interest,” “without a modifier, could in the abstract be so broad as to be vague and ambiguous.” *Id.* at 327. The same is true here, where the possibility that “economic benefit” could run to all persons without limitation would be equally vague and ambiguous. The Supreme Court’s answer to this possibility was that “when interpreting broad, context-sensitive terms such as ‘interest,’ we must be sensitive to the

context.” *Id.* at 328. In the alcoholic beverages context, the Supreme Court noted that the term “interest” was “then narrowed by the phrase ‘in the business of a brewer.’” *Id.* at 328. The Court then limited the term “interest” with the plain meaning of the term “brewer” to derive a contextualized definition that “meshes with both the plain language and context of the statute’s words, as well as the Legislature’s policy of strict separation between the tiers of the industry.” *Id.* at 328–29.

The steps the *Cadena* court used to interpret “interest” in the alcoholic beverages context should apply similarly in the social gambling context. Just as the plain language of the term “brewer” was used to give contextualized meaning to the otherwise-expansive term, “interest” in *Cadena*, the plain language of the term “personal winnings” also gives context to the term “economic benefit.” “Personal winnings” applies only to those playing poker. And the very enactment of a “social gambling defense” demonstrates the Legislature’s intent to carve a distinct subset of “social gamblers” from otherwise-illegal gambling. The only way to give effect to this defense is to recognize that “other than personal winnings” necessarily refers to those of the social gambler, whose “economic benefit” the modifier was intended to limit.

## **2. Extending “Economic Benefit” To All Persons Generally Is Unreasonable.**

To interpret the “economic benefit” element as broadly as opponents suggest would swallow the entire “social gambling defense” in a manner that extends the definition beyond a logical or reasonable limit. *But see In re Blair*, 408 S.W.3d 843, 851 (Tex. 2013) (“We will not read a statute to draw arbitrary distinctions resulting in unreasonable consequences when there is a linguistically reasonable alternative.”). Recently, you opined that people who wager on a player’s performance as part of a fantasy football league do not qualify for the “actual contestant exception,” which carves “actual contestants in a bona fide contest for the determination of skill” from the definition of “bet.” *See* Tex. Att’y Gen. Op. No. KP-0057 (2016) (quoting Tex. Penal Code § 47.01(1)(B)). You refused to read the “actual contestant exception” in the Penal Code so broadly because such an interpretation “would have that exception swallow the rule.” *Id.*

Interpreting the “economic benefit” exception so broadly would likewise “swallow the rule.” Under the opponents’ unreasonable construction, the “social gambling defense” would be unavailable if any money exchanged hands for any purpose, without regard to that exchange’s relation to the gambling. If the “social gambling defense” is foreclosed whenever any “person” receives any money whatsoever from TCH—whether it be the landlord, utility company, or vendors servicing the club—this is yet another case where the exception—the “economic benefit” exclusion—would swallow the rule—the “social gambling defense.”<sup>2</sup>

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<sup>2</sup> Other supporters have mentioned the absurd results that would flow from such an interpretation, including making illegal the friendly apartment game of poker, the country club poker table, or the fraternity poker night. *See, e.g.*, February 28, 2018 Letter from Blizzard & Zimmerman.

**3. The Last Antecedent Doctrine Also Encourages a Narrow Construction of “Economic Benefit.”**

Moreover, the only way to give effect to the qualifier, “other than personal winnings” is to apply it to the immediately preceding phrase, “economic benefit.” See *Entergy*, 282 S.W.3d at 442 (“[W]e do not interpret a statute in a manner that renders parts of it meaningless.”). Courts have interpreted “other than” clauses similar to “other than personal winnings” under the “last antecedent doctrine:”

Under the last antecedent doctrine, where no contrary intention appears, relative and qualifying words, phrases, and clauses are to be applied to the immediately preceding words or phrase. Such words, phrases, and clauses are not to be construed as extending to or modifying others which are more remote ....

*In re Guardianship of Finley*, 220 S.W.3d 608, 615 (Tex. App.—Texarkana 2007, no pet.) (quoting 82 C.J.S. Statutes § 333 (1999)). *In re Finley* also involved a statute in which one side argued that the term “appointed under the laws of a jurisdiction other than this state” applied broadly to three listed exceptions within the guardianship section of the Texas Probate Code—husband and wife, joint managing conservators, and coguardians. *Id.* at 614-15. Citing the “last antecedent doctrine” to discern legislative intent, the *Finley* court held that the “other than” term had to modify only the last of the three exceptions, or else, the three exceptions would collapse into one:

If the phrase “appointed under the laws of a jurisdiction other than this state” means to qualify two or more people already appointed elsewhere as guardians, then the phrase “a husband and wife” is rendered redundant with the later phrase “coguardians.” .... As we are to presume that the entire statute is intended to be effective, we should not construe a statute in such a way as to render the inclusion of one part of it meaningless.

*Id.* at 616 (citing Tex. Gov’t Code Ann. § 311.021(2)). Because a construction that applies “economic benefit” to all “persons” and not just social gamblers renders the “other than personal winnings” qualifier meaningless, this is not a reasonable construction and should be rejected. See *Entergy*, 282 S.W.3d at 441–42 (recognizing that the qualifier “either separately or through the use of subcontractors” in the Texas Labor Code modifies the term “general contractor” and would be rendered meaningless if the term “general contractor” were given a restrictive meaning).

**4. Assuming Both Broad and Narrow Applications Are Reasonable, Statutory Construction Aids Compel the Narrow Construction of “Economic Benefit.”**

Even assuming you find both interpretations of the term “economic benefit” to be reasonable, the following aids to statutory construction compel the conclusion that the Legislature intended for “economic benefit” to apply narrowly to social gamblers:

In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the: (1) object sought to be attained; (2) circumstances under which the statute was enacted; (3) legislative history; (4) common law or former statutory provisions, including laws on the same or similar subjects; (5) consequences of a particular construction; (6) administrative construction of the statute; and (7) title (caption), preamble, and emergency provision.

*HCBeck, Ltd. v. Rice*, 284 S.W.3d 349, 356 (Tex. 2009) (quoting Tex. Gov't Code § 311.023).

First, the “object sought to be attained is to provide a legal mechanism for “social gambling,” or, as State Bar Committee called it, “the friendly poker game”:

This section prohibits every form of gambling, but provides a defense for the “friendly poker game.”

\* \* \*

The elements of the defense are designed to exclude any form of exploitative or commercialized gambling. The evidence must show that no participant received an economic benefit other than winnings; therefore, if one party gets a special cut from each pot or charges for the privilege of using the facilities, none of the participants can rely on the defense.

\* \* \*

If the “odds” of the game are stacked in favor of one party, Subsection (b)(3) excludes the defense. However, the equal risks and chances requirement of Subsection (b)(3) refers only to the rules of the game, not to the advantages that accrue to a skilled player. Therefore, a game which ensures a profit to the house or banker, regardless of the luck or skill involved, is not a “friendly” game to which the defense applies: but the presence of a superior, even professional player, who the skill and luck, does not vitiate the defense.

State Bar Committee on Revision of the Penal Code, A Proposed Revision of the Texas Penal Code at 329 (Final Draft, October 1970) (emphasis added). Certainly, interpreting the statute in a manner that would do away with the defense for the “friendly poker game” entirely would not satisfy the “object sought to be obtained.”

Second, the “circumstances under which the statute was enacted” and the “legislative intent” factors also warrant in favor of a narrow interpretation of “economic benefit.” In 1973, the Legislature enacted a “social gambling defense” for the first time, adopting the proposed language from the State Bar in total with the above-quoted commentary. *See Adley v. State*, 718 S.W.2d 682, 684–85 (Tex. Crim. App. 1985) (discussing history of gambling legislation and



pointing out that the “social gambling defense” was not available in pre-1973 legislation). This commentary confirms that the Legislature intended to apply the “economic benefit” consideration only to participants in the game of poker—not to the facilitator of the premises.

Later, the Legislature adopted additional commentary which directly addressed the perceived “defective” subsection (b)(2), and recognized the legislative intent to apply the “economic benefit” term only to gambling participants:

Unfortunately, the statement of the [social gambling] defense is defective in this section, but hopefully the courts will interpret it according to the legislature’s clear intent—as if it read: (b) It is a defense to prosecution under this section that ... (2) no person gambling there received any economic benefit other than personal winnings.

Seth S. Searcy III & James R. Patterson—Practice Commentary—1973, Tex. Penal Code § 4704 (Vernon 1989) (attached as Exhibit A to March 1, 2018 Letter from Locke Lorde LLP). These two commentaries—adopted at varying times throughout the history of Chapter 47—confirm that the narrower interpretation was intended.

Third, a narrower construction of “economic benefit” also prevails after considering the “common law or former statutory provisions” alongside the “consequences of a particular construction.” Tex. Gov’t Code § 311.023. As all parties have recognized, the “social gambling defense” was enacted for the first time in 1973, and the “economic benefit” element of the defense has never been amended. See Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Certainly, a broad “economic benefit” construction that swallows the defense in its entirety would not have been the intent of the Legislature, considering that it has never opted to do away with the defense explicitly, even though it has amended section 47.02 (offense for gambling) nine times and section 47.04 (offense for keeping a gambling place) three times since the statutes’ 1973 enactment.

**5. Opponents’ Arguments For A Broad Construction of “Economic Benefit” Are Contrary to Prior Precedent and Expressions of Legislative Intent.**

Despite the fact that the only reasonable interpretation of the “economic benefit” portion of the “social gambling defense” is a narrow construction that applies only to the poker player, opponents assert two unavailing arguments in favor of a broader interpretation.

First, opponents contend that previous bills have been introduced to add “participant” in place of “person” in a manner that would correct the “defective” portion of the defense. If the Legislature truly intended to apply “economic benefit” to only gambling participants, opponents contend, it surely would have passed legislation clarifying that intent. This argument is unavailing because courts consider neither failed legislation nor legislative inaction when interpreting statutes. See *Entergy*, 282 S.W.3d at 471 (Willett, J., Concurring) (“As non-adoption infers nothing authoritative about an earlier statute’s meaning, we do not consult failed

bills to divine what a previous Legislature intended.”); *see also Dutcher v. Owens*, 647 S.W.2d 948, 950 (Tex. 1983) (warning against gleaned legislative intent from failed bills: “Any such inference would involve little more than conjecture.”); *Tex. Employment Comm’n v. Holberg*, 440 S.W.2d 38, 42 (Tex. 1969) (“[W]e attach no controlling significance to the Legislature’s failure to enact the proposed amendment”).

Second, opponents contend that the above-quoted State Bar Commentary indicates the Legislature’s intent to exclude facilitators like TCH from the “social gambling defense” because they “charge for the privilege of using the facilities.” But the State Bar Commentary clearly limits the scope of applicability to “parties” to the poker game. *See* State Bar Commentary at 329 (“[I]f **one party** gets a special cut from each pot **or charges for the privilege of using the facilities**, none of the participants can rely on the defense.”). TCH, by contrast, is not a “party” to the poker game that “charges for the privilege of using the facilities” because it is not a “player” at all. TCH does not participate in poker play, nor do its dealers.

For these reasons, TCH does not receive “economic benefit other than personal winnings” in a manner that forecloses the “social gambling defense.”

**C. Except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.**

As discussed above, the only games played at TCH are those in which the chances for any player to win are equal. None of the games played at TCH have “house odds,” and indeed, no dealers participate in the games by dealing themselves a hand. TCH allows no players to bet with “poker insurance,” as this activity could be perceived as creating better odds for some players over others. For these reasons, the “chances for any player to win are equal except for the advantage of skill or luck.” Tex. Penal Code § 47.02(b)(3).

**D. The Scope of the Question Presented is Limited to the Applicability of the “Social Gambling Defense.”**

In a last-ditch effort to undermine these legal social gambling establishments, opponents have suggested that the activities of enterprises like TCH also run afoul of several other gambling statutes that do not have an accompanying “social gambling defense.” Opponents have suggested that facilitators of private social gambling venues possibly violate Texas Penal Code § 47.03 (creating a misdemeanor offense for a person who “operates or participates in the earnings of a gambling place”); Tex. Penal Code § 47.05 (creating a misdemeanor offense for a person who “knowingly communicates information as to bets”); and Tex. Penal Code § 47.06(b) (creating a misdemeanor offense for a person who “knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for gambling purposes”).

Because Chairman Morrison’s request does not ask the AG to construe these statutes or interpret the statutory definitions of “gambling place,” “bet” or “gambling equipment,” applying Chairman Morrison’s hypothetical to these laws goes far beyond the opinion process—and

The Honorable Ken Paxton  
March 29, 2018  
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certainly beyond this request. But assuming the AG wishes to construe these statutes as well, these three statutes to not apply to TCH because TCH is not a “commercial gambler.” Chapter 47 was enacted to “distinguish between the social gambler and the commercial gambler.” *Adley*, 718 S.W.2d at 684–85. TCH merely facilitates a private social space in a manner no different than a country club or private dining facility. The mere fact that the poker players bet amongst themselves in this private facility does not turn TCH into an “individual[] who engage[s] in gambling commercially, or, as the Practice Commentary notes, the ‘exploitive gambler.’” *Id.*

I sincerely hope that after consideration of the above analysis, you will conclude that these establishments, when properly run, are compliant with Texas law. On behalf of TCH, thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Weber", with a long horizontal line extending to the right.

Andrew Weber

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*\*Board Certified Administrative Law  
Texas Board of Legal Specialization*

TO: TEXAS CARD HOUSE ("TCH" or "Client")  
RE: APPLICABILITY OF THE STATUTORY DEFENSES IN THE TEXAS PENAL CODE TO  
YOUR OPERATIONS

Dear Client,

You have asked me to give you my legal opinion on the applicability of the Texas Penal Code, ("Code") to the operations of a 'member only' social club, that allows, *inter alia*, for members to play the game of poker.

**I. FACTUAL ASSUMPTIONS**

There are a number of factual assumptions upon which this opinion is based. Specifically, it is understood that; (a) the social club, ("club") is a 'members only' club, which restricts access to the general public, and requires pre-approval, payment of a membership fee, and which membership is subject to cancellation for failure to remain in good standing, as per the club's internal rules and regulations; (b) any fee charged is for the use of the entire facility, whether or not the member plays the game of poker; (c) the dealer(s) provided by the club, are employees of the club, are not allowed to accept tips, or other compensation, from any personal winnings of

any of the participants in a poker game<sup>1</sup>; (d) there is no “house” as the term is used in the gaming industry, and the “house” or club, does not take what is commonly known as a “rake”; (e) other than the skill or luck of those participating in a game of poker, the chances of winning or losing, are the same for each participant; and (f) the club does not derive any economic benefit from the personal winnings of any participant in a game of poker.

## **II. HISTORY AND THE STATUTORY DEFENSE TO ILLEGAL GAMBLING**

In 1974, the Texas Legislature enacted the Texas Penal Code, and in doing so, made various changes in the law pertaining to gambling. Prior to 1974, the Penal Code criminalized gambling in separate and distinct offenses for all the various forms of gambling. The statutes were confusing to say the least. In enacting Chapter 47 of the new Code, the legislature sought to simplify the law. More importantly, the legislature, for the first time, sought to decriminalize social gambling and provide minimal penalties for the individual who utilized the services of the professional gambler. See generally practice commentary to Chapter 47, V.T.C.A. Penal Code, § 47.01, et seq.<sup>2</sup>

The statutory defense (“defense”) to illegal gambling, can be found in two separate sections of the Code, specifically, sections 47.02(b)<sup>3</sup> and 47.04(b)<sup>4</sup>.

The elements of the defenses are identical in both sections, and will therefore be discussed together in this opinion. Specifically, the defenses provide as follows:

*“(b) It is a defense to prosecution under this section that:  
(1) the actor engaged in gambling in a private place;*

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<sup>1</sup> The term “poker game” includes all aspects thereof, including, any one hand, the wager, and aspect of skill and/or luck.

<sup>2</sup> *Adley v. State*, 718 S.W.2d 682, 683 (Tex. Crim. App. 1985)

<sup>3</sup> Applies to the prohibition against Gambling.

<sup>4</sup> Applies to the prohibition against Keeping a Gambling Place.

(2) *no person received any economic benefit other than personal winnings; and*  
(3) *except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.*”

The applicable rules and principals of statutory construction provides that:

Our fundamental goal when reading statutes “is to ascertain and give effect to the Legislature’s intent.” *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 452 (Tex. 2012). To do this, we look to and rely on the plain meaning of a statute’s words as expressing legislative intent unless a different meaning is supplied, is apparent from the context, or the plain meaning of the words leads to absurd or nonsensical results. *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 389–90 (Tex. 2014). Words and phrases “shall be read in context and construed according to the rules of grammar and common usage.” *Id.* (citing Tex. Gov’t Code § 311.011). We presume the Legislature “chooses a statute’s language with care, including each word chosen for a purpose, \*326 while purposefully omitting words not chosen.” *TGS–NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011). In that vein, we take statutes as we find them and refrain from rewriting the Legislature’s text. *Entergy Gulf States v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009).

With these basic principals in mind, I will discuss each of the three elements and apply them to your club’s operations.

Before doing so, it is important to note that each element is directly related to, and only applicable to, the act of gambling. The importance of this, will become evident in the analysis below.

### **III. PRIVATE PLACE.**

The Code defines a “public place” at section 47.01(8) as follows:

“(8) “*Private place*” means a place to which **the public does not have access**, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops.” (emphasis added)

Although the determination of whether a place is private or public, necessarily depends on a factual analysis, it is my opinion that your club does not allow access, for the use of its facilities, to the general public, and therefore qualifies as private place. I do not believe that it is only

“nominally private” as suggested by Attorney General John Hill in his opinion H-489, but to the contrary, is more akin to the description and analysis in the case of *Grant v. State*, 33 Tex. Crim. 527, 27 S.W. 127 (1894).<sup>5</sup>

#### **IV. ECONOMIC BENEFIT FROM PERSONAL WINNINGS.**

First, it must be noted that the term “economic benefit” is not defined in the Code. However, it must also be noted that the term is restricted to “personal winning”. It cannot therefore logically follow, that any economic benefit received by the club, from a person, before that person participates in a poker game, qualifies for consideration. Stated differently, the payments received by the club, as described in the factual assumption section, above, are not the type of economic benefit addressed in this element of the defense.

The inquiry has to be limited to the use of the winnings while the game is in progress. The club is clearly prohibited from taking a “rake”<sup>6</sup> or allowing the dealers from being tipped, directly from winnings<sup>7</sup>, during the actual game. Stated differently, only the actual players, or participants in the game, can derive an economic benefit from any bet placed or hand played. Since the club itself is not a player, or participant, and does not share in any economic benefit derived from any bet or hand played, it does qualify for this element of the defense.

How the winnings are used after the game is concluded, cannot logically be the concern of the legislature or the subject of this element of the defense. Such an extension of this element, would

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<sup>5</sup> “*The rooms of a commercial club, to which only the club members and invited visitors are admitted, except when the club has under discussion some question affecting the public interest, are not a public place, within the meaning of the statute prohibiting card playing in public places.*”

<sup>6</sup> See Attorney General Opinion, KP-0057.

<sup>7</sup> In my opinion, tipping from a source other than winnings obtained from any hand played, is permissible. The best way to accomplish that, is to make tipping chips available for purchase before the member starts to play, and visually distinguish those chips from the ones used to place

lead to the absurd result that the winnings can never be used, for any purpose. For example, an absurd result would be to deny the existence of this element of the defense, if a player uses his/her winnings to purchase gas on the way home from the club. Or buy milk for his/her children. Absurd examples like this, are obviously endless, and clearly not intended by the legislature,

Some have cited the State Bar Commentary adopted with the passage of the 1973 Penal Code,<sup>8</sup> to suggest an expansive and all encompassing reading of this element of the defense. However, a close reading of the commentary, reveals the following language: “the evidence must show that **no participant**, received an economic benefit, other than winnings...”(emphasis added)

This language makes it clear that this element of the defense applies only to participants in the actual game, and does not extend to the club, the gas station or the grocery store.

#### **V. CHANCE OF WINNING AND LOSING, MUST BE THE SAME FOR ALL PARTICIPANTS**

This is the easiest element to address. Since there are no “house odds”, and the only participants in any game or hand, are the actual players, the chances of winning or losing are clearly only the factors of the skill or luck of the individual players.

#### **VI. CONCLUSION.**

It must be noted that there is no definitive authority that answers the issues discussed here. It must also be noted that the particular facts and circumstances, as they exist, or as they are found

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a wager, or bet.

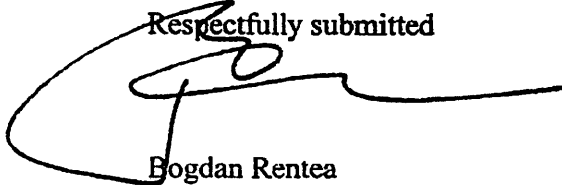
<sup>8</sup> See State Bar Committee on Revision of the Penal Code, A Proposed Revision of the Penal Code, (Final Draft October 1970)



to exist, by a trier of fact, i.e. judge or jury, in the event of a prosecution or other action involving your club's operations, will determine whether your club is or is not entitled to the statutory defenses discuss in this opinion.

Therefore, my opinion has to be qualified, however, as of now, based on the facts and circumstances as I understand them, and based on the materials research and identified herein, it is my opinion that your club meets all the elements of the statutory defenses set out in the Code, and that based on the existence of those defenses, the club is not operating or keeping an illegal gambling place.<sup>9</sup>

Respectfully submitted



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<sup>9</sup> This opinion is for the use of Texas Card House, ("TCH"), and its owners, officers, directors, and members. It may be distributed by TCH, to whomever it deems appropriate, however, it may not be relied upon by such other recipient(s), without the express written permission of Bogdan Rentea.

STATE GOVERNMENT CODE CHAPTER 245. ISSUANCE OF LOCAL PERMITS  
**10. Texas Local Government Code Chapter  
245.**

LOCAL GOVERNMENT CODE

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED  
ACTIVITIES

SUBTITLE C. REGULATORY AUTHORITY APPLYING TO MORE THAN ONE TYPE OF LOCAL  
GOVERNMENT

CHAPTER 245. ISSUANCE OF LOCAL PERMITS

Sec. 245.001. DEFINITIONS. In this chapter:

(1) "Permit" means a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

(2) "Political subdivision" means a political subdivision of the state, including a county, a school district, or a municipality.

(3) "Project" means an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

(4) "Regulatory agency" means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 6 (S.B. 848), Sec. 1, eff. April 27, 2005.

Sec. 245.002. UNIFORMITY OF REQUIREMENTS. (a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:

(1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or

(2) a plan for development of real property or plat application is filed with a regulatory agency.

(a-1) Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought. An application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency. A certified mail receipt obtained by the applicant at the time of deposit is prima facie evidence of the date the application or plan was deposited with the United States Postal Service.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

(c) After an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project.

(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

(e) A regulatory agency may provide that a permit application expires on or after the 45th day after the date the application is filed if:

(1) the applicant fails to provide documents or other information necessary to comply with the agency's technical requirements relating to the form and content of the permit application;

(2) the agency provides to the applicant not later than the 10th business day after the date the application is filed written notice of the failure that specifies the necessary documents or other information and the

date the application will expire if the documents or other information is not provided; and

(3) the applicant fails to provide the specified documents or other information within the time provided in the notice.

(f) This chapter does not prohibit a regulatory agency from requiring compliance with technical requirements relating to the form and content of an application in effect at the time the application was filed even though the application is filed after the date an applicant accrues rights under Subsection (a-1).

(g) Notwithstanding Section 245.003, the change in law made to Subsection (a) and the addition of Subsections (a-1), (e), and (f) by S.B. No. 848, Acts of the 79th Legislature, Regular Session, 2005, apply only to a project commenced on or after the effective date of that Act.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 6 (S.B. 848), Sec. 2, eff. April 27, 2005.

Sec. 245.003. APPLICABILITY OF CHAPTER. This chapter applies only to a project in progress on or commenced after September 1, 1997. For purposes of this chapter a project was in progress on September 1, 1997, if:

(1) before September 1, 1997:

(A) a regulatory agency approved or issued one or more permits for the project; or

(B) an application for a permit for the project was filed with a regulatory agency; and

(2) on or after September 1, 1997, a regulatory agency enacts, enforces, or otherwise imposes:

(A) an order, regulation, ordinance, or rule that in effect retroactively changes the duration of a permit for the project;

(B) a deadline for obtaining a permit required to continue or complete the project that was not enforced or did not apply to the project before September 1, 1997; or

(C) any requirement for the project that was not applicable to or enforced on the project before September 1, 1997.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Sec. 245.004. EXEMPTIONS. This chapter does not apply to:

(1) a permit that is at least two years old, is issued for the construction of a building or structure intended for human occupancy or habitation, and is issued under laws, ordinances, procedures, rules, or regulations adopting only:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; or

(B) local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons;

(2) municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;

(3) regulations that specifically control only the use of land in a municipality that does not have zoning and that do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, or building size;

(4) regulations for sexually oriented businesses;

(5) municipal or county ordinances, rules, regulations, or other requirements affecting colonias;

(6) fees imposed in conjunction with development permits;

(7) regulations for annexation that do not affect landscaping or tree preservation or open space or park dedication;

(8) regulations for utility connections;

(9) regulations to prevent imminent destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy;

(10) construction standards for public works located on public lands or easements; or

(11) regulations to prevent the imminent destruction of property or injury to persons if the regulations do not:

(A) affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, building size, residential or commercial density, or the timing of a project; or

(B) change development permitted by a restrictive covenant required by a municipality.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999. Amended by Acts 2003, 78th Leg., ch. 646, Sec. 1.

Amended by:

Acts 2005, 79th Leg., Ch. 31 (S.B. 574), Sec. 1, eff. September 1, 2005.

Sec. 245.005. DORMANT PROJECTS. (a) After the first anniversary of the effective date of this chapter, a regulatory agency may enact an ordinance, rule, or regulation that places an expiration date on a permit if as of the first anniversary of the effective date of this chapter: (i) the permit does not have an expiration date; and (ii) no progress has been made towards completion of the project. Any ordinance, rule, or regulation enacted pursuant to this subsection shall place an expiration date of no earlier than the fifth anniversary of the effective date of this chapter.

(b) A regulatory agency may enact an ordinance, rule, or regulation that places an expiration date of not less than two years on an individual permit if no progress has been made towards completion of the project. Notwithstanding any other provision of this chapter, any ordinance, rule, or regulation enacted pursuant to this section shall place an expiration date on a project of no earlier than the fifth anniversary of the date the first permit application was filed for the project if no progress has been made towards completion of the project. Nothing in this subsection shall be deemed to affect the timing of a permit issued solely under the authority of Chapter 366, Health and Safety Code, by the Texas Commission on Environmental Quality or its authorized agent.

(c) Progress towards completion of the project shall include any one of the following:

- (1) an application for a final plat or plan is submitted to a regulatory agency;
- (2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;
- (3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;
- (4) fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or
- (5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 31 (S.B. 574), Sec. 1, eff. September 1, 2005.

Sec. 245.006. ENFORCEMENT OF CHAPTER. (a) This chapter may be enforced only through mandamus or declaratory or injunctive relief.

(b) A political subdivision's immunity from suit is waived in regard to an action under this chapter.

(c) A court may award court costs and reasonable and necessary attorney's fees to the prevailing party in an action under this chapter.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 31 (S.B. 574), Sec. 1, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 264 (H.B. 1704), Sec. 1, eff. May 29, 2017.

Sec. 245.007. CONSTRUCTION AND RENOVATION WORK ON COUNTY-OWNED BUILDINGS AND FACILITIES IN CERTAIN COUNTIES. (a) This section applies only to a building or facility that is owned by a county with a population of 3.3 million or more and is located within the boundaries of another political subdivision.

(b) A political subdivision may not require a county to notify the political subdivision or obtain a building permit for any new construction or any renovation of a building or facility owned by the county if the construction or renovation work is supervised and inspected by an engineer or architect licensed in this state.

(c) This section does not exempt a county from complying with the building standards of the political subdivision during the construction or renovation of the building or facility.

Added by Acts 2005, 79th Leg., Ch. 532 (H.B. 960), Sec. 1, eff. June 17, 2005.



March 11, 2022

***Via Email:*** [Jennifer.munoz@dallascityhall.com](mailto:Jennifer.munoz@dallascityhall.com)

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Dallas Board of Adjustment  
c/o Jennifer Muñoz & LaTonia Jackson  
Administrator & Secretary to Board of Adjustment  
1500 Marilla St., 5BN  
Dallas, Texas 75201

Re: BDA 212-028; Appeal of Building Official's decision revoking certificate of occupancy for poker gambling facility d/b/a Shuffle 214 ("Applicant") at 11411 E. Northwest Highway, Suite 111 Dallas, Texas (the "Property")

Dear Board Members:

This letter and the attached materials are the City's written response to the above-listed Board of Adjustment appeal by the Applicant, set for hearing on Tuesday, March 22, 2022, at 1:00 p.m. This is an appeal from the revocation of Applicant's certificate of occupancy ("CO") originally issued on June 22, 2021. The City urges the Board of Adjustment to affirm the Building Official's decision because, as shown herein, Applicant's use of the Property to operate a commercial gambling business featuring poker betting violates state law – Texas Penal Code §47.04(a) which prohibits keeping a gambling place or operating a business featuring gambling with cards. Additionally, Dallas City Code provides: a building official *shall* revoke a certificate of occupancy if it determines the certificate was issued in error and *shall* deny any application for which the certificate "requested does not comply with the codes, the Dallas Development Code...or any county, state, or federal laws or regulations." *See* Dallas, Tex., Administrative Procedures of the Construction Codes, Chapter 52 §§ 306.5(1), 306.13(1) (2005) (emphasis added). The City urges the Board of Adjustment to recognize the Building Official was complying with city and state law in revoking the erroneously issued CO.

## **I. BACKGROUND**

### **A. Revocation of Applicant's certificate of occupancy**

Applicant's CO was issued on June 22, 2021. A copy of the CO Application (the "Application") is attached as **Exhibit 1**. A land use statement dated June 7, 2021, (copy attached as **Exhibit 2**) was submitted with the Application.

By letter dated December 17, 2021, Applicant's CO was revoked by Assistant Building Official Megan Wimer ("Building Official"). A copy of the revocation is attached as **Exhibit 3**. The CO was revoked in accordance with Section 306.13(1) of Chapter 52: Administrative



Procedures for the Construction Codes of the City of Dallas, a copy of which is attached as **Exhibit 4**. That section states:

“The building official shall revoke a certificate of occupancy if the building official determines: 1) the certificate of occupancy is issued in error.”

The Building Official determined upon review that the application and related materials showed that the Property’s use was in violation of the Texas Penal Code §47.04, “Keeping a Gambling Place,” and therefore revoked the CO. The notice of revocation attached as Exhibit 3 was mailed to an incorrect address, so Applicant’s appeal is deemed timely even though the appeal was not filed until more than 30 days after the mis-directed notice of revocation was issued.

**B. Statement provided by Applicant shows Applicant operated a gambling place.**

A land use statement dated June 7, 2021 submitted by Matthew Morgan on behalf of Applicant, (**Exhibit 2**) states that the only significant activity taking place at Applicant’s facility on the Property was poker betting and gambling. There was no food or alcohol sold on site and no coin operated machines on site. Poker and gambling was the only activity on the Property. The fee to become a member, or the fee to enter the Property was not specified as a daily, weekly, monthly, or annual fee. The land use statement states: “members pay for the amount of time they spend in our establishment.” The hours of operations are noted as being from 10 a.m. to 5 a.m. daily (Monday-Sunday).

**C. Poker games operated as a business or commercial activity where there is any economic benefit to any person involved in the business are illegal in Texas.**

Under Texas law, poker games or tournaments with bets and money changing hands in a commercial establishment where there is *any* economic benefit to *any* person or entity other than the personal winnings of the players are illegal – regardless of whether the activity occurs in a so-called “private” club and regardless of whether or not the “house” takes any portion of the betting pools or pots in each poker game. If the house, host, or location where the poker players play charges any door fee, chair fee, membership fee (whether a daily, weekly, hourly, or annual fee), or derives any economic benefit of any kind from hosting the poker games then the activity is illegal because it constitutes “keeping a gambling place,” made unlawful by Texas Penal Code §47.04. Applicant appears to believe that if it operates its business as a “private club” charging membership fees or a “fee to enter” and the house does not take a cut of the pot (or take a rake), the poker business would be legal, but Applicant is mistaken. Applicant’s proposed use clearly violates Texas law against commercialized gambling, therefore the Building Official properly revoked Applicant’s CO.

**II. DISCUSSION AND ARGUMENT**

**A. Texas law prohibits gambling or keeping a gambling place (a gambling business).**

In Texas, commercialized gambling is illegal unless the gambling activity is specifically authorized by an amendment to the Texas Constitution (as is the case with the Texas Lottery and pari-mutual betting at state-authorized and licensed horse and dog racing tracks). No provision of

the Texas Constitution authorizes the operation of a gambling business featuring poker and similar games. Contrary to Applicant's bold and erroneous assertion, Texas law does not allow or authorize the operation of a poker business, and the Texas legislature could not authorize operation of a poker business without an amendment to the Texas Constitution.

In *City of Fort Worth v. Rylie*, 602 S.W. 3d 459, 461 (Tex. 2020) the Texas Supreme Court wrote:

For as long as the State of Texas has been the State of Texas, its citizens have elected to constitutionally outlaw most types of "lotteries". Contrary to the term's popular understanding, a "lottery" includes not just contests involving scratch-off tickets and numbered ping-pong balls, but a wide array of activities that involve, at a minimum, (1) the payment of "consideration" (2) for a "chance" (3) to win a "prize". Since its ratification in 1876 our current constitution has affirmatively required the legislature to "pass laws prohibiting" lotteries. Tex. CONST. art. III, § 47. \*\*\* To fulfill its constitutional obligation, the legislature has enacted statutes making it a criminal offense to engage in or promote most forms of gambling." *Id.* at 460-61.

In *Rylie* the Court also stated: "If the legislature exercises power the constitution says it doesn't have – that is, if it permits lotteries when it only has the power to prohibit them – we take the constitution's word over that of the legislature. In light of the constitution's requirement that the legislature prohibit lotteries." *Id.* at 467. "When the Constitution provides and commands that a thing shall be done, the matter must be done as directed, and neither the Legislature, Executive, nor the courts have authority to set aside the [constitutional] mandates." *Id.* at 468, citing *Ferguson v. Wilcox*, 28 S.W. 2d 526, 533 (Tex. 1930). "If the legislature were permitting activities the constitution requires it to prohibit, that action would be *ultra vires* and cannot be allowed to stand, no matter the Operators' good-faith reliance on those actions." *Rylie*, 602 S.W. 3d at 468.

Chapter 47 of the Texas Penal Code declares gambling illegal in Texas. Texas Penal Code §47.04(a) (copy attached as **Exhibit 5**) provides that a person commits the offense of keeping a gambling place if he knowingly uses or permits another to use as a gambling place any real estate, building, room, or other property whatsoever under his control with an expectation that the property will be used as a gambling place. Texas Penal Code §47.02(a)(3) (copy attached as **Exhibit 6**) provides that a person commits the offense of gambling if he plays or bets for money or other thing of value at any game played with cards or any other gambling device. Under §47.04(b) of the Texas Penal Code, it is an affirmative defense to prosecution for keeping a gambling place if:

- (1) the gambling occurred in a private place;
  - (2) no person received any economic benefit other than personal winnings; ***and***
  - (3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.
- (c) An offense under this section is a Class A misdemeanor. (*emphasis added*)

In order to benefit from the affirmative defense, the Applicant must prove all three elements of the defense listed above. The Applicant fails to prove the defense if *any* person receives "any economic benefit" from the gambling activity "other than personal winnings." This defense was

designed and intended to allow (or not criminalize) the conduct where a person in their private home or similar “private place” invites friends over to play poker and make bets, where the host does not charge any fees (no membership fees, no “fee to enter,” no chair fees, and no hourly fees) for hosting the event and “no person received any economic benefit other than personal winnings.” The affirmative defense was not designed or intended to allow a commercial business to operate a poker club or poker room and sell so-called memberships (so it can call itself a “private” club) or collect fees or charges of any kind that results in the operator gaining an “economic benefit,” which defeats the affirmative defense. The Applicant’s operations on the site are clearly illegal as the house obtains an “economic benefit” by collecting membership fees and entrance fees. Additionally, according to the commentary on section 47.02(b)—“charges for the privilege of using the facilities”—the fees Applicant charges would not come within the affirmative defense because these fees and charges served as a prerequisite for using the facilities. Therefore, Applicant’s certificate of occupancy was properly revoked.

**B. Applicant’s use is a commercial poker room, and it is not a “private place” under Texas gambling law.**

Applicant’s land use statement (**Exhibit 2**) makes no attempt to minimize the gambling aspect of its business operation where poker and gambling is the exclusive focus of the business. Calling it a “private club” and requiring persons to pay a membership or entrance fee does not qualify the business as a “private place” under Chapter 47 of the Texas Penal Code. The definition of “private place” for purposes of the defense to keeping a gambling place is narrowly construed to exclude any place that the public has access to and instead applies to friendly poker games among friends such as in someone’s private home. A location where dozens or hundreds of people gather daily to play poker and make bets is not a “private place” even if there is a modest entrance fee or charge to enter, like a club. For the defense to apply, the poker game must both occur in a private place *and* there can be no economic benefit to any person other than personal winnings. Applicant fails to meet either of these 2 elements of the affirmative defense, therefore Applicant’s use of the Property is in violation of state law and Applicant’s certificate of occupancy was properly revoked.

**III. LEGAL AUTHORITY**

**A. Texas case law supports the Building Official’s decision because the requirement that “no person received any economic benefit” is construed broadly.**

In *Gaudio v. State*, No. 05-91-01862-CR, 1994 WL 67733 (Tex. App.—Dallas, March 7, 1994, writ ref’d) (copy attached as **Exhibit 7**) the jury convicted the defendant of unlawfully keeping a gambling place. On appeal, the defendant argued that the affirmative defense to prosecution applied. The defendant rented an apartment where a group of friends gathered three nights a week to play poker. A dealer was hired to deal the cards and a waitress was hired to serve food and drinks during the games. The group agreed to cut from the betting pot from each hand to pay (or reimburse defendant) for the expenses defendant incurred in keeping the apartment to play poker. (*Id.* at 1). The winner of each hand tipped the dealer, as the main source of the dealer’s compensation. (*Id.* at 1).

At trial, the jury decided that elements (1) and (3) of the affirmative defense were established (i.e., the apartment was a “private place” where a small group of friends gathered to play poker 3 nights a week and the risks of losing were the same for all participants). On appeal the State agreed that the evidence supported the jury’s findings on these two elements. (*Id.* at 2). The jury concluded that the defendant had failed to satisfy his burden to show the second element of his defense (i.e., that “no person received any economic benefit other than personal winnings”).

On appeal, the Court noted that the dealer and the waitress had received an “economic benefit” as they were paid for their services to the poker players, which defeated the affirmative defense and was sufficient evidence to affirm the jury verdict and conviction. (*Id.* at 2). The Court stated: “Based on the plain language of the statute *no person* can receive an economic benefit. ... In this case the waitress and dealer received tips from the players. The receipt of money as tips is an economic benefit.” (*emphasis in original*). The Court also noted that even if the “economic benefit” element were viewed to mean that the host or sponsor of the “gambling place” can establish the defense as long as the host/sponsor does not receive “any economic benefit other than personal winnings,” then the defendant had still derived an “economic benefit” because the rent for the apartment, which defendant was legally obligated to pay, was paid or reimbursed by others, constituting an “economic benefit” and defeating the defense, so defendant’s conviction was affirmed. (*Id.* at 3).

*Miller v. State*, 874 S.W. 2d 908 (Tex. App.—Houston (1st Dist., 1994, pet. denied) (copy attached as **Exhibit 8**) interprets the second “economic benefit” element of the section 47.02(b)(2) affirmative defense available to otherwise illegal gambling operations in Texas. (*Id.* at 910). In *Miller*, the jury convicted Miller of gambling when he visited a gambling place to gamble. (*Id.* at 910-12). At this gambling place, a person received an “economic benefit other than personal winnings” when the owner(s) and investor(s) in the gambling place had an agreement to split the profits from the games. (*Id.* at 912). Given this context, the court stated: ““any economic benefit” would certainly include the sharing of profits by the owner of the house ... and his partner.” (*Id.* at 912). The Court noted that “received” under the statute would always include the time period the gambling activity was ongoing. (*Id.* at 912). *Miller* illustrates that when owner(s), operator(s), or others receive revenue generated by the gambling business they receive an “economic benefit” from keeping a gambling place, which is unlawful and defeats the affirmative defense. In *Miller* the lake house where the gambling business operated was owned by Mr. Ford. Ford’s business partner was Mr. Chapman. Ford and Chapman split the profits from the gambling games 50-50. The Court concluded that both Chapman and Ford had received an economic benefit from the gambling activity other than personal winnings. (*Id.* at 912.). Consequently, the affirmative defense was defeated and could not be established for Miller’s defense to the gambling charges.

In *Miller* the Court stated: “The elements of the defense in subsection (b) [the affirmative defense] are designed to exclude any form of exploitative or commercialized gambling ... therefore, if one party charges for the privilege of using the facilities, none of the participants can rely on the defense.” (*Id.* at 912). The *Miller* decision endorses the Texas Penal Code’s definition of “benefit” “as anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.” See, Texas Penal Code §1.07 (7). The penal code provides no definition of “economic” however the lack of a definition for the term “economic” in the penal code does not make the statute vague. (*Id.* at 911). Thus, the Court here turned to section 311.011(a) of the Texas Government Code, which states “words or phrases must

be read in the context in which they are used and construed according to the rules of grammar and common usage.” (*Id.*). *Miller* stands for the proposition that when the owner(s), operator(s), or employees of a poker gambling business receive funds generated by the business as compensation for their work or services to the gambling business then the affirmative defense is defeated and the poker is illegal gambling.

#### **B. Texas Attorney General opinions support the Building Official’s decision.**

The Texas Attorney General has also provided some guidance on these issues. Texas Attorney General Opinion No. GA-0335 (2005) addresses the question whether it would be lawful for a bar/restaurant to host an on-premises poker tournament where: 1) participants pay a modest or nominal entry fee; and 2) the house intends to take no cut of the entry fee of each player and the entire prize pool generated by the number of players times each player’s entry fee will be paid out to the winning players at the end of the night. After analyzing relevant factors, the Opinion concludes: “...a bar or restaurant that hosts a Texas Hold-Em poker tournament would violate the prohibition against “keeping a gambling place.” Texas Penal Code §47.04(a). This Opinion makes clear that even if the house takes no cut of the entry fee paid by each player and the entire prize pool is fully disbursed to the winning players, that fact or structure does not protect the host from the offense of “keeping a gambling place.”

The Applicant’s land use statement (See **Exhibit 2**) makes it clear that Applicant intends to collect membership fees or a “fee to enter” from club members. Thus, Applicant plans to collect charges or assessments from persons who come to Applicant’s establishment to play poker. As a result of the collection of fees or charges of any kind, Applicant derives an “economic benefit” from the operations of the poker business, which defeats the affirmative defense and means that Applicant is responsible for “keeping a gambling place.” Furthermore, any employees who are paid or tipped to work at Applicant’s poker business derive an “economic benefit” from their employment, which means that Applicant cannot prove the affirmative defense.

Texas Attorney General Letter Opinion dated November 3, 1990 (LO-90-88) addresses whether a person located in Texas can call another state to play lottery games or other games of chance which would be illegal in Texas and pay for the wagers or bets by using a credit card. The Opinion concludes that because the transactions would generate an economic benefit to a third party, the defense to prosecution would not apply. As demonstrated by this Opinion, the requirement of the affirmative defense that “no person received any economic benefit” is viewed very broadly, such that if *any* person (either the host of the game(s), or a third party, or even an employee) derives any “economic benefit” from the gambling operation “other than personal winnings” received by the players, the affirmative defense to a gambling offense fails. Texas law prohibiting gambling is written in such a way that gambling cannot be operated as a business without violating the law, because when poker games are operated as a business then some person(s) will receive an economic benefit other than personal winnings. If a poker game is played in the host’s home (i.e., a “private place”) where there are no fees charged by the host, and no employees are paid to work at the games (so there is no business or commercial aspect to the activity), then the affirmative defense might be available. The affirmative defense is not intended to allow a commercial poker room to operate and collect revenues or receive any economic benefit.

Texas Attorney General Opinion No. DM-344 (1995) addresses whether two or more persons, each using a separate personal computer in a private place, play a card game with each other and bet on the outcome of the games would constitute illegal gambling. The Opinion further explores what might constitute “private place” for purposes of the defense to prosecution under Chapter 47 of the Penal Code. The Opinion states whether a place is private is determined by the scope of access by others, and even a place traditionally viewed as private, such as a residence, would not be a private place for the purpose of the defense if the public had access to gamble there.

Texas Attorney General Opinion No. GA-0358 (2005) addresses whether the legislature, in the absence of a constitutional amendment, may authorize the creation of county gaming districts on a local option basis to administer a state video lottery. In finding that the legislature may not authorize such creation without a constitutional amendment, the Opinion clearly states: “It is well established that the legislature may not authorize an action (such as gambling) that the Texas Constitution prohibits.” (*Id.* at 2). Article III, section 47(a) of the Texas Constitution requires the legislature to “pass laws prohibiting lotteries and gift enterprises.” The historical meaning of the term “lotteries” under Article III, section 47(a) of the constitution, on the basis of long-standing decisions of the Texas Supreme Court and Texas Court of Criminal Appeals is that any game that contains the elements of prize, chance, and consideration constitutes a “lottery” and constitutes gambling which is against state law and policy as declared in Article III, section 47(a) of the Texas Constitution and Chapter 47 of the Texas Penal Code. Atty. Gen. Opinion No. GA-0358 concludes: The legislature may not, absent a constitutional amendment, authorize the creation of county gaming districts on a local option basis. (*Id.* at 2). In regard to Applicant’s situation, this Opinion means that the legislature could not authorize poker gambling being operated as a business without first obtaining a constitutional amendment authorizing the gambling activity, as was done in order for the State to enact the Texas Lottery and legalized betting at authorized horse racing and dog racing tracks. There is no constitutional amendment or authority which allows or enables commercialized gambling in a poker house or poker establishment.

#### IV. CONCLUSION

The Building Official correctly determined that Applicant’s use (operating poker games and similar games and collecting membership fees and “fees to enter” or fees to participate in gambling) constituted illegal gambling in violation of Texas law, so Applicant’s CO was properly revoked. Not only does Applicant’s business derive an economic benefit from the poker games and gambling on the Property, but the business also does not constitute a “private place” because a private club (as suggested by Applicant) is not synonymous with a “private place” under the affirmative defense to Texas laws prohibiting gambling. The Board should reject Applicant’s appeal and affirm the Building Official’s correct revocation.

We look forward to answering any questions you might have about anything in this submission.

March 11, 2022  
Bd. of Adjustment Appeal  
Page 8

Sincerely,

*Gary R. Powell*  
Senior Assistant City Attorney

*Charlotta S. Riley*  
Senior Assistant City Attorney

GRP  
Attachments

DATE: 4/22/2021  
 CO NO: (OFFICE USE ONLY)  
210503 1098

# CERTIFICATE OF OCCUPANCY APPLICATION



NAME OF BUSINESS (DBA) <b>Shuffle 214</b>			STREET ADDRESS OF BUSINESS <b>11411 E. Northwest Hwy</b>		BLDG AND SUITE NUMBER <b>111</b>
PROPERTY OWNER <b>Matthew Morgan</b>			ADDRESS <b>11411 E. Northwest</b>		CITY <b>Dallas</b>
STATE <b>Texas</b>	ZIP CODE <b>75218</b>	PHONE NO <b>(214) 824-7949</b>	E-MAIL ADDRESS <b>mkmorgan83@gmail.com</b>		
MANAGER/OPERATOR OF USE OR BUSINESS <b>Matt Morgan</b>			ADDRESS <b>11411 E. Northwest #111</b>		CITY <b>Dallas</b>
STATE <b>Texas</b>	ZIP CODE <b>75235</b>	PHONE NO <b>(214) 824-7949</b>	E-MAIL ADDRESS <b>vicki@baldwinplanning.com</b>		
APPLICANT (if different from manager/operator) <b>Vicki Rader</b>			ADDRESS <b>3904 Elm St., Suite B</b>		CITY <b>Dallas</b>
STATE <b>Texas</b>	ZIP CODE <b>75226</b>	PHONE NO <b>(214) 824-7949</b>	E-MAIL ADDRESS <b>vicki@baldwinplanning.com</b>		

DESCRIBE THE PROPOSED USE OF PROPERTY (attach additional sheets if necessary)  
**same use as previous use CO # 1812261056 Commercial Amusement Inside**

What is the square footage of the tenant space or building? 6,050 square feet

<input type="radio"/> YES <input checked="" type="radio"/> NO	Is this a change in use of land, tenant space or building?	See <u>CO Checklist</u> for plan submittal requirements.
<input type="radio"/> YES <input checked="" type="radio"/> NO	Is the proposed use "personal services" (barber/beauty shop, shoe repair, tailor, instructional arts, laundry/dry cleaning pickup/dropoff, photo studio, handcrafted art work, etc.)?	Provide <u>Personal Services Affidavit</u> executed by business owner, see <u>CO Checklist</u> for additional requirements.
<input type="radio"/> YES <input checked="" type="radio"/> NO	Will potentially hazardous foods/open foods be sold and/or served?	<u>Food Establishment Permit Application</u> required (only available from City staff)
<input type="radio"/> YES <input checked="" type="radio"/> NO	Will alcohol be sold and/or served?	Provide completed <u>Alcohol Measurement Certification Application Checklist</u> and <u>Alcohol Certification Affidavit Forms</u>
<input type="radio"/> YES <input checked="" type="radio"/> NO	Will there be a dance floor?	Annual license fee charged to businesses operating a place where dancing is allowed (subject to approval from Dallas Police Vice Control, call 214-671-3230 for more information. Applications available from Special Collections at 1500 Marilla St, 2DS; M-F, 8 am to 5 pm, or call 214-670-3438.
<input type="radio"/> YES <input checked="" type="radio"/> NO	Is the proposed use a doctor's office, dentist office or other medical office or health care office?	Applicant must execute <u>Ambulatory Health Care Facility</u> form attesting to new or pre-existing conditions & facts pertaining to the health care model for any doctor's, dentist, or other medical offices (except hospitals, emergency rooms & care clinics)
<input type="radio"/> YES <input checked="" type="radio"/> NO	Will you display or offer for sale smoking paraphernalia commonly used, or commonly known to be used, for the inhalation of tobacco or illegal substances (except rolling papers, tobacco cigarettes or cigars)?	If 'YES' then a Specific Use Permit is required; or, if the use is nonconforming then applicant must provide verifiable proof that the that the display or sale or paraphernalia, etc. previously existed. Additionally, you must register under Chapter 12B of the Dallas City Code.

I HAVE CAREFULLY READ THE COMPLETED APPLICATION AND KNOW THE SAME IS TRUE AND CORRECT AND HEREBY AGREE THAT IF A PERMIT IS ISSUED ALL PROVISIONS OF THE CITY ORDINANCES AND STATE LAWS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT. I AM THE OWNER OF THE PROPERTY OR THE DULY AUTHORIZED AGENT. PERMISSION IS HEREBY GRANTED TO ENTER PREMISES AND MAKE ALL INSPECTIONS. I ALSO AFFIRM THAT THE EMAIL ADDRESS GIVEN ABOVE MAY BE USED FOR OFFICIAL COMMUNICATION CONCERNING THIS APPLICATION AND PERMIT.

APPLICANT'S SIGNATURE  
**Vicki Rader** Digitally signed by Vicki Rader  
 Date: 2020.03.18 14:45:59 -05'00'

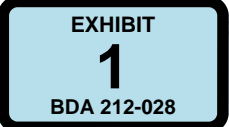
### FOR OFFICE USE ONLY

Change in Land Use?  YES  NO      Change in Occupancy?  YES  NO      Is Use Nonconforming?  YES  NO

Previous CO Number: 1812261056      Related Permit Number: \_\_\_\_\_      Related Project Number: \_\_\_\_\_

ZONING				BUILDING		MISCELLANEOUS	
LAND USE	BASE ZONING	PD	SUP	CONSTRUCTION TYPE	OCCUPANCY	ACTIVITY	OWN
<u>7396</u>	<u>RP</u>	REQUIRED PARKING	PROPOSED PARKING	SPRINKLER	OCCUPANT LOAD	<u>B</u>	<u>B</u>
LOT	BLOCK	PARKING AGREEMENT	DELTA CREDITS	STORIES	DWELLING UNITS	FLOOD PLAIN	AIRPORT
LOT AREA	CONSERVATION DIST					BDA	HISTORIC DISTRICT

ROUTE TO	REVIEWED	DATE	COMMENTS	FEE CALCULATIONS (\$)
PREScreen	<u>BR</u>	<u>03/02/21</u>	<u>PROUD #1812261056</u>	CO APP FEE <u>215.00</u>
ZONING				CE INSP FEE <u>65.00</u>
BUILDING				HEALTH PERMIT APP FEE
CODE				OTHER FEES
OTHER:				TOTAL FEES \$ <u>280.00</u>





# CERTIFICATE OF OCCUPANCY (CO) CHECKLIST



City of Dallas

## APPLICATION CHECKLIST AND REQUIRED DOCUMENTS

By checking each requirement, you are stating that you have supplied correct and complete information. In the event that the required information is not contained in the submitted documents, you will be notified of the deficiency. Failure to supply the additional requested information within five (5) working days after notification may result in your application being delayed and eventually discarded. A new application, the original application, complete plans and a new checklist will be required for re-submittal for plan review. This re-submittal will be treated as a new application and will be processed in the order of receipt. A Certificate of Occupancy **does not authorize construction** of any type.

### SAME USE AS PREVIOUS USE - CERTIFICATE OF OCCUPANCY

- 1. Completed *Building Inspection Application*.
- 2. Please see "**ADDITIONAL REQUIREMENTS OR SPECIAL PROVISIONS**" below

### CHANGE OF USE - CERTIFICATE OF OCCUPANCY

- 1. Completed *Building Inspection Application*.
- 2. Please see "**ADDITIONAL REQUIREMENTS OR SPECIAL PROVISIONS**" below
- 3. Submit two (2) sets of the following drawing documents drawn to a standard scale and fully dimensioned. All drawing documents submitted for review must have a minimum text size of 3/32" and a minimum drawing sheet size of 11" x 17" and a maximum of 36" x 48", "E" size:
  - Site plan of the entire property showing all property lines and parking spaces. The site plan must show the location of the tenant space and the locations of all other tenant spaces on the property
  - with their suite numbers.  
**Exception:** Building floor key plan does not need to be to scale, but must show the location of the tenant space and all other tenant spaces on that floor. Identify tenant spaces by their suite number.
  - Floor plan of the entire tenant space showing the areas to be occupied with each room identified as to its use.
  - Provide a complete parking analysis for every tenant space on the property. List the type of business and the area in square feet of each tenant space, occupied or vacant, on the site plan.

### ADDITIONAL REQUIREMENTS OR SPECIAL PROVISIONS

In addition to the requirements listed above for a CO, the following land uses will require additional information for review. Please schedule an appointment with a consultant for more information. A building permit may be required if there is no record of a permit previously issued to create the tenant space. Ask the property owner to contact this office for more information. A building permit and other trade permits may also be required as a result of the Certificate of Occupancy review.

- 1. Personal services (Examples include: barber/beauty shop, shoe repair, a tailor, an instructional arts studio, a photography studio, a laundry/cleaning pickup/ receiving station, a handcrafted art work studio, etc.).
  - Floor plan of the entire tenant space showing the areas to be occupied with each room identified as
  - to its use. Show furniture on the same plan or you can provide a furniture plan on a separate floor plan sheet.
  - Signed and notarized Affidavit for Certificate of Occupancy from the business owner.
  - If applicable, a copy of a state license from each employee providing the personal service.

# CERTIFICATE OF OCCUPANCY (CO) CHECKLIST (Page 2)

## ADDITIONAL REQUIREMENTS OR SPECIAL PROVISIONS (CONTINUED)

2. The display or sale of smoking paraphernalia commonly used, or commonly known to be used, for the inhalation of tobacco or illegal substances (except rolling papers, tobacco cigarettes or cigars) requires an *SUP*. Additionally, you must register a 'paraphernalia shop' in accordance with Chapter 12B of the Dallas City Code.
3. Places of religious worship, theaters, dance halls, labor halls, commercial amusement uses, restaurants with a total area of 750 sq. ft. or greater and other assembly occupancies (Occupancy Groups A) as defined in the Dallas Building Code.
- Floor plan of the entire tenant space showing the areas in square feet of each different floor area to be occupied and its proposed occupant load factor in accordance with Chapter 10 of the building code. Identify seating and dance areas, type of seating, standing room areas for lines and business or circulation areas.
  - Identify all exits and list type of door hardware and panic hardware used at each exit.
4. Warehouses, storage facilities and other storage occupancies (Occupancy Groups S) as defined in the Dallas Building Code.
- Floor plan of the entire tenant space showing the areas in square feet of each different floor area designated for storage and other uses.
  - High-pile storage (storage over 12 ft.) will require engineered plans.  
Provide a complete inventory and MSDS sheets for each different material, especially HAZMAT, being stored as required in the Dallas Building Code or Dallas Fire Code. Any material being stored above the quantity limits allowed by code may require a building permit for fire-rated construction and hazardous occupancy (Occupancy Groups H).
  - Provide a complete inventory and MSDS sheets for each different material, especially HAZMAT, being stored as required in the Dallas Building Code or Dallas Fire Code. Any material being stored above the quantity limits allowed by code may require a building permit for fire-rated construction and hazardous occupancy (Occupancy Groups H).
5. Manufacturing facilities and other factory occupancies (Occupancy Groups F) as defined in the Dallas Building Code.
- Floor plan of the entire tenant space showing the areas in square feet of each different floor area designated for manufacturing, storage of raw materials and other uses.
  - Storage of commodities over 12 feet high is considered *High Piled Storage*. *Racking systems* (shelving) may only be installed with a building permit and required engineered plans.  
Provide a complete inventory and MSDS sheets for each different raw material, especially HAZMAT, being stored and used as required in the Dallas Building Code or Dallas Fire Code. Any material being stored above the quantity limits allowed by code may require a building permit for fire-rated construction and hazardous occupancy (Occupancy Groups H).
6. Any land use requiring alcohol certification. Refer to *Alcohol Measurement Certification Application Checklist*.
7. If the new use includes areas where food/ice or beverages are manufactured, packaged, stored, distributed, sold or prepared excluding vending machines, then provide:
- Two (2) sets of scaled floor plans showing equipment and plumbing fixtures layout including floor drains.
  - Two (2) sets of scaled plans showing finish schedules for floors, walls and ceilings.
  - Two (2) sets of menus and cut sheets of equipment being installed, if available.

**NOTE:** Additional information required by the Building Official may be necessary for the issuance of the permit (Ordinance no. 26029).

I, Vicki Rader have read the above information and acknowledge that all required documents have been provided.

Signature V Rader

Date 4-28-2021

**Please note that staff cannot accept incomplete applications or illegible plan review documents.**



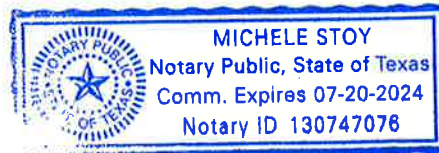
# Land Use Statement

4/12/2021

Regarding the property we have leased located at 11411 E. Northwest Highway #111 Dallas, TX 75218, our intended use is to operate a membership-based private club with normal operating hours of 10am-5am daily. We will not be selling or serving alcohol. Our use and development plans have already been approved by our Landlord.

Regards,

Matthew Morgan  
Owner, Shuffle 214  
512.423.9881





CITY OF DALLAS

December 17, 2021

CERTIFIED MAIL NO. 7020 1290 0000 3631 0129

Matthew Morgan, Owner  
11411 W. Northwest Highway #111  
Dallas, TX 75218

**RE: Revocation of Certificate of Occupancy No. 2105031098 for a commercial amusement (inside) use, dba Shuffle 214 at 11411 W. Northwest Highway #111 ("the Property")**

Dear Mr. Crow:

This letter is to inform you that the above-referenced certificate of occupancy issued on June 22, 2021 is hereby revoked. The building official is required to revoke a certificate of occupancy if he or she determines that it was issued in error.<sup>1</sup>

Upon rereview of the attached land use statement submitted with the certificate of occupancy application, it has been determined that the described operations violate Texas Penal Code Section 47.04, "Keeping a Gambling Place." Therefore, Certificate of Occupancy No. 2003031040 was issued in error.

Any use operating on the Property without a certificate of occupancy is an illegal land use that must immediately cease operating.<sup>2</sup> The commercial amusement (inside) use may not operate until a new certificate of occupancy is issued that complies with all relevant codes. Pursuant to Paragraph (1) of Section 306.5, "Denial," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code, the building official shall deny an application for a certificate of occupancy if the building official determines that the certificate of occupancy requested does not comply with the codes, the Dallas Development Code, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations.

<sup>1</sup> Paragraph (1) of Section 306.13, "Revocation of Certificate of Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.

<sup>2</sup> Section 51A-1.104, "Certificate of Occupancy," of Chapter 51A of the Dallas Development Code; Subsection 306.1, "Use or Occupancy," of Chapter 52, "Administrative Procedures for the Construction Codes," of the Dallas City Code.





CITY OF DALLAS

This decision is final unless appealed to the Board of Adjustment in accordance with Section 51A-4.703 of the Dallas Development Code before the 20<sup>th</sup> day after written notice of the above action.<sup>3</sup> If you have any questions, please contact me at 214-948-4501.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Megan Wimer'.

Megan Wimer, AICP, CBO, Assistant Building Official  
Building Inspection Division

cc: Dr. Eric Johnson, Chief of Economic Development and Neighborhood Services  
David Session, CBO, Interim Building Official  
Tammy L. Palomino, First Assistant City Attorney  
Major Devon Palk, Dallas Police Department  
Lieutenant Lisette Rivera, Dallas Police Department

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<sup>3</sup> Section 51A-4.703(a)(2), "Board of Adjustment Hearing Procedures," of Chapter 51A of the Dallas Development Code.



# Land Use Statement

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6/7/2021

Regarding the property we have leased located at 11411 E. Northwest Highway #111 Dallas, TX 75218, our intended use is to operate a membership-based private club with normal operating hours of 10am-5am daily. Our day-to-day business operations involve facilitating the game of poker. We operate as a private club and thus charge a membership fee prior to becoming a member. In doing so, we operate and abide by all local, state and federal laws. Pursuant to Chapter 47 of the Texas Penal Code, we understand and operate our business whereby no person may receive any economic benefit other than personal winnings at our location. Our sister company, Shuffle 512 operates in the exact same manner and has been in operation since June 2018 in Austin, Texas. We are in good standing with the Texas State Comptroller's office and are up to date on all applicable taxes.

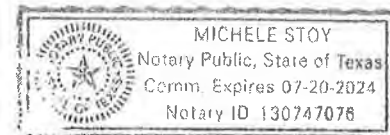
No food or beverages will be prepared or sold on site by our business. We will not be selling or serving alcohol. There will be no live entertainment or dancing on site. Live poker will be the game of skill played in our establishment by our members in a social club atmosphere. There will be no game or amusement machines/computers used on site. The product we sell is membership to our social club and members pay for the amount of time they spend in our establishment. Our use and intended plans have been approved by our Landlord prior to leasing the space.

Sincerely,

Matthew Morgan

Owner, Shuffle 214

512.423.9881



*Michele Stoy*  
6/8/2021



### 306.12 Voiding of certificate of occupancy.

**306.12.1 Void *ab initio*.** A certificate of occupancy shall be void *ab initio* if the use or occupancy authorized by that certificate of occupancy is not commenced before the 120<sup>th</sup> day after the date of its issuance unless one or more extensions are granted under Subsection 306.12.2, in which case the certificate of occupancy shall be void *ab initio* if the use or occupancy is not commenced during the extended time period(s). (Ord. 26029; 26579)

**306.12.2 Extensions of time.** The building official may grant one or more extensions of time for periods not exceeding 120 days each if the building official finds that circumstances beyond the control of the holder of the certificate of occupancy have prevented the use or occupancy from being commenced. If a request for extension is made by the applicant or the applicant's agent, the request must be in writing and made within the time period sought to be extended. (Ord. 26029; 26579)


**306.12.3 Void.** A certificate of occupancy shall be void if:

1. A specific use permit required by the *Dallas Development Code* to operate the use or occupancy expires; or
2. A compliance date for the use or occupancy set by ordinance or the board of adjustment in accordance with the *Dallas Development Code* has passed. (Ord. 26579)

**306.13 Revocation of certificate of occupancy.** The building official shall revoke a certificate of occupancy if the building official determines that:

1. the certificate of occupancy is issued in error;
2. the certificate of occupancy is issued on the basis of false, incomplete, or incorrect information supplied;
3. a use or occupancy is being operated in a manner that is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
4. the structure or portion of the structure is a substantial danger of injury or an adverse health impact to any person or property and is in violation of the codes, the *Dallas Development Code*, other city ordinances, rules, or regulations, or any county, state, or federal laws or regulations;
5. a required city, county, state, or federal license, permit, or registration to operate the use or occupancy has not been issued, has been revoked, or has expired;



 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated

Penal Code (Refs & Annos)

Title 10. Offenses Against Public Health, Safety, and Morals (Refs & Annos)

Chapter 47. Gambling (Refs & Annos)

V.T.C.A., Penal Code § 47.04

§ 47.04. Keeping a Gambling Place

Currentness

(a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

(b) It is an affirmative defense to prosecution under this section that:

(1) the gambling occurred in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) An offense under this section is a Class A misdemeanor.

**Credits**


Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 667, ch. 251, § 1, eff. Aug. 29, 1977. Acts 1989, 71st Leg., ch. 1030, § 1, eff. Sept. 1, 1989. Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

Notes of Decisions (68)

V. T. C. A., Penal Code § 47.04, TX PENAL § 47.04

Current through the end of the 2021 Regular Session and Chapters 1 to 6 of the Second Called Session of the 87th



 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

Vernon's Texas Statutes and Codes Annotated

Penal Code (Refs & Annos)

Title 10. Offenses Against Public Health, Safety, and Morals (Refs & Annos)

Chapter 47. Gambling (Refs & Annos)

V.T.C.A., Penal Code § 47.02

§ 47.02. Gambling

Effective: January 1, 2016

Currentness

(a) A person commits an offense if he:

(1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;

(2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.

(b) It is a defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) It is a defense to prosecution under this section that the actor reasonably believed that the conduct:

(1) was permitted under Chapter 2001, Occupations Code;

1994 WL 67733

Only the Westlaw citation is currently available.

NOTICE: NOT DESIGNATED FOR PUBLICATION.  
UNDER TX R RAP RULE 47.7, UNPUBLISHED  
OPINIONS HAVE NO PRECEDENTIAL VALUE  
BUT MAY BE CITED WITH THE NOTATION “(not  
designated for publication).”

Court of Appeals of Texas, Dallas.

Richard Anthony GAUDIO, Appellant,  
v.  
The STATE of Texas, Appellee.

No. 05-91-01862-CR.

March 7, 1994.

On Appeal from the 204th Judicial District Court Dallas  
County, Trial Court Cause No. F91-23691-Q.

Before LAGARDE, BURNETT and ROSENBERG, JJ.

LAGARDE, Justice.

## OPINION

\*1 A jury convicted appellant of unlawfully keeping a gambling place. The trial court set punishment at two year's confinement, probated for three years, and a \$1,000 fine. Appellant contends that the evidence is insufficient to support his conviction and that the trial court erred in denying his motion to suppress. We overrule appellant's points of error and affirm the trial court's judgment.

### SUFFICIENCY OF THE EVIDENCE

At trial, appellant presented evidence on the statutory affirmative defense to unlawfully keeping a gambling

place. Appellant had to prove by a preponderance of the evidence that: (1) the gambling occurred in a private place; (2) no one received an economic benefit other than personal winnings; and (3) there was an equal chance of winning in poker. The jury found that appellant received an economic benefit, thereby finding that appellant failed to prove his affirmative defense.

Appellant argues that the jury's finding that he received an economic benefit is against the great weight and preponderance of the evidence. He asserts, therefore, that the evidence is insufficient to support his conviction. The State argues that the evidence supports the jury's finding on economic benefit.

### A. Relevant Facts

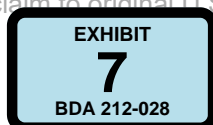
A group of friends gathered at an apartment rented by appellant to play poker three nights a week. The group agreed to cut the betting pot from each hand to pay for the expenses connected with keeping the apartment to play poker. The group hired a dealer to deal the cards. They also hired a waitress who served food and drinks during the games. Police executed a search warrant at the apartment during a poker game and arrested appellant.

The evidence on economic benefit was not disputed. The dealer testified to the following facts: he dealt the cards at the poker games three nights a week; he cut money from the betting pots to pay the expenses of maintaining the apartment; he gave the money to appellant; the winner of each hand tipped him for his services; and he would play poker from time to time.

Defense witnesses testified to the following facts: appellant volunteered to lease the apartment in his name; cuts were taken from the poker pot to pay expenses; the expenses included the apartment's rent, the telephone, playing cards, poker chips, food, alcohol and cigarettes; everyone agreed to paying the expenses from the cuts from the betting pot; and once they covered expenses there were no more cuts to the betting pot.

### B. Standard of Review

The Texas Constitution authorizes a court of appeals to review factual sufficiency questions on a defendant's affirmative defense. *Meraz v. State*, 785 S.W.2d 146,



154 (Tex. Crim. App. 1990). When a court of appeals is called upon to examine whether an appellant proved his affirmative defense, the correct standard of review is whether after considering all the evidence relevant to the issue at hand, the judgment is so against the great weight and preponderance of the evidence so as to be manifestly unjust. See [Meraz](#), 785 S.W.2d at 155.

\*2 Appellant argues that the great weight and preponderance of the evidence shows that he proved his affirmative defense, thus the State failed in its burden to prove the elements of the offense beyond a reasonable doubt. However, at the foundation of every affirmative defense is the practical, if not technical, necessity of the defendant acknowledging that he committed the otherwise illegal conduct. [Meraz](#), 785 S.W.2d at 153. Therefore, proof of an affirmative defense does not necessarily mean there was insufficient evidence to support the conviction.

### C. Applicable Law

The penal code defines the offense of unlawfully keeping a gambling place and the affirmative defense to the offense as follows:

(a) a person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents, or lets any such property with a view or expectation that it be so used.

(b) it is an affirmative defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(Emphasis added.) [TEX. PENAL CODE ANN. § 47.04](#) (Vernon 1989). The practice commentary following [section 47.04](#) states:

Unfortunately the statement of the defense is defective in this section, but hopefully the courts will interpret it according to the legislature's clear intent-as if it read:

(b) It is a defense to prosecution under this section that:

\* \* \*

(2) no person gambling there received any economic benefit other than personal winnings.... (Emphasis added.) Seth S. Searcy III & James R. Patterson, Practice Commentary, [TEX. PENAL CODE ANN. § 47.04](#) (Vernon 1989).

The penal code defines benefit as anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested. [TEX. PENAL CODE ANN. § 1.07](#) (Vernon 1989).

The penal code does not define economic. When a statute does not define the language it uses, the courts should interpret the statute using the common usage of the word.

[Campos v. State](#), 623 S.W.2d 657, 658 (Tex. Crim. App. 1981); [TEX. GOV'T CODE ANN. § 311.011](#) (Vernon 1988). Economic means of or pertaining to the production, development, and management of material wealth or finances. THE AMERICAN HERITAGE DICTIONARY (1991).

### D. Application of Law to Facts

The jury found that the apartment was a private place and that poker is a game with an equal chance of winning except for the advantage of skill or luck. [TEX. PENAL CODE ANN. § 47.04\(b\)\(1\)](#), and (3). The State and appellant agree that the evidence supports those jury findings. The testimony on economic benefit is undisputed.

\*3 Based on the plain language of the statute no person can receive an economic benefit. If we apply the plain language of the statute, the jury's finding is not against the great weight and preponderance of the evidence. In this case the waitress and dealer received tips from the players. The receipt of money as tips is an economic benefit.

If we interpret the statute as the practice commentary

suggests, i.e., that *no person gambling there* received an economic benefit, the evidence still supports the jury's finding. The dealer received money as a tip for each hand he dealt. He played poker with the others from time to time. The dealer's tips were an economic benefit *to a person gambling there*. Therefore, someone who gambled at the apartment received an economic benefit other than personal winnings.

Even if we interpret section 47.04, as appellant argues, to mean only the defendant cannot receive an economic benefit, the jury's finding that appellant received an economic benefit is not against the great weight and preponderance of the evidence. Appellant did not dispute that he was the lessee on the lease for the apartment. The State and appellant introduced evidence that the players paid the rent from cuts of the betting pots.

As lessee, appellant was legally obligated to pay the rent on the apartment. Paying the rent from the money cut from the betting pots relieved appellant of this legal obligation. We conclude that paying rent that another is legally obligated to pay is an economic benefit to that person.

The jury's finding that appellant received an economic benefit is not against the great weight and preponderance of the evidence. We overrule appellant's first point of error.

#### MOTION TO SUPPRESS

Appellant contends that the trial court should have suppressed all evidence and testimony resulting from the search warrant in this case. Appellant argues that the affidavit supporting the warrant does not provide probable cause for the warrant. Appellant claims that the affidavit is inadequate because it does not state the basis of the informant's knowledge.

The State contends that the affidavit provides probable cause for the warrant, arguing that independent corroboration by the police overcame any defects in the affidavit. Alternatively, the State argues that the doctrine of curative admissibility cures any error. Finally, the State argues that the failure to suppress the evidence is harmless under rule 81(b)(2) of the rules of appellate procedure. TEX. R. APP. P. 81(b)(2).

#### A. Relevant Facts

Sergeant Nelson testified that a confidential informant told him that people were gambling on a regular basis at 4043 Harvest Hill Road in apartment ## 2164. Apartment # 2164 was the apartment rented by appellant where the group gathered to play poker. Nelson and other officers conducted surveillance to confirm the informant's information. For approximately one month the officers conducted surveillance of the apartment three nights a week.

\*4 The affidavit filed by Nelson to get the search warrant contained the following statements:

1. Affiant talked with a confidential informant who is known to the affiant. The affiant first talked to the informant one month before and was told that the informant had found and had personal knowledge that appellant was keeping the apartment as a gambling place. The informant stated that appellant is conducting a gambling operation and is receiving a fee for his services.

2. The informant stated appellant operates a gambling place on Monday, Thursday, and Saturday nights, beginning at approximately 8:00 p.m. and continuing past midnight.

3. Based on the information supplied by the informant, affiant conducted surveillance. Affiant observed several persons, some of which are known gamblers, entering the apartment.



4. The affiant has personally verified the address and has observed persons known to affiant as gamblers enter the apartment. The people are allowed entrance after recognition by someone inside the apartment.



5. On two different occasions, Nelson has observed people sitting around a table inside the apartment. The confidential informant stated the poker table is located in the living room area.




6. The informant states that the betting pot on the table is cut by the dealer of the cards.


7. This informant is known to the affiant and has on previous occasions given information to affiant regarding the violations of gambling laws of the State of Texas and on each and every occasion this information has been confirmed and found to be true and correct. The informant has furnished information to the affiant within the past year which has led to the arrest of numerous persons for illegal gambling offenses.

## B. Applicable Law


A search warrant must be based upon probable cause. U.S. CONST. amend. IV. Under the Fourth Amendment, an affidavit is sufficient to show probable cause if, from the totality of the circumstances reflected in the affidavit, it provided the magistrate with a substantial basis for concluding that probable cause existed.  *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983). Probable cause sufficient to support a search warrant exists if the facts contained within the four corners of the affidavit and the reasonable inferences drawn therefrom justify the magistrate's conclusion that the object of the search is probably on the premises at the time of issuance.  *Cassias v. State*, 719 S.W.2d 585, 587-88 (Tex. Crim. App. 1986) (op. on reh'g).

In ascertaining whether a search warrant is based on probable cause, we interpret the affidavit in a common-sense, realistic manner. The magistrate is entitled to draw reasonable inferences from the facts contained in the affidavit. *Ellis v. State*, 722 S.W.2d 192, 196 (Tex. App.-Dallas 1986, no pet.). We give the magistrate's determination of probable cause great deference.  *Gates*, 462 U.S. at 236. Our review of the sufficiency of an affidavit is not a *de novo* review. As long as a magistrate had a substantial basis for concluding that a search would uncover evidence of wrongdoing the Fourth Amendment is satisfied. See  *Johnson v. State*, 803 S.W.2d 272, 289 (Tex. Crim. App. 1990) *cert. denied*, 111 S. Ct. 2914 (1991).

\*5 Although the informant's veracity and reliability are no longer separate and independent requirements for each case, they are still "highly relevant" considerations in the totality of the circumstances review.  *Gates*, 462 U.S. at 231. There must be some indicia of reliability of the tip.  *Knight v. State*, 814 S.W.2d 545, 547 (Tex. App.-Houston [1st Dist.] 1991, no pet.). The affiant's statement that the informant is reliable and has provided information in the past that led to convictions is sufficient to establish the informant's reliability.  *Carmichael v. State*, 607 S.W.2d 536, 538 (Tex. Crim. App. 1980).


If information from an unknown informant alone does not show probable cause, an informant's tip combined with independent police investigation may provide a substantial basis for the probable cause finding.  *Janecka v. State*, 739 S.W.2d 813, 825 (Tex. Crim.


App. 1987). Corroboration of the details of an informant's tip by independent police work is another relevant consideration in the totality of the circumstances analysis.

 *Lowery v. State*, 843 S.W.2d 136, 141 (Tex. App.-Dallas 1992, no pet.).

## C. Application of Law to Facts

### 1. Informant's Tip

The magistrate had a substantial basis to determine the informant was reliable. The affiant stated that every time the informant gave him information he found it to be true and correct. He also said that in the past year the informant provided information that led to numerous arrests. See  *Carmichael*, 607 S.W.2d at 538.

However, the affidavit does not state the basis of the informant's knowledge. The affidavit does not provide any means of determining how the informant got his information. The affiant's statement that the informant had found and had personal knowledge that people were gambling in the apartment is conclusory. See  *Ware v. State*, 724 S.W.2d 38, 41 (Tex. Crim. App. 1986). From the affidavit, the magistrate could not determine the source of the informant's tip.

The informant's reliability and the basis of his knowledge are only relevant factors to determine if there is probable cause and are not determinative. *Gates*, 362 U.S. at 231. One of the factors can show the tip is reliable without the other factor. In *Gates*, the informant's basis of knowledge was sufficient to show the tip was reliable even though the informant's motives were suspect. See *Gates*, 362 U.S. at 235. However, we conclude that without some basis to determine the source of the informant's tip, the statement that the informant is reliable is insufficient to show that the tip was reliable. The informant's tip alone is insufficient to provide the magistrate with a substantial basis for determining probable cause existed.

### 2. Corroboration

Our conclusion that the informant's tip, standing alone, does not show probable cause does not end our review. If an informant's tip is insufficient, independent police investigation that corroborates the tip can be used to

supplement the tip. The *tip plus corroboration* can then provide a substantial basis for the magistrate's probable cause finding. Corroboration of an informant's tip must consist of more than just innocent activity. See [Lowery](#), 843 S.W.2d at 143.

\*6 Based on the informant's tip, Nelson conducted surveillance of the apartment. During his surveillance he observed many people coming and going from the apartment on the nights the informant said gambling occurred. He stated that people were not admitted until they were identified by people inside the apartment. Nelson said that he could observe people sitting around a table in the apartment. Nelson also said that during his observations of the apartment he saw persons known to him as *gamblers* enter the apartment. We conclude that these observations sufficiently corroborate the informant's tip.

Combining Nelson's observations and the informant's tip, we conclude that there was a substantial basis for the magistrate's determination that there was probable cause to support the warrant. Based on the totality of the circumstances reflected in the affidavit, we conclude that the affidavit provided a substantial basis for the magistrate's determination. We overrule appellant's second point of error.

Because of our determination that the affidavit provided probable cause for the search warrant, we do not reach the State's alternative arguments under its second counterpoint.

## CONCLUSION

We overrule appellant's first point of error because the evidence supported the jury's finding that appellant received an economic benefit. We overrule appellant's second point of error because under the totality of the circumstances test the affidavit provided probable cause for the warrant.

We affirm the trial court's judgment.

## All Citations

Not Reported in S.W.2d, 1994 WL 67733

874 S.W.2d 908  
Court of Appeals of Texas,  
Houston (1st Dist.).  
Ronnie MILLER, Appellant,  
v.  
The STATE of Texas, Appellee.  
No. 01-93-00268-CR.  
|  
April 14, 1994.  
|  
Rehearing Denied May 19, 1994.

### Synopsis

Defendant was convicted in the County Court at Law Number 1, Brazos County, Claude D. Davis, J., of gambling, and he appealed. The Court of Appeals, Duggan, J., held that: (1) provisions setting forth “social gambling” defense were not vague; (2) evidence was sufficient to support conviction; (3) expert testimony was admissible; (4) evidence tending to show that premises were not a private place and context of defendant’s activities was admissible; (5) defendant was not selectively prosecuted; and (6) trial court properly excluded testimony on whether defendant knew he was playing in a game of craps that did not satisfy requirements of “social gambling” defense.

Affirmed.

West Headnotes (15)

#### [1] Constitutional Law Statutes

In examining criminal statute for vagueness, inquiry is whether ordinary, law-abiding individual would have received sufficient information that his or her conduct risked violating criminal law.

#### [2] Constitutional Law Vagueness on face or as

applied

If First Amendment rights are not involved, court need only scrutinize statute to determine whether it is impermissibly vague as applied to defendant’s specific conduct. U.S.C.A. Const.Amend. 1.

#### [3] Constitutional Law Statutes in general

Statute is not unconstitutionally vague merely because words or terms used are not specifically defined.

#### [4] Gaming and Lotteries Validity

Phrase “received any economic benefit” in statute providing “social gambling” defense to prosecution for gambling was not vague as applied in context of craps games played by defendant; “any economic benefit” would certainly include the sharing of profits by the owner of the premises and his partner, and “received” would always include the time period the craps game was being played. V.T.C.A., Penal Code § 47.02(b)(2).

#### [5] Gaming and Lotteries Validity

Phrase “the risks of losing and the chances of winning were the same for all participants” in statute providing “social gambling” defense to prosecution for gambling was not vague in context of craps games played by defendant in which pay-out odds gave the house an inherent advantage. V.T.C.A., Penal Code § 47.02(b)(3).

[6] **Statutes** ⚡ Presumptions and Construction as to Validity

Statutes are vested with presumption of validity and must be construed in such a way as to uphold their validity.

[7] **Constitutional Law** ⚡ Vagueness in general

Statute that is arguably vague may be given constitutional clarity by applying standard rules of statutory construction.

[8] **Gaming and Lotteries** ⚡ Weight and Sufficiency

Conviction of gambling was supported by sufficient evidence, including testimony of partner of owner of the premises that he paid owner \$13,000 to participate 50/50 in profits from the games; in order for state to show “that persons received some economic benefit other than personal winnings,” it was not necessary that division of winnings occur at table during game played by defendant. 📄 V.T.C.A., Penal Code § 47.02(b).

[9] **Criminal Law** ⚡ Particular issues  
**Criminal Law** ⚡ Miscellaneous matters

While expert witness’ testimony about rules of craps, whether there was economic benefit other than personal winnings, and whether risks of losing and chances of winning were same for all participants encompassed ultimate fact issues, testimony was properly admitted in prosecution

for gambling to assist trier of fact to understand the evidence and to determine facts in issue. Rules of Crim.Evid., Rule 702.

4 Cases that cite this headnote

[10] **Criminal Law** ⚡ Matters Directly in Issue; Ultimate Issues  
**Criminal Law** ⚡ Experts

Expert testimony should not be excluded merely because it encompasses or embraces ultimate issue of fact, but such evidence may not decide that fact or issue for the jury. Rules of Crim.Evid., Rule 702.

[11] **Criminal Law** ⚡ Instruments or devices used, or suspected of use, in commission of crime

Two cases of poker chips, bag of poker chips, numbers written on dice table and testimony concerning 30–40 decks of cards, football schedules, shotgun, dealing shoe, and plastic discard holder were properly admitted in prosecution for gambling to show that premises in question were not a private place and to show context of defendant’s activities. 📄 V.T.C.A., Penal Code § 47.02(b).

1 Cases that cite this headnote

[12] **Criminal Law** ⚡ Discriminatory or Selective Prosecution

To prevail on claim of selective prosecution, defendant must first make prima facie showing that state has singled him out for prosecution while others similarly situated and committing the same acts have not.



[13] **Criminal Law** → Discriminatory or Selective Prosecution

Mere exercise of some selectivity by government in instituting prosecutions is not itself a constitutional violation; defendant must show that state's discriminatory selection of him for prosecution has been invidious or in bad faith and that it rests upon such impermissible grounds as race, religion, or desire to prevent his exercise of constitutional rights.

1 Cases that cite this headnote

[14] **Criminal Law** → Particular cases

County sheriff was not selectively prosecuted for gambling because of his refusal to endorse Republican judicial candidate; although other participants were not prosecuted for gambling, no other participants were similarly situated as defendant, and district attorney had duty to present to grand jury any information of official misconduct by an officer. *Vernon's Ann. Texas C.C.P. art. 2.03*; *V.T.C.A., Penal Code § 47.02(b)*.

1 Cases that cite this headnote

[15] **Gaming and Lotteries** → Admissibility

Trial court properly excluded testimony on whether defendant knew he was playing in a game of craps that did not satisfy requirements of "social gambling" defense; none of the excluded testimony related to defendant being mistaken about facts of the games occurring on the night in question, and there was sufficient evidence for jury to infer that defendant knew that premises owner and his partner were sharing profits or cutting the pot. *V.T.C.A., Penal Code § 47.02(b)*.

**Attorneys and Law Firms**

\*910 *Chris J. Kling*, Bryan, for appellant.

*Brenda Bailey*, Bryan, for appellee.

Before HUTSON–DUNN, DUGGAN and ANDELL, JJ.

**OPINION**

DUGGAN, Justice.

The jury found appellant, Ronnie Miller, guilty of the Class C misdemeanor<sup>1</sup> of gambling, and the trial court assessed punishment at a \$200 fine. In six points of error, appellant argues that: (1) the evidence was insufficient to support a finding of guilty; (2) the controlling statutory provisions, *TEX.PENAL CODE ANN. § 47.02(b)(2)*, (3) (*Vernon 1973*), are unconstitutionally vague; (3) the trial court erred in admitting the testimony of Kevin Templeton; (4) the trial court erred in admitting irrelevant evidence, the cumulative effect of which was to contribute to appellant's conviction; (5) the trial court erred in denying appellant's motion to dismiss for selective prosecution; and (6) the trial court erred in excluding testimony on whether appellant knew he was playing in a game of craps that did not satisfy the requirements of *section 47.02(b)*. We affirm.

On November 14, 1990, appellant, the sheriff of Brazos County, went to a location known as the "lake house," bought \$20 worth of chips, and played craps. At trial, the only disputed issue was whether appellant's actions complied with the "social gambling" \*911 defense<sup>2</sup> provided by *section 47.02(b)*:

It is a defense to prosecution under this section that:

- (1) the actor engaged in gambling in a private place;
- (2) no person received any economic benefit other than personal winnings; and
- (3) except for the advantage of skill or luck, the risks of

losing and the chances of winning were the same for all participants.

### Constitutionality of the Gambling Statute

As a threshold issue, we will first consider appellant's constitutional complaint contained in his second point of error. Appellant argues that section 47.02(b)(2) is unconstitutionally vague because (1) "economic benefit" is not defined in terms of value or amount, and (2) the time when "economic benefit" is "received" is not specified. He argues that section 47.02(b)(3) is unconstitutionally vague because the phrase "the risks of losing and the chances of winning were the same for all participants" is not defined and is incapable of comprehension. He contends that this vagueness results in arbitrary and discriminatory enforcement by the police, and impermissibly delegates enforcement to the police, district attorneys, grand juries, and juries on an ad hoc and subjective basis.

<sup>[1]</sup> In examining a criminal statute for vagueness, the inquiry is whether the ordinary, law-abiding individual would have received sufficient information that his or her conduct risked violating a criminal law. *Bynum v. State*, 767 S.W.2d 769, 773 (Tex.Crim.App.1989).

Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

*Grayned v. City of Rockford*, 408 U.S. 104, 108–109, 92 S.Ct. 2294, 2298–99, 33 L.Ed.2d 222 (1972) (footnotes and citations omitted).

<sup>[2]</sup> <sup>[3]</sup> If first amendment rights are not involved, we need only scrutinize the statute to determine whether it is impermissibly vague as applied to appellant's specific conduct. *Bynum*, 767 S.W.2d at 774. A statute is not unconstitutionally vague merely because the words or terms used are not specifically defined. *Id.* (citing *Engelking v. State*, 750 S.W.2d 213 (Tex.Crim.App.1988)). Instead, the words or phrase must be read in the context in which they are used and construed according to the rules of grammar and common usage. TEX. GOV'T CODE ANN. § 311.011(a) (Vernon 1988).

We first consider appellant's vagueness challenge of the section 47.02(b)(2) phrase "received any economic benefit" in relation to the facts before us. Appellant argues that "economic benefit" is vague because the act does not define a value or amount, and that "received" is vague because it fails to specify the time when the economic benefit must be received.

Although "economic benefit" is not defined in the Penal Code, "benefit" is defined in TEX. PENAL CODE ANN. § 1.07(a)(6) (Vernon Pamph.1994) as "anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested." It is true that the plain language of sections 47.02(b) and 1.07(a)(6) do not define a value or amount. However, the failure to define a value, amount, or time period does not necessarily render the statute unconstitutionally vague.

The commentary following section 47.02 states:

The elements of the defense in Subsection (b) are designed to exclude any form of exploitative or commercialized gambling... therefore, if one party gets a special cut from each pot or charges for the privilege of using the facilities, none of the participants can rely on the defense.

Searcy & Patterson, Practice Commentary, TEX. PENAL CODE ANN. § 47.02 (Vernon 1989).

<sup>[4]</sup> We believe that in the context of the craps games played by appellant, "any economic benefit" would certainly include the sharing of profits by the owner of the

house (also acting as “the house”) and his partner. Similarly, “received” would always include the time period the craps game was being played. Because we must scrutinize the statute to determine whether it is impermissibly vague as applied to appellant’s specific conduct, we need not consider a time period before or after the craps game. It is not necessary to define a specific amount or a time period for appellant to have sufficient warning that if any person “received” an “economic benefit” other than personal winnings, participation in the craps game would violate the statute.

The evidence at trial supports this conclusion. Todd Chapman testified that although he was not playing the craps game with appellant, he had an agreement with L.A. Ford to split the profits from the games 50/50. (Ford was the owner of the lake house and acted as “the house” during the games; Chapman was Ford’s partner.) Chapman further testified that everyone at the games knew about the partnership. Moreover, Chapman and Ford did in fact split the profits of the craps game played by appellant. We find this testimony sufficient to show that appellant had fair warning that while he played craps, Chapman received economic benefit other than personal winnings.

<sup>151</sup> We next consider appellant’s vagueness challenge to the section 47.02(b)(3) phrase “the risks of losing and the chances of winning were the same for all participants” in relation to the facts before us. The commentary following section 47.02 states:

If the “odds” of the game are stacked in favor of one party, Subsection (b)(3) excludes the defense. However, the equal risks and chances requirement of Subsection (b)(3) refers only to the rules of the game, not to the advantages that accrue to a skilled player. Therefore, a game that ensures a percentage to the house or banker, regardless of the luck or skill involved, is not a “friendly” game to which the defense applies; but the presence of a superior, even professional player, who relies on skill and luck, does not vitiate the defense.

Searcy & Patterson, Practice Commentary, TEX. PENAL CODE ANN. § 47.02 (Vernon 1989) (emphasis added).

Again, we turn to the evidence at trial and consider if appellant had fair warning about whether the “risks of losing and the chances of winning were the same for all participants” under the rules of the craps game.

Mr. Weido testified about the basic game of craps. There are two players, a shooter who rolls the dice, and a fader who bets against the shooter. Three possibilities result from the first roll. First, if the shooter rolls a seven or 11, the shooter wins. Second, if he rolls a two, three, or 12, the fader wins. Third, if he rolls any other number, the shooter’s point is established. When a point is established, the shooter then continues to roll. On the following rolls, if the shooter rolls his point before he rolls a seven, he wins; if he rolls a seven before he makes his point, the fader wins.

Out of the 36 possible combinations of the dice, the seven will appear more than any other number because there are six ways for it to occur; conversely, there are two ways for the 11 to occur. Therefore, on the first roll, the shooter has a total of eight chances out of 36 to win, a total of four chances out of 36 to lose, and a total of 24 chances out of 36 to make a point. On the same roll, the fader has four chances to win, eight chances to lose, and 24 chances that the shooter will make a point. The first roll is the only roll where the shooter has a greater chance to win than the fader. After the first roll, the fader always has the statistical advantage.

In addition to these basic rules, which apply to all craps games and which only address the risks of losing and the chances of winning in a statistical manner, L.A. Ford had other rules he imposed on the participants of the craps game played by appellant. While appellant was playing, Ford acted as the fader and as “the house.” Mr. Weido testified that on “hard-way” bets, Ford set five to one odds on the amount “the house” would pay the winners. A “hard-way” bet can only be made when the shooter is attempting to make his established point, and that point is four, six, eight, or 10. The “hard-way” player is betting that the shooter will roll doubles to make his point. For example, if the shooter is attempting to roll a six, only the combination of double threes will result in a win for the “hard-way” bet. Again, this must occur before a seven is rolled. In this example, because there are six chances to roll a seven, and four chances to roll a six (other than by double threes), the chances of winning this bet are 10 to one. Weido stated that Ford, acting as “the house,” only paid out five to one.

Weido testified that to participate in Ford's game, the players had to abide by his rules. We believe these rules clearly indicate that while appellant played craps, the risks of losing and the chances of winning were not the same for all participants. From the plain language of the statute, appellant had fair warning of the prohibited conduct.

Similarly, we find that sections 47.02(b)(2) and 47.02(b)(3) provide sufficient guidance to law enforcement authorities so that arbitrary or discriminatory enforcement is not permitted. For enforcement purposes, law enforcement authorities could observe: (1) the receipt of economic benefit other than personal winnings, and (2) whether "the house" pay-out odds set by Ford gave him an inherent advantage.

<sup>161</sup> Statutes are vested with a presumption of validity and must be construed in such a way as to uphold their validity. *Ely v. State*, 582 S.W.2d 416, 419 (Tex.Crim.App.1979). A statute that is arguably vague may be given constitutional clarity by applying the standard rules of statutory construction. *Engelking*, 750 S.W.2d at 215. Although the legislature could have been more specific, we find these sections nonetheless incorporate a comprehensible standard of conduct. See *Coates v. City of Cincinnati*, 402 U.S. 611, 614, 91 S.Ct. 1686, 1688, 29 L.Ed.2d 214 (1971); *Lear v. State*, 753 S.W.2d 737, 739 (Tex.App.—Austin 1988, no pet.).

Accordingly, neither section 47.02(b)(2) nor section 47.02(b)(3) is unconstitutionally vague as applied to appellant's conduct. We overrule point of error two.

### Sufficiency of Evidence

Appellant claims that the State failed to disprove the social gambling defense. In reviewing the sufficiency of the evidence, an appellate court must view the evidence in the light most favorable to the verdict to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). This Court may not sit as a thirteenth juror and disregard or reweigh the evidence. *Moreno v. State*, 755 S.W.2d 866, 867 (Tex.Crim.App.1988). If there is evidence that establishes

guilt beyond a reasonable doubt, and the trier of fact believes that evidence, we are not in a position to reverse the judgment on sufficiency of evidence grounds. *Id.*; *Glass v. State*, 761 S.W.2d 806, 807 (Tex.App.—Houston [1st Dist.] 1988, no pet.). The jury, as trier of fact, is the sole judge of the credibility of witnesses, *Sharp v. State*, 707 S.W.2d 611, 614 (Tex.Crim.App.1986), cert. denied, \*914 488 U.S. 872, 109 S.Ct. 190, 102 L.Ed.2d 159 (1988), and may believe or disbelieve all or any part of a witness's testimony. *Id.* at 614; *Smith v. State*, 789 S.W.2d 419, 420 (Tex.App.—Houston [1st Dist.] 1990, pet. ref'd). A jury may believe a witness even though his testimony is contradicted. *Sharp*, 707 S.W.2d at 614.

To prove appellant illegally gambled, the State had to show one of the following:

- (1) that the gambling did not occur in a private place; or
- (2) that persons received some economic benefit other than personal winnings; or
- (3) that except for the advantage of skill or luck, the risks of losing and the chances of winning were not the same for all participants.




<sup>181</sup> The most compelling evidence was presented in connection with the second requirement. Todd Chapman testified that pursuant to an agreement with L.A. Ford, he paid \$13,000 to participate 50/50 in the profits from the games at the lake house. Appellant argues that if, after the game, Chapman and Ford privately divide Ford's winnings, it cannot retroactively invalidate the game. He claims that the division must occur at the table during the game played by appellant. We believe Chapman did receive an economic benefit at the table during the game played by appellant. The agreement to split profits was connected with each roll of the dice in each game played that night; half of the winnings were Chapman's although he did not play in the games.

Appellant ignores the plain language of the statute, that no person receive any economic benefit other than personal winnings. It does not provide an amount of economic benefit or a time period for the receipt of an economic benefit.

Because this agreement represents sufficient evidence<sup>3</sup> for a rational fact finder to find against appellant on the second element of the gambling defense beyond a reasonable doubt, we need not address the first or third elements. We overrule point of error one.

### Testimony of Kevin Templeton

<sup>[9]</sup> In point of error three, appellant argues that the trial court erred in admitting the testimony of Kevin Templeton as an expert because the testimony determined ultimate fact issues that could only be found by the jury. Templeton testified about the rules of craps, whether there was an economic benefit other than personal winnings, and whether the risks of losing and the chances of winning were the same for all participants.

<sup>[10]</sup> The decision to allow a witness to testify as an expert is committed to the sound discretion of the trial court.  *Duckett v. State*, 797 S.W.2d 906, 910 (Tex.Crim.App.1990). The threshold determination for admitting expert testimony is whether the specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.  *Id.*; TEX. R.CRIM.EVID. 702. While expert testimony should not be excluded merely because it encompasses or embraces an “ultimate issue” or fact, such evidence may not decide that fact or issue for the jury.  *Duckett*, 797 S.W.2d at 914.

While we agree that Templeton’s testimony encompassed ultimate fact issues, we disagree that it should have been excluded. His specialized knowledge of the rules of craps assisted the trier of fact to understand the evidence and to determine facts in issue. Without understanding the rules of craps and how the game is normally played, it would be difficult for the average juror to make a determination about whether there was economic benefit or whether the risks of losing and the chances of winning were the same \*915 for all participants. Further, the trial court carefully excluded testimony about Templeton’s legal interpretation of the statute.


The trial court did not abuse its discretion by allowing Templeton to testify about these facts. We overrule point of error three.

### Cumulative Error

In point of error four, appellant contends that the trial court erred in admitting irrelevant evidence, the cumulative effect of which contributed to his conviction. Over appellant’s objections, the trial court admitted:

1. two cases of poker chips,
2. a bag of poker chips,
3. numbers written on the dice table, and
4. testimony concerning 30–40 decks of cards, football schedules, a shotgun, a dealing shoe, and a plastic discard holder.

Appellant contends that to get a conviction, the State had to show a casino and try the activity at the lake house, rather than the conduct of appellant. He claims that the evidence was prejudicial and had little or no probative value on the conduct of appellant.

<sup>[11]</sup> However, appellant ignores that the State had to introduce evidence showing that the lake house was not a private place in order to disprove one of the elements of the defense. The evidence must be relevant to a contested fact or issue to be admissible, and that determination is within the sound discretion of the trial judge. *Jackson v. State*, 575 S.W.2d 567, 570 (Tex.Crim.App.1979). That decision will not be reversed on appeal unless a “clear abuse of discretion is shown.”  *Werner v. State*, 711 S.W.2d 639, 643 (Tex.Crim.App.1986).

We find that the evidence tended to show the jury (1) whether or not the lake house was a private place, and (2) the context of appellant’s activities. We overrule point of error four.

### Selective Prosecution



In point of error five, appellant argues that the trial court erred in denying his motion to dismiss for selective prosecution. Appellant, a Republican, argues that he was prosecuted because of his refusal, in the fall of 1990, to endorse a fellow Republican in his efforts to run against a sitting Democratic judge. He claims that Bill Turner, a Democrat and the district attorney during the fall of 1990, asked appellant to support the Republican judicial candidate. He claims that his refusal to endorse the Republican candidate caused Turner to selectively prosecute him for gambling.

<sup>[12]</sup> To prevail on the motion, appellant must first make a prima facie showing that the State has singled him out for prosecution while others similarly situated and committing the same acts have not. *United States v. Greene*, 697 F.2d 1229, 1234 (5th Cir.), cert. denied, 463 U.S. 1210, 103 S.Ct. 3542, 77 L.Ed.2d 1391 (1983). In

the case before us, twenty-four other participants at the lake house were not prosecuted for gambling. Presuming that this is sufficient to meet the first part of the test, we address the second part by examining the reasons why appellant, and not others, were prosecuted.

<sup>[13]</sup> Appellant must show that the State's discriminatory selection of him for prosecution has been invidious or in bad faith in that it rests upon such impermissible grounds as race, religion, or the desire to prevent his exercise of constitutional rights. *Greene*, 697 F.2d at 1234. The mere exercise of some selectivity by the government in instituting prosecutions is not itself a constitutional violation. *Greene*, 697 F.2d at 1234. It has been held that


selection for prosecution based in part upon the potential deterrent effect on others serves a legitimate interest in promoting more general compliance with the tax laws. Since the government lacks the means to investigate every suspected violation of the tax laws, it makes good sense to prosecute those who will receive, or are likely to receive, the attention of the media.

*United States v. Catlett*, 584 F.2d 864, 868 (8th Cir.1978). See also  \*916 *United States v. Ness*, 652 F.2d 890, 892 (9th Cir.1981);  *United States v. Johnson*, 577 F.2d 1304, 1309 (5th Cir.1978).

<sup>[14]</sup> No other participants at the lake house were similarly situated as appellant, the sheriff of Brazos County. Further, the district attorney has a duty to present to the grand jury any information of official misconduct by an officer. TEX.CODE CRIM.P.ANN. art. 2.03 (Vernon 1977). We find that appellant fails to meet the second part of the test because the State had legitimate reasons to only

prosecute appellant. We overrule point of error five.

### Exclusion of Evidence Regarding Knowledge

<sup>[15]</sup> In appellant's sixth point of error, he claims the trial court erred in excluding testimony on whether appellant knew he was playing in a game of craps that did not satisfy the requirements of  section 47.02(b). Appellant sought to introduce evidence of his belief that the games at the lake house were legal, i.e., that he did not "knowingly" violate the gambling statute.

The excluded testimony would have shown that upon inquiry of various people, including the district attorney and certain Texas Department of Public Safety officers, appellant was told through his years as sheriff that if there was no cutting of the pot and no cheating, then the games were legal. Appellant argues that because he was mistaken about the facts surrounding the game of craps at the lake house, the evidence should have been admitted to support a mistake of fact defense.

The witnesses testified to conversations appellant had with them over a five-year period. None of the excluded testimony related to appellant being mistaken about facts of the games occurring at the lake house on November 14, 1990. We have already decided there was sufficient evidence for the jury to infer that appellant knew Ford and Chapman were sharing the profits or cutting the pot. The trial court did not abuse its discretion by excluding the testimony. We overrule point of error six.




We affirm the trial court's judgment.

### All Citations

874 S.W.2d 908

### Footnotes

<sup>1</sup> This case originated in the justice court, having jurisdiction over Class C misdemeanors. TEX. CONST. art. V, sec. 19; TEX.CODE CRIM.P.ANN. art. 4.11 (Vernon Pamph.1994). On appeal from the justice court, the county court tried the case de novo. TEX. CONST. art. V, sec. 16; TEX.CODE CRIM.P.ANN. art. 4.08 (Vernon Pamph.1994).

<sup>2</sup> While  section 47.02(a) prohibits gambling (making bets),  section 47.02(b) "provides a defense ... for the social gambler...." Searcy & Patterson, Practice Commentary,  TEX.PENAL CODE ANN. § 47.02 (Vernon 1989).

- <sup>3</sup> The State also presented Weido's testimony that while appellant was playing the craps game, Weido tipped a waiter a chip for bringing free drinks to the players. Weido further testified that while appellant was playing the craps game, Weido gave John LeFlore, a deputy sheriff watching the game, a \$25 chip, and that LeFlore then used it to gamble. Because we find the Ford/Chapman partnership agreement to be sufficient evidence to support the jury finding, we need not consider whether players giving chips to non-players would constitute sufficient evidence to support a conviction.

**FILE NUMBER:** BDA212-013(PD)

**BUILDING OFFICIAL'S REPORT:** Application of Diana Flores represented by Alfredo Pena for a special exception to the single-family use regulations at 1134 Mountain Lake Road. This property is more fully described as Lot 3 in City Block 1/4802 and is zoned an R-7.5(A) Single Family District, which limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit ADU (not for rent) in addition to the main structure. As proposed, the request will require a special exception to the single-family use regulations for an additional structure.

**LOCATION:** 1134 Mountain Lake Road

**APPLICANT:** Diana Flores represented by Alfredo Pena

**REQUESTS:**

The applicant proposes to construct and maintain an additional dwelling unit (not for rent) on a site developed with a single-family dwelling and an existing detached garage.

**UPDATES:**

On March 30, 2022, the representative requested to revise the request to remove the variance request to exceed 25 percent of the floor area ratio of the main structure.

**STANDARD FOR A SPECIAL EXCEPTION TO THE SINGLE-FAMILY USE REGULATIONS TO AUTHORIZE AN ADDITIONAL DWELLING UNIT:**

The board may grant a special exception to the single-family use regulations of the Dallas Development Code to authorize an additional dwelling unit on a lot when, in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

In granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when *in the opinion of the board*, the additional dwelling unit will not adversely affect neighboring properties.



### **STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures **accessory to single-family uses**, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

### **State Law/HB 1475 effective 9-1-21**

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
  - (a) 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 (Submission of Rolls to Taxing Units), Tax Code;
  - (b) 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 is authorized to physically occur;
  - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - (e) the municipality consider the structure to be a nonconforming structure.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to authorize an additional dwelling unit since the basis for this type of appeal is when in the opinion of the board, the additional dwelling unit will not: 1) be used as rental accommodations; or 2) adversely affect neighboring properties.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) Single Family District

North: R-7.5(A) Single Family District

South: R-7.5(A) Single Family District

East: R-7.5(A) Single Family District

West: R-7.5(A) Single Family District

**Land Use:**

The subject site and all surrounding properties are developed with single-family uses.

**Zoning/BDA History:**

There have been no related board or zoning cases in the vicinity within the last five years.

**GENERAL FACTS/STAFF ANALYSIS:**

The request for a special exception to the single-family use regulations focus on constructing and maintaining an additional dwelling unit (non-rent) on a property zoned an R-7.5(A) Single Family District. In this district, one dwelling unit is allowed per lot.

DCAD records indicate the following improvements for the property located at 1134 Mountain Lake Road: “main improvement: a structure with 1,596 square feet of living area built-in 1940” and “additional improvements: a 504-square-foot detached garage. However, the proposed site plan reflects a floor area for the construction of an 1812-square-foot main structure and a detached garage with approximately 917 square feet.

While the proposed ADU has been constructed, City records reflect permits for the construction of the proposed two-story additional DU have not been received for review.

The property is rectangular in shape, flat, and according to the application, contains 0.231 acres, or approximately 10,062 square feet in area. In an R-7.5(A) Single Family District the minimum lot size is 7,500 square feet.

The applicant has the burden of proof in establishing the following:

- That granting the variance will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same zoning classification.

As of April 11, 2022, no letters have been submitted in support of or in opposition to the request.

Ultimately, the two requests are independent, and the board must consider the standards and evidence presented for each request.

If the board were to grant the special exception for an additional dwelling unit to a single-family use and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on this document. Furthermore, if the board were to grant the special exception to allow the ADU, the Dallas Development Code states that in granting this type of special exception, the board shall require the applicant to deed restrict the subject property to prevent the use of the additional dwelling unit as rental accommodations.

However, granting these requests will not provide any relief to the Dallas Development Code regulations other than allowing an additional dwelling unit on the site (i.e. development on the site must meet all other code requirements), as depicted on the site plan, including the increase in floor area if each are approved by the board.

**Timeline:**

- Dec. 10, 2021: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- Dec. 28, 2021: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

- January 3, 2022: The Board of Adjustment Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the January 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the February 11<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- January 25, 2022: The applicant submitted evidence (**Attachment A**) for staff consideration.
- January 27, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the February public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, Senior Engineer, and the Assistant City Attorney to the board.
- No review comment sheets were submitted in conjunction with this application.
- February 22, 2022: The Board recommended to hold the case under advisement until April 19, 2022.
- March 30, 2022: The representative requested to revise the request to remove the variance request to exceed 25 percent of the floor area ratio of the main structure.

**BOARD OF ADJUSTMENT ACTION: February 22, 2022**

APPEARING IN FAVOR: Fred Pena 1134 Mountain Lake Rd. Dallas, TX.

APPEARING IN OPPOSITION: None

MOTION: **Lamb**

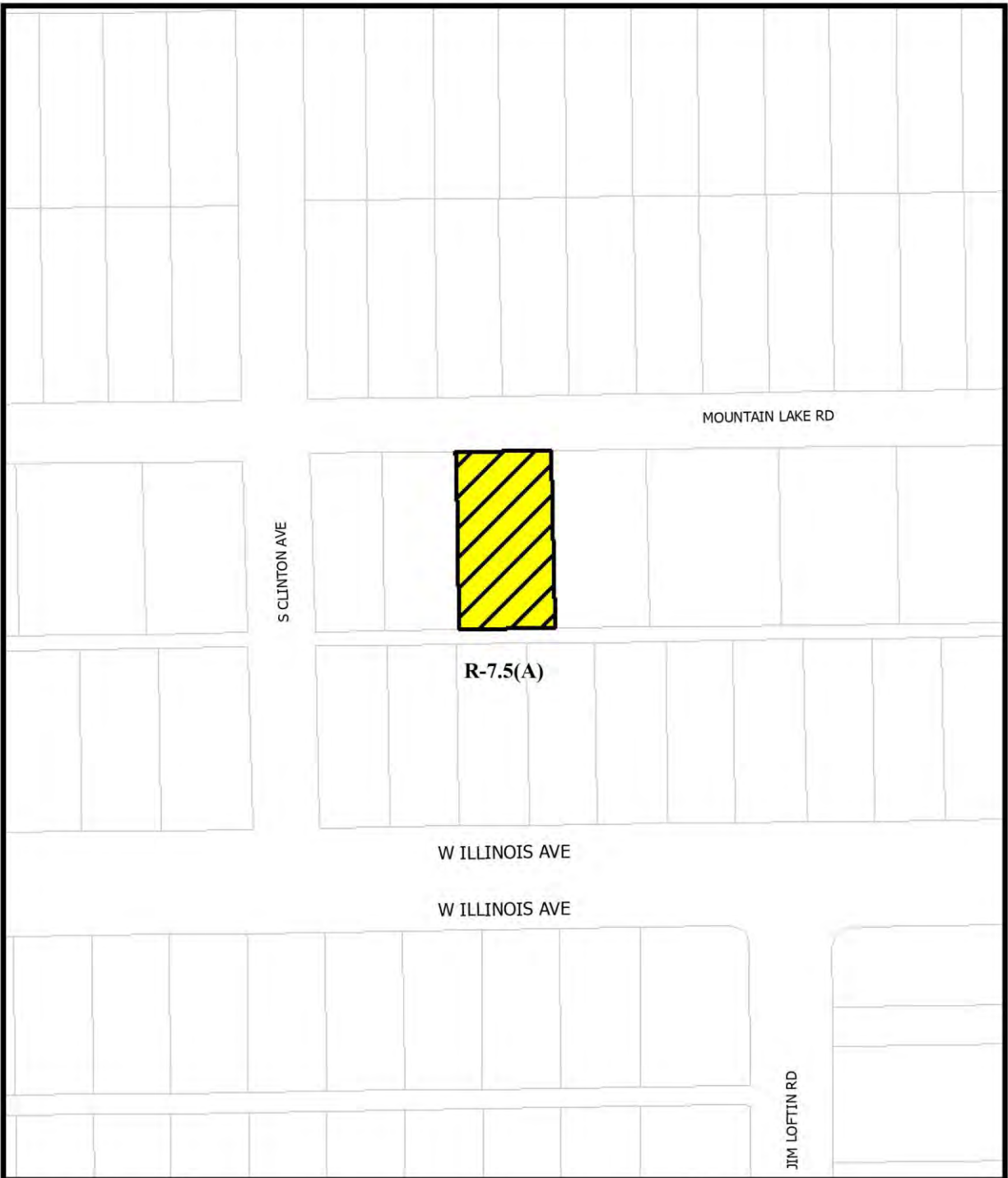
I move that the Board of Adjustment in request No. BDA 212-013, **hold** this matter under advisement until **April 19, 2022**.

SECONDED: **Halcomb**

AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

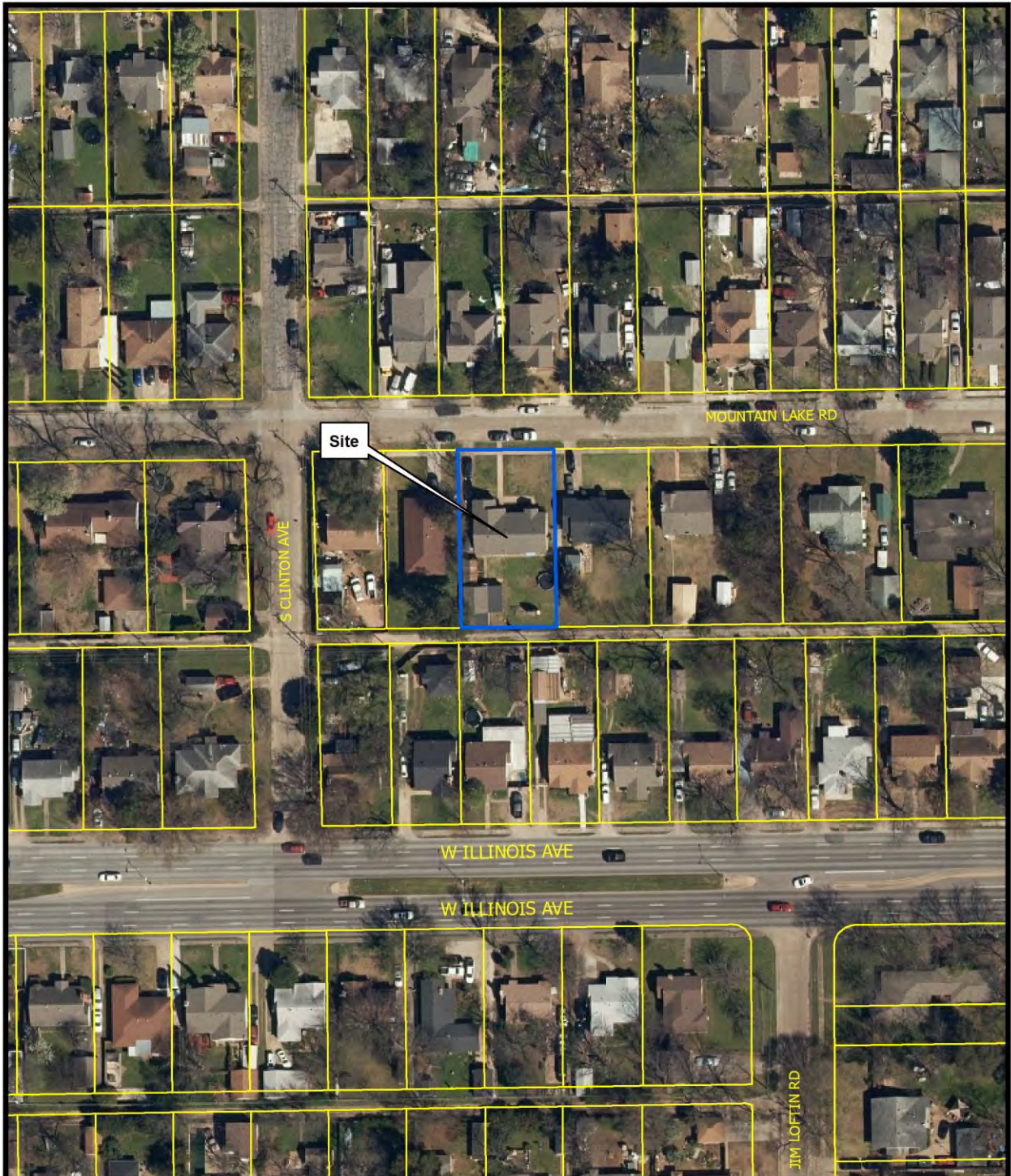


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# ZONING MAP

Case no: BDA212-013

Date: 1/5/2022

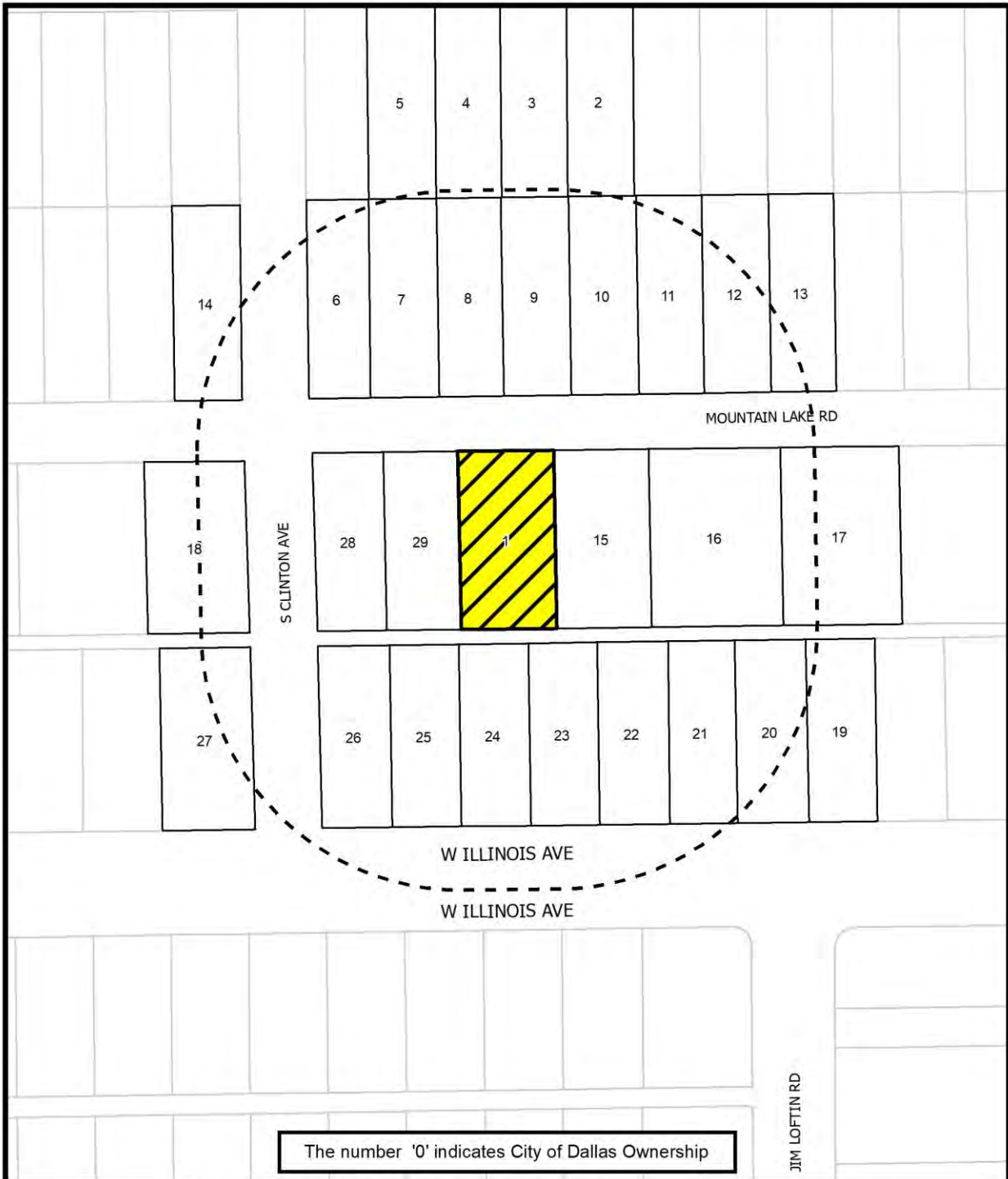


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# AERIAL MAP

Case no: BDA212-013

Date: 1/5/2022



1:1,200

# NOTIFICATION

**200'** AREA OF NOTIFICATION  
**29** NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA212-013**  
 Date: **1/5/2022**



01/04/2022

## ***Notification List of Property Owners***

***BDA212-013***

***29 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	1134 MOUNTAIN LAKE RD	FLORES DIANA L
2	1126 WILBUR ST	HERNANDEZ LORENA
3	1130 WILBUR ST	GUERRERO MANUEL &
4	1134 WILBUR ST	BARRAZA JUAN E JR
5	1138 WILBUR ST	WILKINSON ROSE M
6	1143 MOUNTAIN LAKE RD	MARTINEZ ERIC & MARIA
7	1139 MOUNTAIN LAKE RD	PEREZ RUBEN A
8	1135 MOUNTAIN LAKE RD	ESPARZA FERNANDO
9	1131 MOUNTAIN LAKE RD	TREVINO JOSE E
10	1127 MOUNTAIN LAKE RD	YANEZ FRANCISCO &
11	1123 MOUNTAIN LAKE RD	SEGOVIA RAUL &
12	1119 MOUNTAIN LAKE RD	MORALES LUIS JAVIER &
13	1115 MOUNTAIN LAKE RD	YANEZ FRANCISCO
14	1203 MOUNTAIN LAKE RD	REYES REYNALDO JR &
15	1130 MOUNTAIN LAKE RD	GRIFFIN CHRIS
16	1120 MOUNTAIN LAKE RD	MORENO TERESA
17	1112 MOUNTAIN LAKE RD	ADERMAN DANIEL M
18	1200 MOUNTAIN LAKE RD	IHEMELU ASHLEY &
19	1111 W ILLINOIS AVE	AVILES YOLANDA
20	1115 W ILLINOIS AVE	VALENCIA JUVENTINO M &
21	1119 W ILLINOIS AVE	WHITEN WANDA
22	1123 W ILLINOIS AVE	TAMEZ MARIA S & RAMON
23	1129 W ILLINOIS AVE	ALVARADO TOMAS JR & GLORIA
24	1133 W ILLINOIS AVE	SANCHEZ JOSE &
25	1137 W ILLINOIS AVE	GUZMAN ROGELIO GARCIA &
26	1141 W ILLINOIS AVE	ROBERSON LEVERDIA JEAN

01/04/2022

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
27	1203 W ILLINOIS AVE	MARTINEZ JOHN RICKY
28	1142 MOUNTAIN LAKE RD	MENDEZ SANCHEZ SERGIO
29	1138 MOUNTAIN LAKE RD	MARTINEZ CARLOS M HUICOCHEA



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 212-013

Data Relative to Subject Property:

Date: 12-10-21

Location address: 1134 Mountain Lake

Zoning District: R7.5(A)

Lot No.: 3 Block No.: 1/4802 Acreage: 0.231

Census Tract: 63.02

Street Frontage (in Feet): 1) 75.00 2) \_\_\_\_\_ 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Diana L. Flores

Applicant: Diana Flores (Owner)

Telephone: \_\_\_\_\_

Mailing Address: 1134 Mountain Lake, Dallas, TX

Zip Code: 75224

E-mail Address: diana@gdhcc.com

Represented by: Alfredo Peña

Telephone: 817-602-8161

Mailing Address: 410 E 5th St., Dallas, TX

Zip Code: 75203

E-mail Address: fred@tezanto.com

NO LONGER REQUESTED

REMOVED PRIOR TO NOTIFICATION

Affirm that an appeal has been made for a Variance X, or Special Exception X, of 1 - Additional Dwelling Unit (Not For Rent)

~~2 - Increase Accessory Structure living space size~~

~~3 - Reduce side setback to allow existing structure location to remain~~

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

Owner wishes to renovate an existing accessory structure built as a garage and convert it into an Additional Dwelling Unit (not for rent) to be used by a family member. The existing structure is 785 S.F. including garage parking and was there prior to the owner acquiring the property. The proposed ADU will be 689 S.F. plus 204 S.F. of parking.

JM

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared

DIANA FLORES

(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted:

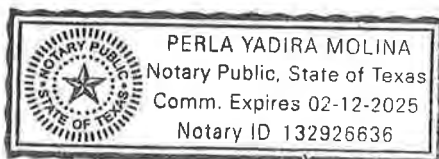
Diana Flores

(Affiant/Applicant's signature)

Subscribed and sworn to before me this 10th day of December, 2021

Perla Yadira Molina  
Notary Public in and for Dallas County, Texas

(Rev. 08-01-11)



**MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT**

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

I hereby certify that Diana Flores  
represented by ALFREDO PENA  
did submit a request for a variance to the floor area ratio regulations, and for a special exception  
to the single family regulations  
at 1134 Mountain Lake Road

BDA212-013. Application of Diana Flores represented by ALFREDO PENA, for a variance to the floor area ratio regulations, and for a special exception to the single family regulations at 1134 MOUNTAIN LAKE RD. This property is more fully described as Lot 3, Block1/4802, and is zoned R-7.5(A), which an accessory structure may not exceed 25% of the floor area of the main structure and limits the number of dwelling units to one. The applicant proposes to construct and maintain an additional dwelling unit (Not For Rent) structure with 713 square feet of floor area (39.3% of the 1812 square foot floor area of the main structure), which will require a 260 square foot variance to the floor area ratio regulations, and to construct an additional dwelling unit (not for rent), which will require a special exception to the single family zoning use regulations.

Sincerely,

  
David Session, Building Official



Printed: 12/10/2021

**Legend**

- City Limits
- School
- Floodplain
- 100 Year Flood Zone
- Mills Creek
- Peak's Branch
- X Protected by Levee
- Parks
- railroad
- Certified Parcels
- Base Zoning
- PD193 Oak Lawn
- Dallas Environmental Corridors
- SPSD Overlay
- Deed Restrictions
- SUP
- Dry Overlay
- D
- D-1
- CP
- SP
- MD Overlay
- Historic Subdistricts
- Historic Overlay
- Height Map Overlay
- CD Subdistricts
- PD Subdistricts
- PDS Subdistricts
- NSO Subdistricts
- NSO\_Overlay
- Escarpment Overlay
- Parking Management Overlay
- Shop Front Overlay

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)



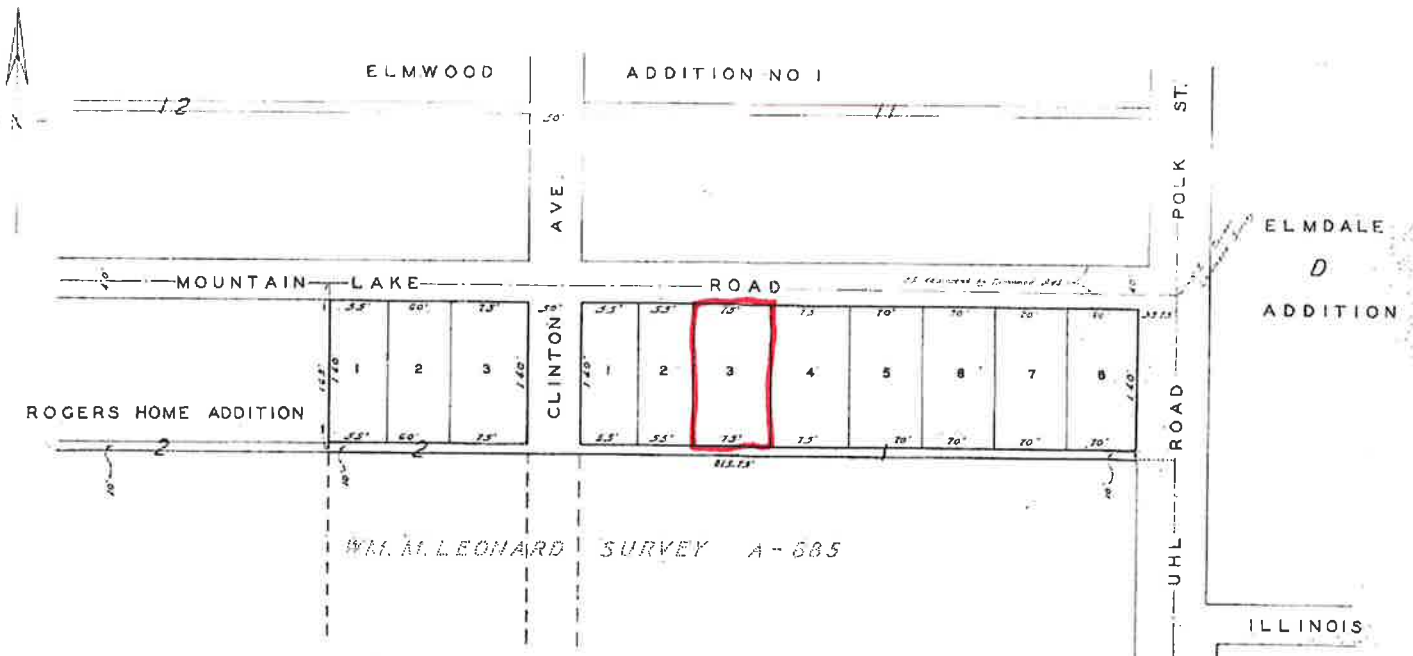
ROGERS HOME ANNEX ADDITION

WM. M. LEONARD SURVEY, DALLAS COUNTY, TEX.

SCALE: 1"=100' JULY 7, 1940

E. E. EMBREY

LICENSED LAND SURVEYOR.



73802 ----- Plat \$2.00  
2.25 Recording

MRS. M. M. LOFTIN and CLARE W. JOHNSON,  
(Joined by their respective husbands, JAS. T. LOFTIS and BEN C. JOHNSON

TO: ... OWNERS' DEDICATION

| STATE OF TEXAS |

ROGERS HOME ANNEX ADDITION

| COUNTY OF DALLAS |

WHEREAS, WE, MRS. M. M. LOFTIN &

CLARE W. JOHNSON, joined by our respective husbands, are the owners of a tract of land situated in the WM. M. LEONARD SURVEY, ABST. #885, COUNTY OF DALLAS and more particularly described as follows:

BEGINNING at the N. E. corner of a 48.53 acre tract as described in deed dated May 1, 1922 and from MRS. F. E. BUMPAS, et al to MRS. M. M. LOFTIN and recorded in Vol. 939, Page 456;

THENCE SOUTH 165 ft. along the East line of said g. Leonard Survey

THENCE WEST 815.75 ft. to a stake in the West line of said 48.53 acre tract;

THENCE NORTH 165 ft. to the N. W. corner of said 48.53 acre tract;

THENCE EAST 815.75 ft. TO THE PLACE OF BEGINNING.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT WE, MRS. M. M. LOFTIN, & MRS. CLARE W. JOHNSON, joined by our respective husbands, do hereby adopt this Plat designating the hereinabove described property as "ROGERS HOME ANNEX ADDITION" to the City of Dallas, Texas. Subject to the following restrictive covenants governing said addition:

This is a blanket encumbrance against all of the lots in the Subdivision:

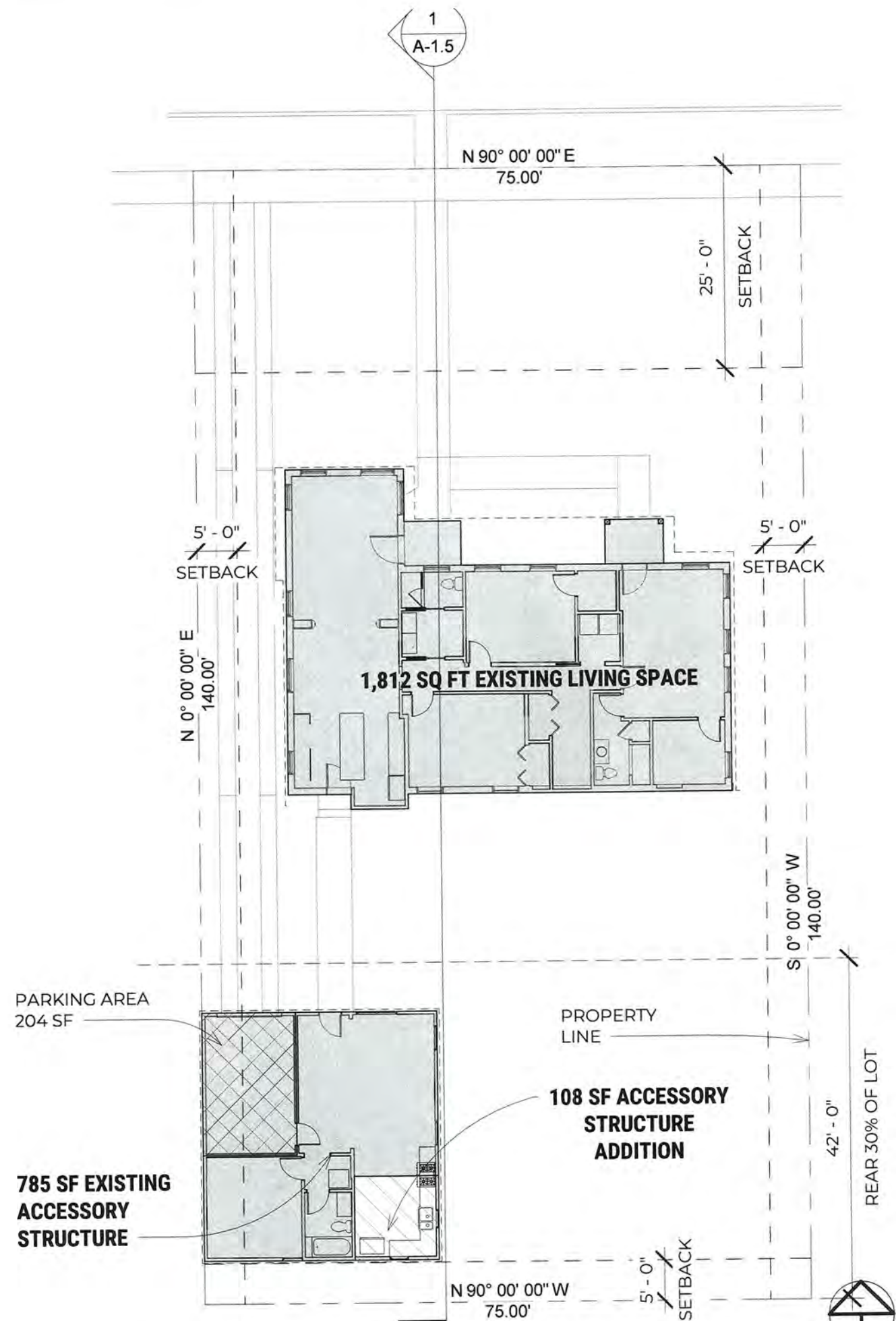
(a) All lots in the tract shall be known and described as residential lots, and no structures shall be erected on any building plot other than one single-family or two family dwelling not to exceed two stories in height and two car garage, and necessary out house typical for 1 or 2 family residences.

(b) No building shall be erected on any plot nearer than 30 feet to nor farther than 35 feet from the front lot line, nor nearer than 5 feet to any side lot line. No house to be less than 10 feet to adjoining house on either side.

(c) No lot shall have less than 7000 square feet of area or a width of less than 50 feet.



12/13/2021 10:45:01 AM



**1** PROPOSED SITE PLAN  
1/16" = 1'-0"

**ZONING INFORMATION**

ZONING TYPE: R-7.5 (A)

**SITE RESTRICTIONS**

R-7.5 (A)  
 FRONT SETBACK: 25 FT  
 SIDE/REAR SETBACKS: 5 FT  
 HEIGHT: 30 FT  
 HEIGHT (ACCESSORY): 17 FT  
 BASED ON EXISTING HOUSE  
 LOT COVERAGE: 45%

**CURRENT CONDITIONS:**

LOT SIZE: 10,500 SQ FT  
 ALLOWED TOTAL LOT COVERAGE: 4,725 SQ FT  
 CURRENT LOT COVERAGE: 2,809 SQ FT  
 (ROOF EDGE)  
 CURRENT L.C. PERCENTAGE: 26.8%  
 ALLOWED LOT COVERAGE EXPANSION: 1,916 SQ FT  
 PROPOSED LOT COVERAGE EXPANSION: 920 SQ FT

**ACCESSORY STRUCTURE SIZE LIMIT:**

SIZE LIMIT (LIVING SPACE): 25%  
 MAIN HOUSE LIVING SPACE: 1,812 SQ FT  
 (INCLUDES ADDITION TO MAIN HOUSE)  
 ALLOWABLE PER 25%: 453 SQ FT

**PROPOSED ACCESSORY STRUCTURE:**

EXISTING: 785 SQ FT  
 ADDITION: 108 SQ FT  
 SUBTOTAL: 893 SQ FT  
 PARKING: (204) SQ FT

**(TOTAL) 689 SQ FT**

(PURSUING AN INCREASE TO 700 SQ FT FOR ADU)



**TEZANTO**

817.602.8161  
fred@tezanto.com



Alfredo Peña  
12-10-21

**DIANA FLORES**

1134 MOUNTAIN LAKE ROAD  
DALLAS, TX 75224

**SITE INFORMATION**

Project number: 21.01-03  
Date: 12-10-21

**AS-1.2**

## Board of Adjustment Appeal

1134 Mountain Lake Road

### **3 Items to appeal:**

- Exception for an Additional Dwelling Unit
- Increase Accessory Structure living space size
- Reduce side setback to allow existing structure to location to remain

### **Project Description:**

The purpose of this appeal is to seek an exception to convert an existing Accessory Structure that contains a garage and a workshop into an additional dwelling unit.

The intent of the unit will be for family to live comfortably. The property Owner is transferring ownership of the property to her daughter, the Owner will live in the additional dwelling unit and the daughter with her children will live in the main house.

### **Variances Information:**

In order for this to happen two variances would need to be granted.

### **Floor Area**

The first is an increase in Floor Area of the Accessory Structure. The limit is 25% of the main house excluding areas used for vehicle parking.

Floor Area of the main house:

As measured and including front porches: **1,812 Sq Ft**

Note: The measured square footage was done by a Texas licensed architect, Floor Plan attached.

25% of the main house floor area is: 453 Sq Ft

The proposed Square Footage is **689 Sq Ft**

Because the additional dwelling unit is designed to keep aging-in-place in mind. Consideration is given to provide plenty of space for the prospect of a walker or even a possible wheelchair. 25% Floor Area of the main house does not provide sufficient space to lay out a proper unit with a kitchenette, bathroom, bedroom and living/dining area. Furthermore, the proposed renovated Accessory Structure would not be contrary to the public interest and is in fact within the average of the vicinity as shown in the following comparative table.



## Comparative Property Data

Property	Lot Size	Main Structure Size (DCAD)	Accessory Structure Size (DCAD)	Percentage of Main House
1134 Mountain Lake (applicant)	10,066 Sq Ft	1,812 Sq Ft (as submitted)	689 Sq Ft (as submitted)	38%
1104 Mountain Lake	12,260 Sq Ft	1,709 Sq Ft	600 Sq Ft	35%
1210 Mountain Lake	12,911 Sq Ft	1,973 Sq Ft	572 Sq Ft	29%
1127 Mountain Lake	7,602 Sq Ft	966 Sq Ft	627 Sq Ft	64%
1131 Mountain Lake	7,905 Sq Ft	1,365 Sq Ft	480 Sq Ft	35%
1231 Mountain Lake	7,319 Sq Ft	1,430 Sq Ft	180 Sq Ft 252 Sq Ft	13% 18% 30% Total
1106 Wilbur	7,428 Sq Ft	1,080 Sq Ft	576 Sq Ft	53%
1135 Wilbur	7,261 Sq Ft	1,084 Sq Ft	384 Sq Ft	35%

The properties listed are a sample of the vicinity on the same street (Mountain Lake) and one street north (Wilbur). They are all in the same R-7.5A zoning. Not all the lots are larger than average so properties were selected to reflect the apparent average density in the vicinity both on the smaller (<8,000 Sq Ft) Lots and the larger (>8,000 Sq Ft) lots.

Within this analysis the average accessory structure is roughly 39.88% of the corresponding primary structure on the property.



## **Side Setback**

The West exterior wall of the existing accessory structure lies on the property line. The proposed Accessory Structure is intended to remain as-is along that exterior West side.

We think the existing structure used the following exception to be built with no side yard setback.

The Dallas City Code, in Sec. 51A-4.402 MINIMUM SIDE YARD

### **(b) Side yard provisions for residential districts.**

(1) In a single family district, one required side yard may be reduced below the setback required in this section, if the other side yard is increased to at least double the side yard required in this section, subject to the following conditions:

(A) The minimum side yard between structures on contiguous lots must not be less than the minimum side yard required in this section.

(B) To reduce the required side yard, a subdivision plat must be approved by the commission and filed with the county clerk showing the location of all building lines, and showing the proposed distances between the building lines and property lines, streets lines and alley lines.

(C) A person may not erect an accessory structure except for a swimming pool and its appurtenances in the double side yard.

(2) Reserved.

**(3) In a residential district, a person need not provide a side yard setback for a structure accessory to a residential use, including a generator, if the structure:**

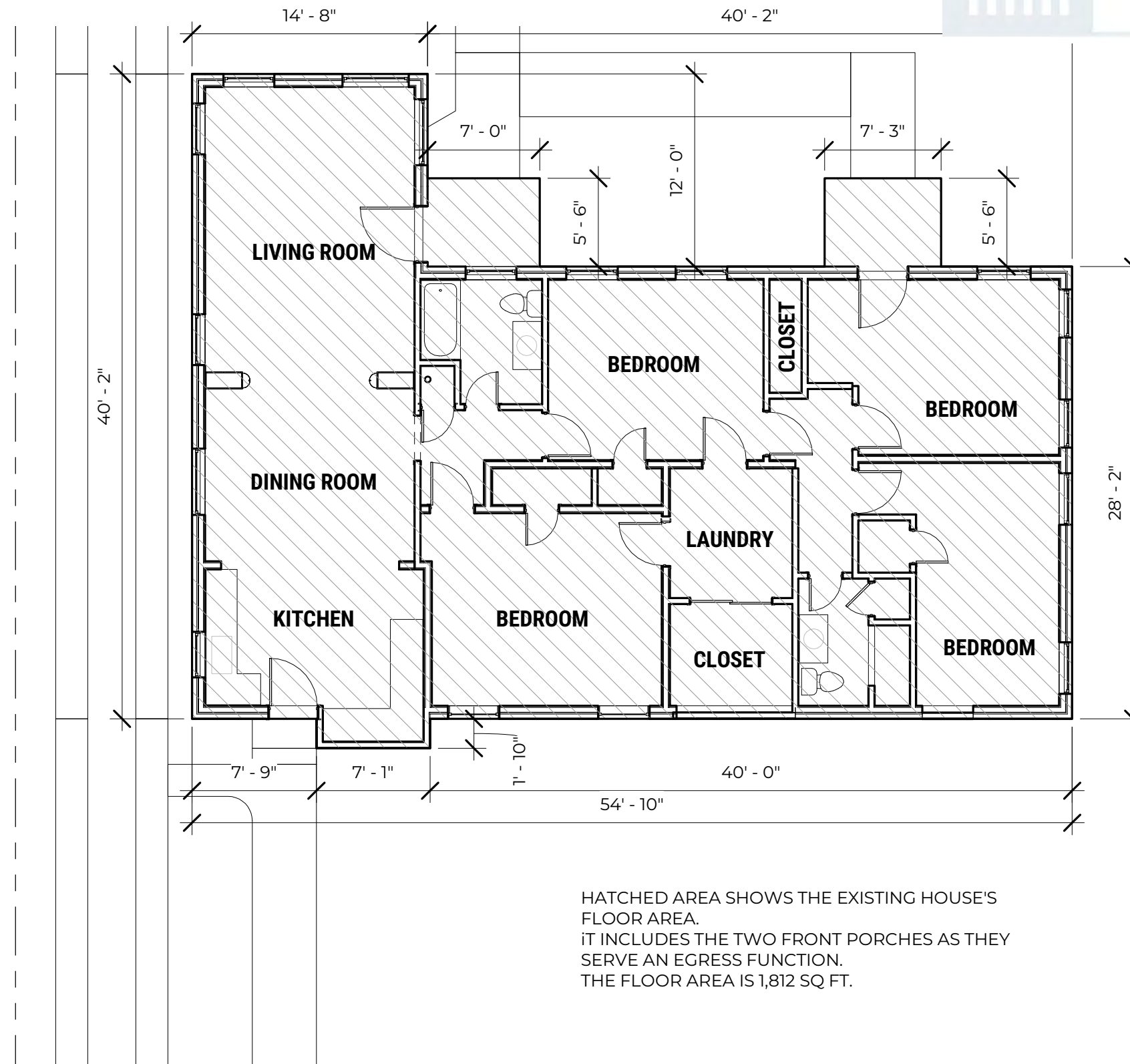
**(A) does not exceed 15 feet in height; and**

**(B) is located in the rear 30 percent of the lot.**

The existing structure was more than likely built on the property line using this exception as it does fall under 15' in height and is in the rear 30% of the lot.

Zoning-wise, an Accessory or Additional Dwelling Unit is considered an accessory to the main house, thus still an Accessory Structure. The proposed renovation does not increase the height to be above 15' nor does the addition fall forward of the rear 30% line of the property.

The project is not requesting a variance due to site constraints but due to the fact that changing the use of the existing structure from a garage/shop to an ADU does not adversely impact the code compliant structure. In fact it improves it by addressing a roof that slopes to shed water on the neighbor and improves the fire rating of the existing walls within 3 ft of the property line.



**1 FLOOR PLAN - EXISTING**  
1/8" = 1'-0"

11340 MOUNTAIN  
LAKE RD

**EXISTING PLAN**

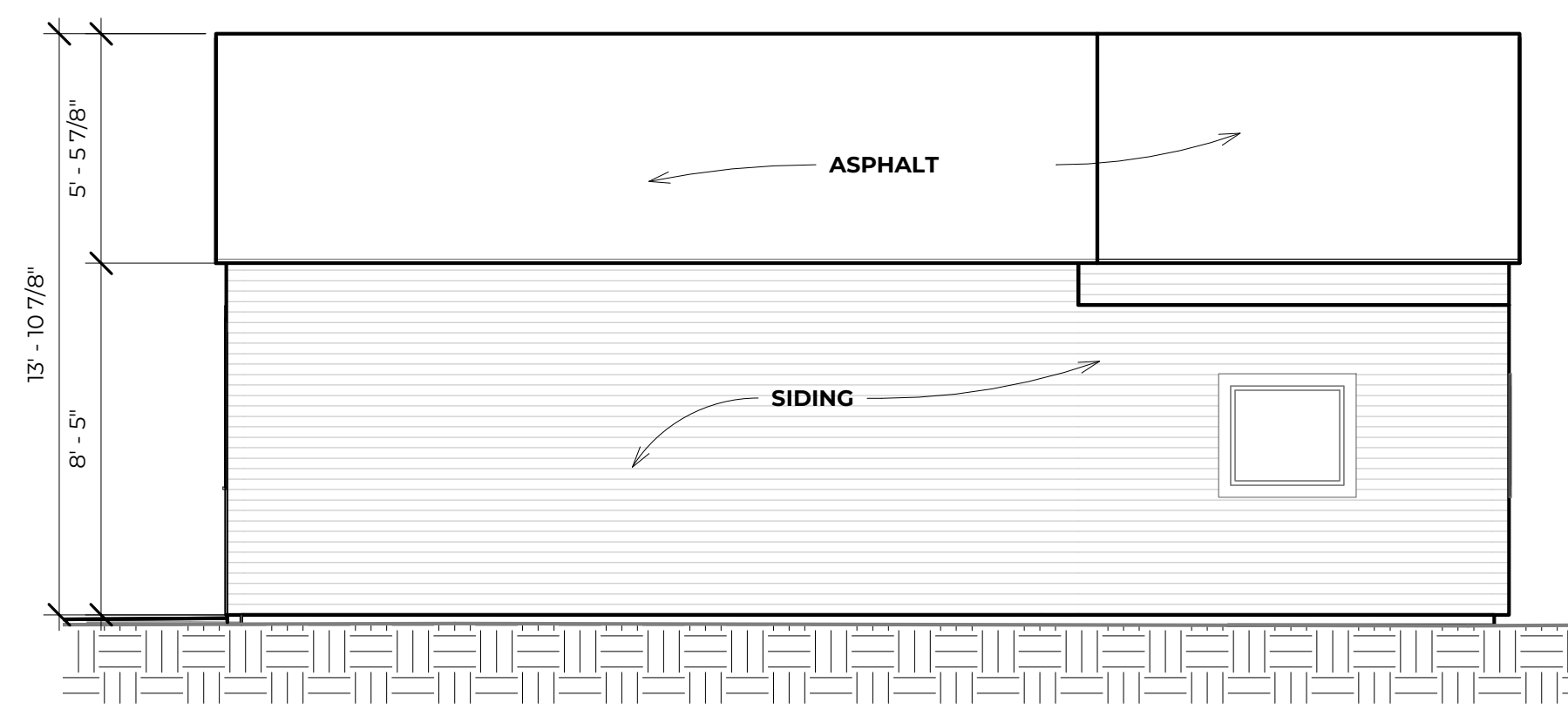
Project number: 21.01-03

Date: 01-25-22

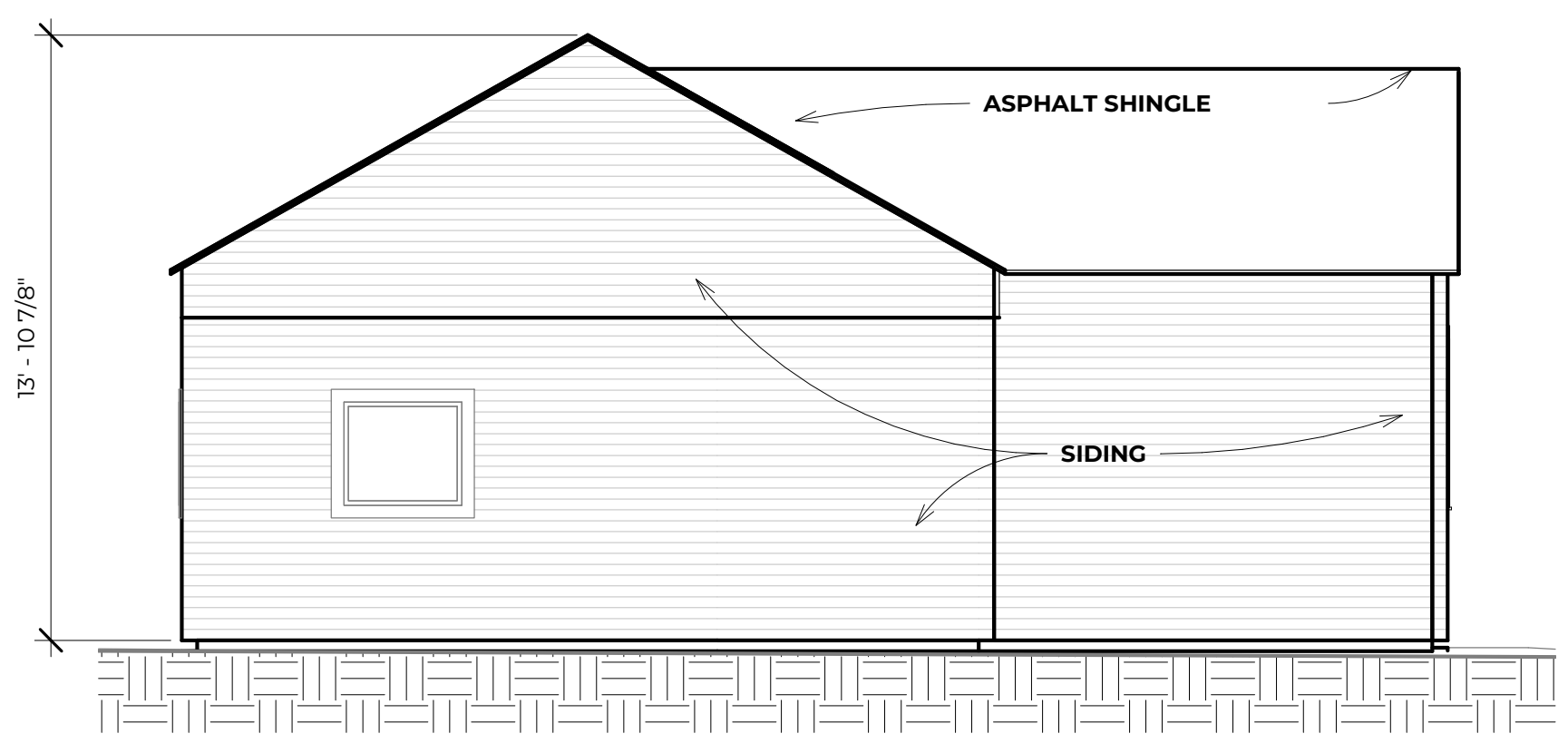
Scale: 1/8" = 1'-0"

NOT FOR CONSTRUCTION, PERMIT OR  
REGULATORY APPROVAL

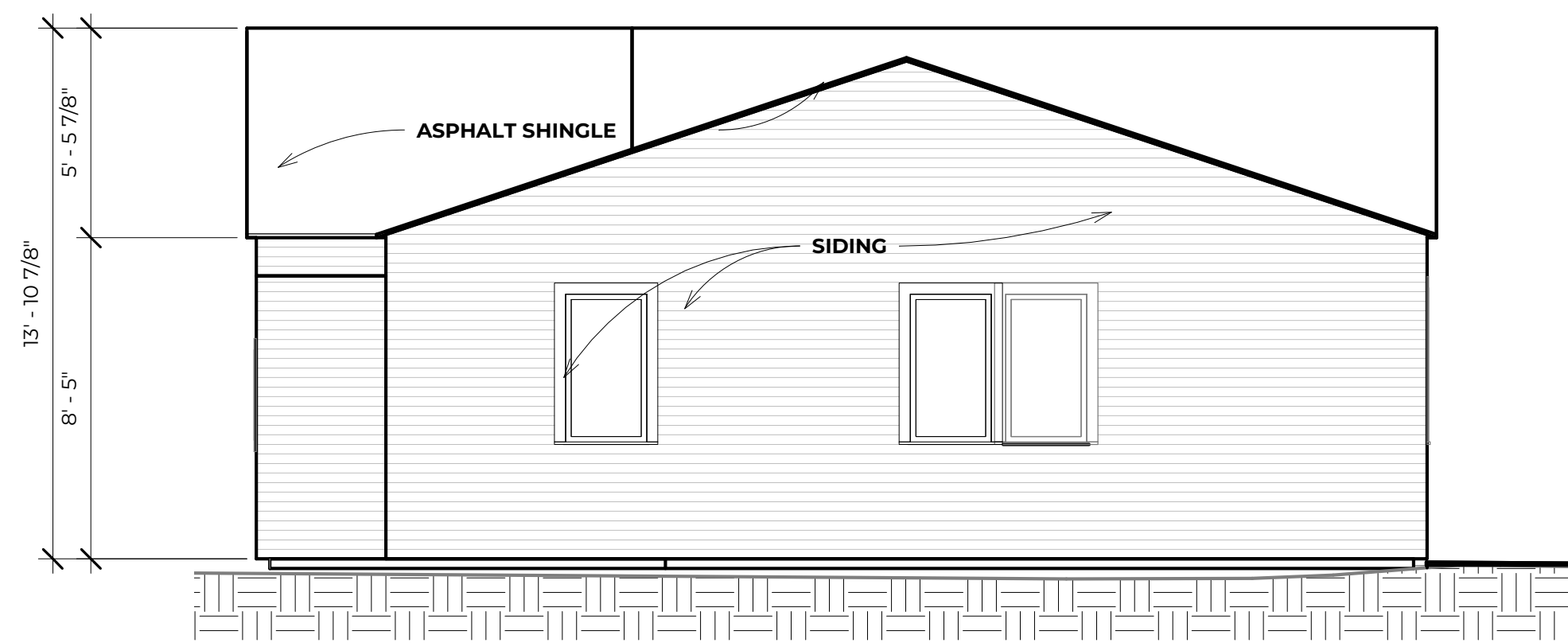
**SK-1.1**



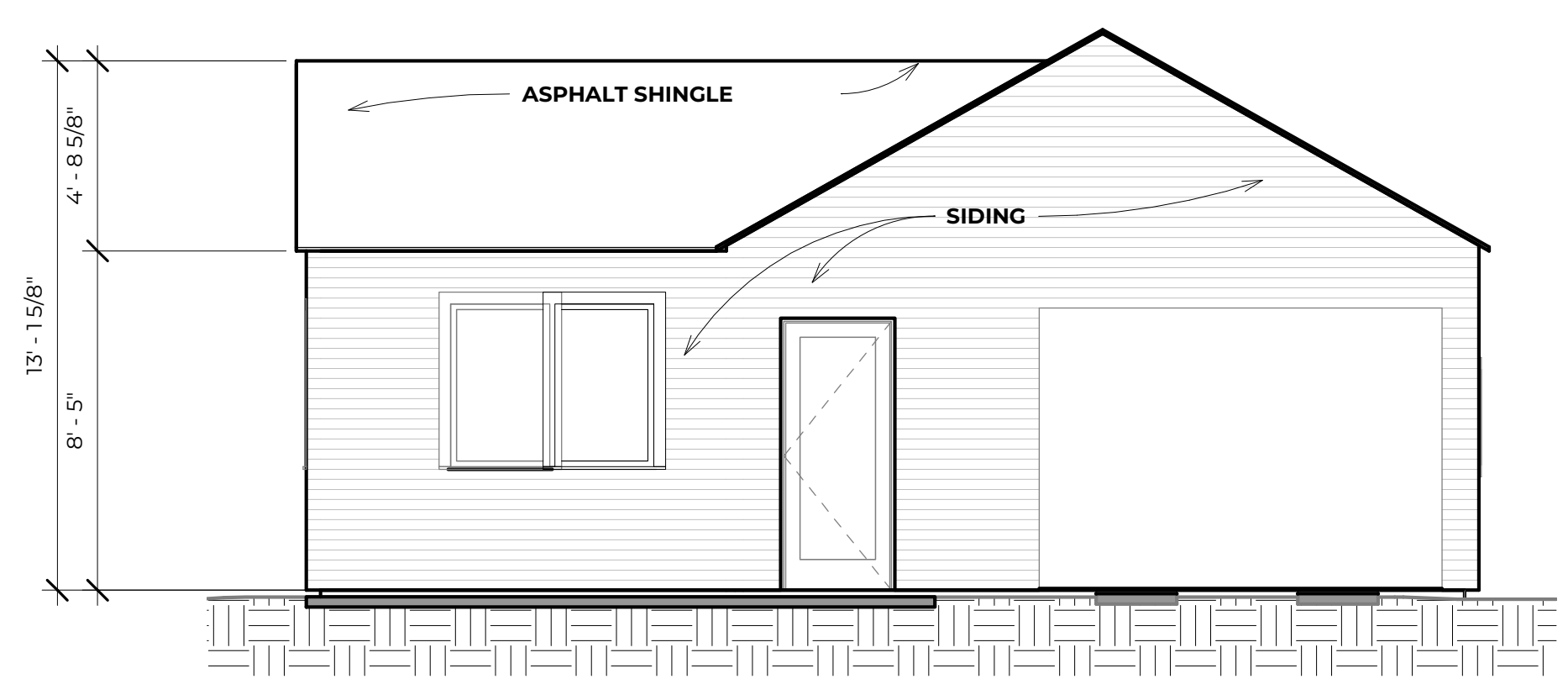
**6 GARAGE WEST ELEVATION**  
1/4" = 1'-0"



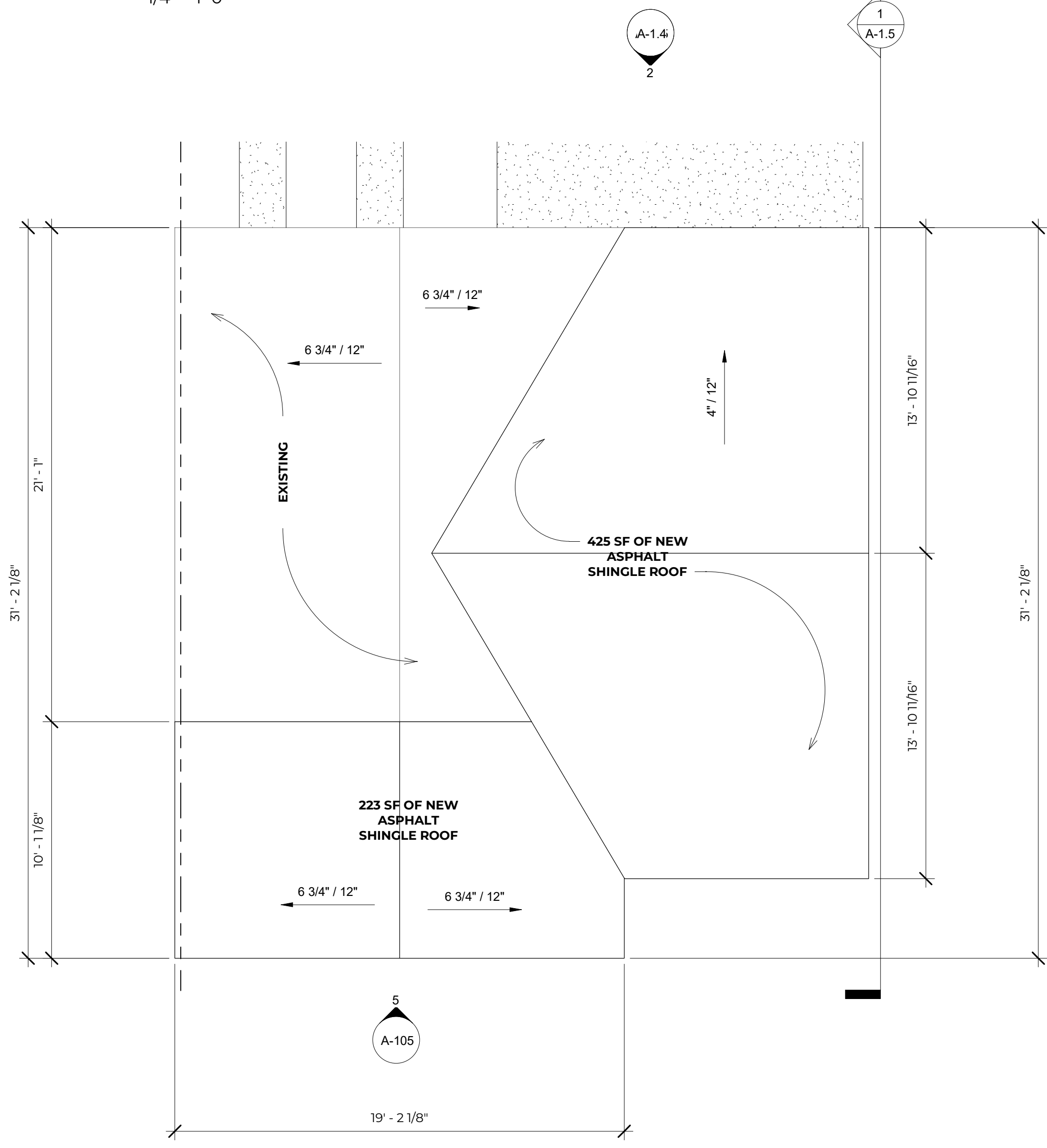
**5 GARAGE SOUTH ELEVATION**  
1/4" = 1'-0"



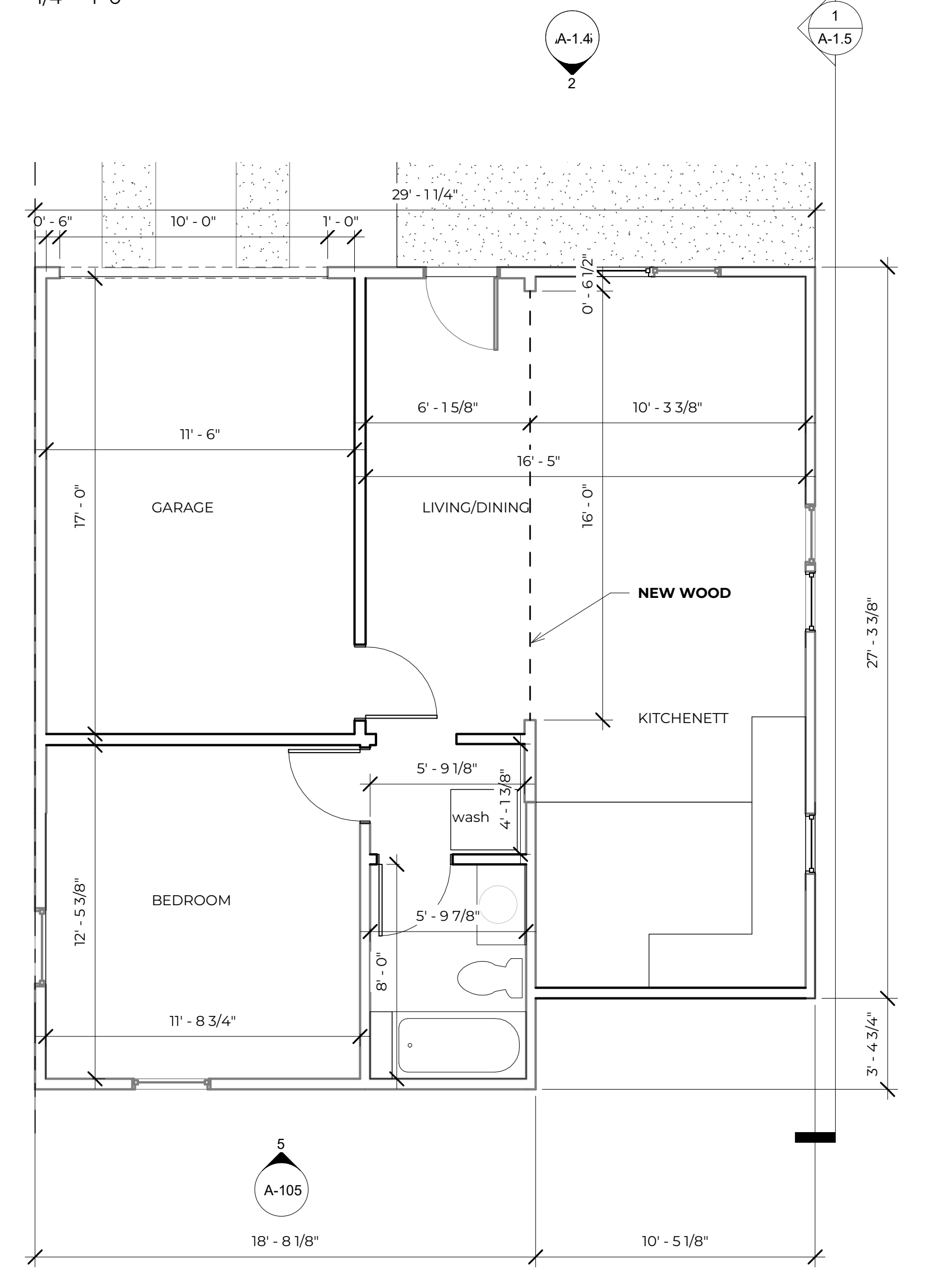
**4 GARAGE EAST ELEVATION**  
1/4" = 1'-0"



**3 GARAGE NORTH ELEVATION**  
1/4" = 1'-0"



**2 GARAGE PROPOSED ROOF PLAN**  
1/4" = 1'-0"



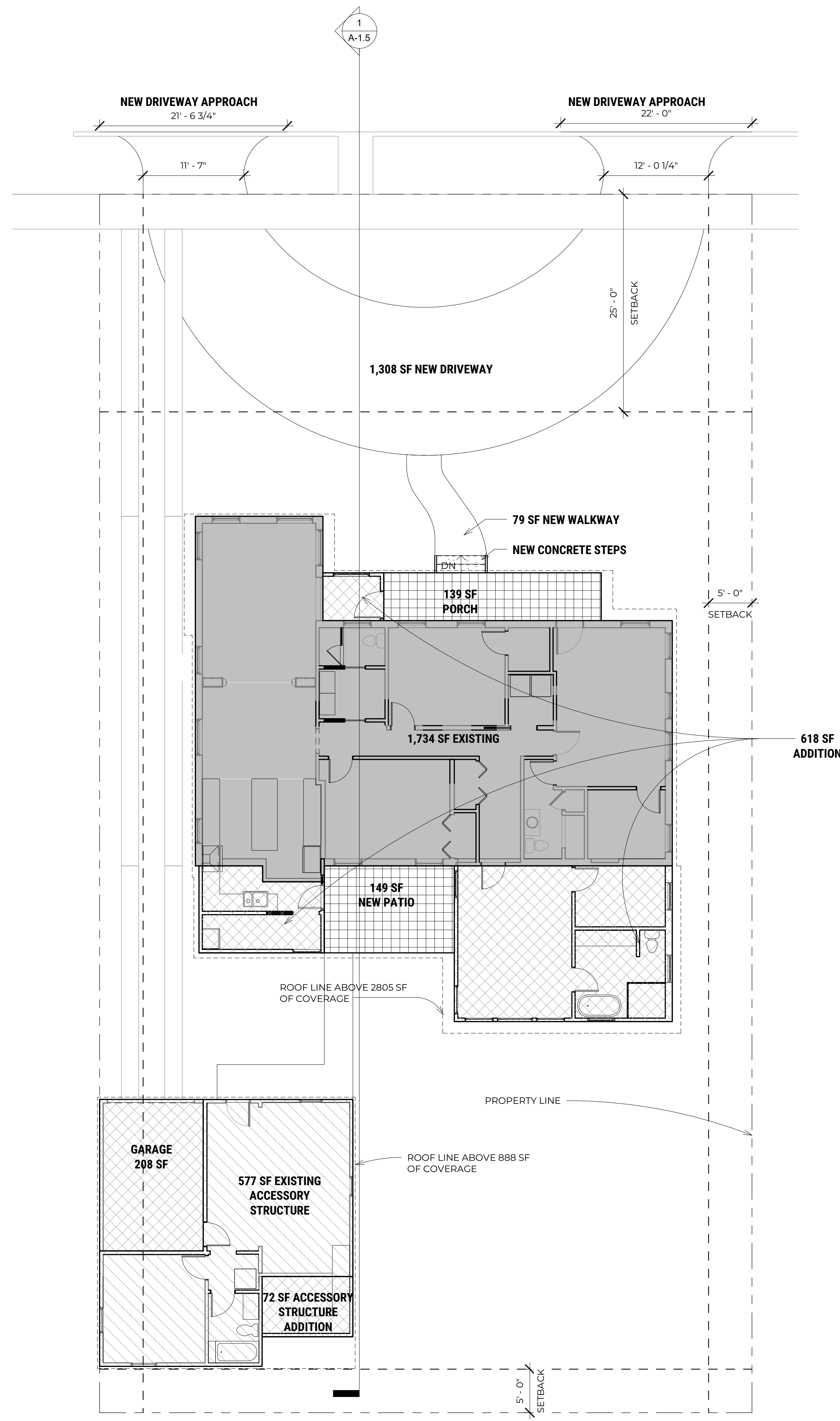
**1 GARAGE PROPOSED PLAN**  
1/4" = 1'-0"

**DIANA FLORES**

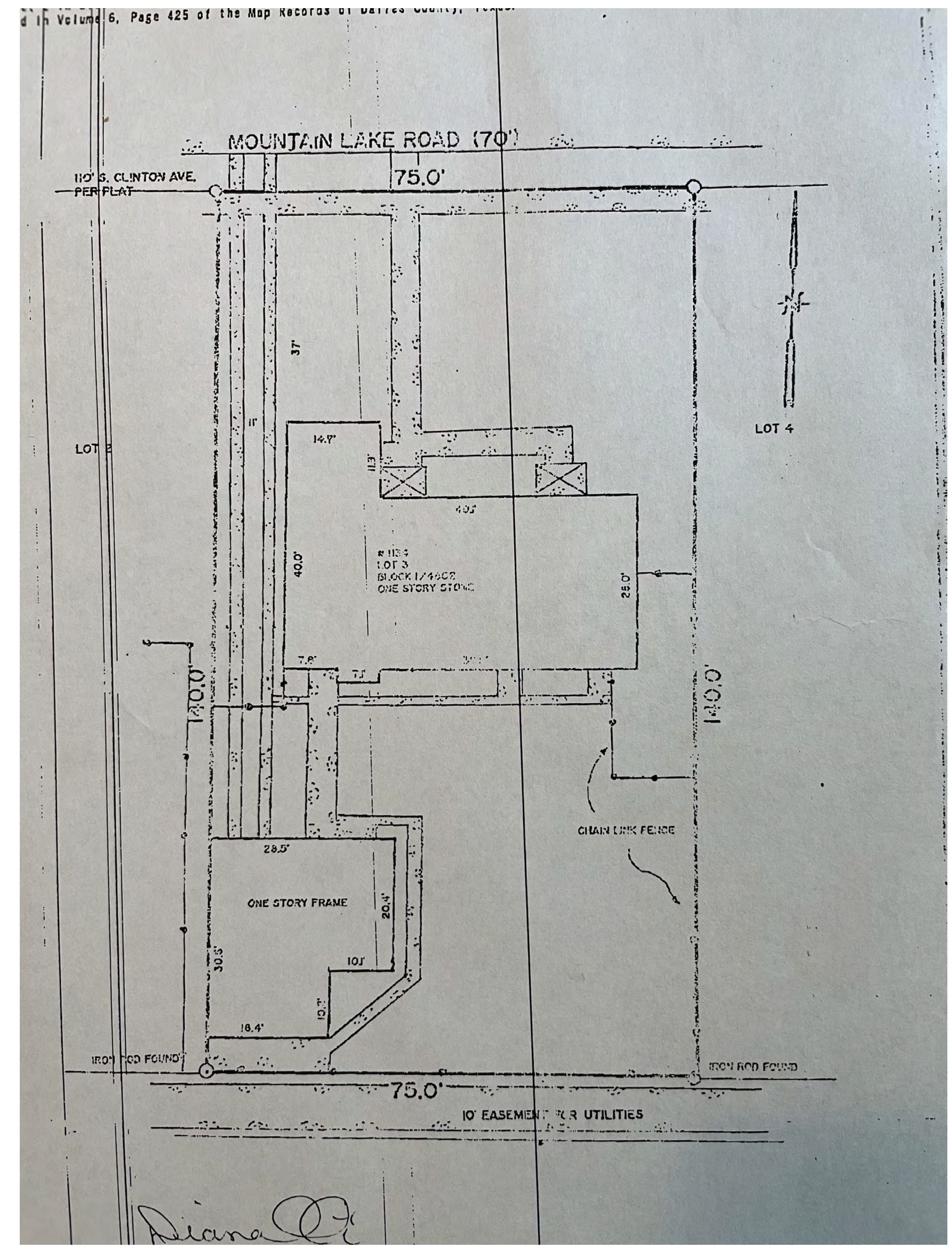
1134 MOUNTAIN LAKE ROAD  
DALLAS, TX 75224

GARAGE PLANS

Project number: 21.01-03  
Date: 04-08-22



2 STIE PLAN  
1/8" = 1'-0"



SURVEY - FOR REFERENCE

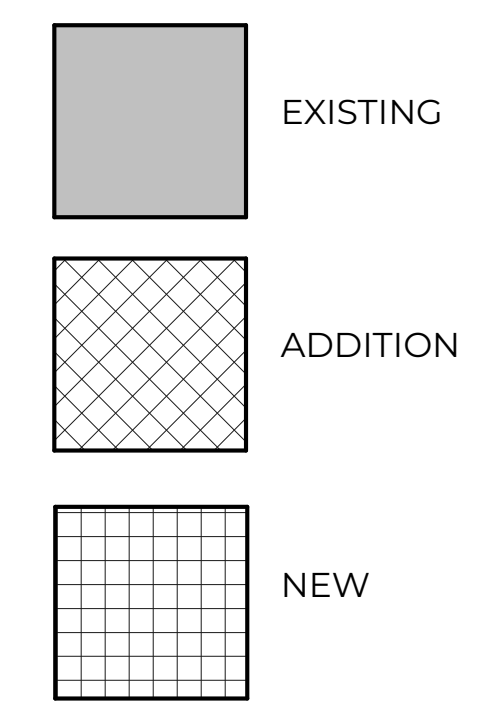
**ZONING INFORMATION**

ZONING TYPE:	R-7.5 (A)
<b>SITE RESTRICTIONS</b>	
R-7.5 (A)	
FRONT SETBACK:	25 FT
SIDE/REAR SETBACKS:	5 FT
HEIGHT:	30 FT
HEIGHT (ACCESSORY):	17 FT
BASED ON EXISTING HOUSE	
LOT COVERAGE:	45%
<b>LOT COVERAGE CALCULATIONS:</b>	
LOT SIZE:	10,500 SQ FT
ALLOWED TOTAL COVERAGE:	4,725 SQ FT
CURRENT COVERAGE:	2,809 SQ FT
CURRENT PERCENTAGE:	26.8%
ALLOWED COVERAGE EXPANSION:	1,916 SQ FT
PROPOSED COVERAGE EXPANSION:	920 SQ FT

**ACCESSORY STRUCTURE:**

SIZE LIMIT:	25%
MAIN HOUSE LIVING SPACE: (INCLUDES ADDITION TO MAIN HOUSE INCLUDES PORCHES)	2,640 SQ FT
ALLOWABLE PER 25%:	660 SQ FT
EXISTING ACCESSORY STRUCTURE: PARKING AREA:	785 SQ FT (208 SQ FT)
ADDITION:	72 SQ FT
<b>PROPOSED ACCESSORY STRUCTURE: (TOTAL)</b>	<b>649 SQ FT</b>

**SCOPE LEGEND**



Panel A

02-22-22

BOA212-013

1134 Mountain Lake Rd.

(Opposition Reference)

**From:** [Don Claude](#)  
**To:** [Jackson, Latonia](#)  
**Subject:** BDA212-013(PD) opposed  
**Date:** Tuesday, February 22, 2022 9:24:56 AM

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**External Email!**

My name is Leverdia Roberson I am 71 yr old physically disabled woman. This is a mostly quiet and safe neighborhood I have proudly resided in and maintained for over 25yrs. My husband passed away in 2016 and my son works nights. My concern is not feeling safe me due to structure being so close to my backyard with the possibility of the property being rented or bringing a criminal element.

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**FILE NUMBER:** BDA212-017(PD)

**BUILDING OFFICIAL'S REPORT:** Application of Joseph F. DePumpo for variances to the side yard setback regulations at 4715 Reiger Avenue. This property is more fully described as a part of Lot 1 in City Block F/799 and is zoned Planned Development District No. 98, a Multiple Family designation, which requires a side yard setback of ten feet. The applicant proposes to maintain the existing multiple-family dwelling and construct and maintain an addition to the multiple-family structure and provide a four-foot side yard setback on the northeast side, which will require a six-foot variance to the side yard setback regulations on the northeast side, and provide an eight-foot-seven-inch setback on the southwest side which will require a one-foot-five-inch variance to the side yard setback regulations on the southwest side.

**LOCATION:** 4715 Reiger Avenue

**APPLICANT:** Joseph F. DePumpo

**REQUESTS:**

A request for a variance to the side yard setback regulations of four feet on the northeast side, and one-foot-five-inch on the southwest side is made to maintain the existing structure and construct and maintain additions to the multiple family structure along both side yard setbacks.

**UPDATES:**

No updates have been provided.

**STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, **side yard**, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and



- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**State Law/HB 1475 effective 9-1-21**

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:
- (a) 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 (Submission of Rolls to Taxing Units), Tax Code;
  - (b) 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 is authorized to physically occur;
  - (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
  - (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
  - (e) the municipality consider the structure to be a nonconforming structure.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

Staff concluded that the subject site is unique and different from most lots in this MF-2 Multiple Family District considering its restrictive lot area of 11,950 square feet. The applicant submitted evidence with the submitted application materials (**Attachment A**) comparing lot size and floor area ratios within the same zoning district. Per the comparative analysis, the average lot area is 19,464 square feet and the average floor area of structures being 11,491 square feet. Thus, in analyzing the comparative properties the restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

## **BACKGROUND INFORMATION:**

### **Zoning:**

<u>Site:</u>	PDD No. 98 Multiple Family
<u>North:</u>	PDD No. 98 Single Family
<u>South:</u>	PDD No. 98 Multiple Family
<u>East:</u>	PDD No. 98 Single Family
<u>West:</u>	PDD No. 98 Multiple Family

### **Land Use:**

The subject site and surrounding properties to the west and south are developed with multiple-family dwelling units while the properties to the north and east are developed with single-family dwellings.

### **Zoning/BDA History:**

There have been no related board or zoning cases in the vicinity within the last five years.

## **GENERAL FACTS/STAFF ANALYSIS:**

This request focuses on maintaining the existing portion of the structure along the northeast, southeast, and southwest portions of the structure that encroach into the 10-foot side yard setbacks. However, since the Development Code regulates compliance with the most restrictive requirement, the variance will only focus on the northeast and southwest encroachments. The proposed site plan will ensure compliance with the less restrictive portion along the southeast. The request proposes to construct and maintain an addition to an existing covered porch along the southwestern portion of the structure of approximately 96 square feet of floor area and will encroach one-foot-five-inches into the side yard setback along the southwestern portion of the structure.

An addition is proposed of approximately 300 square feet of floor area to the first floor of the existing structure to enclose the existing first floor unenclosed porch and an approximately 426 square feet of floor area to the second floor to align the second story with the façade and footprint of the first story along the southeastern portion of the structure. While additions are proposed along the front façade of the structure, neither the existing structure or additions are proposed to extend beyond the existing footprint or encroach into the required 30-foot front yard setback.

The portions of the structure along the southeastern façade where an encroachment of two-feet-seven-inches already exists is being brought into compliance while the proposed second-story addition proposes to follow the same footprint and encroachment. Additionally, the applicant proposes to provide an addition of approximately 475-square-feet to the first and second story along the rear of the

structure and proposes to align the addition with the portion of the façade and roofline currently encroaching into the seven-foot-five-inch side yard setback along the northeastern façade of the structure.

The site is currently developed with a multiple family dwelling unit consisting of three dwelling units, constructed in 1918, according to Dallas County Appraisal District records, and situated along an interior yard and the north line of Reiger Avenue. The additions are proposed to total 1,297 square feet of floor area. The existing structure contains approximately 2,945 square feet. The proposed additions, while not increasing the number of dwellings, will enlarge two of the existing dwelling units and provide a total of 4,242-square feet of floor area.

Structures on lots designated multiple family must have a minimum side yard setback of ten feet. A site plan has been submitted denoting the portions of the existing multiple family structure and the proposed addition to provide varied setbacks of four-feet along the northeast side, seven-feet-five-inches on the southeast side, and eight-feet-seven-inches on the southwest side.

PDD No. 98 differs from most Planned Development Districts since the district designates uses permitted on individual lots. The subject site is designated an MF-2 Multiple Family District with the regulations prescribed in Chapter 51. An MF-2 District in Chapter 51 regulates minimum lot area/size per bedroom per dwelling unit. The following exists for a MF-2 Multiple Family District in Chapter 51:

- No separate bedroom/efficiency requires a minimum of 800 square feet of lot area,
- One bedroom requires a minimum of 1,000 square feet or floor area,
- Two bedrooms require a minimum of 1,200 square feet of floor area, and
- More than two bedrooms add this amount (150 square feet of floor area) for each bedroom over two.

In accordance with the above floor area ratios, the proposed floor plan containing eight bedrooms within three dwelling units require a minimum of 3,900 square feet of lot area. However, the minimum lot area of 3,900 square feet does not include the minimum lot area for the off-street parking requirements of one space per bedroom and .25 per guest for a total of ten off-street parking spaces with a minimum area of 8-feet x 15-feet for a minimum area of 1,200 square feet of lot area. The minimum lot area of 3,900 square feet plus 1,200 feet lot area for a total lot area of 5,100 square feet of lot area does also not include the minimum requirement for infrastructure which typically constitutes ten percent of the lot area, the setback regulations or landscape requirements for the site which can further reduce the lot area or buildable area.

The subject site is not irregular in shape and contains approximately 11,950 square feet of lot area and 2,945 square feet of floor area. The applicant submitted evidence with the submitted application materials (**Attachment A**) comparing lot size and floor area ratios within the same zoning district. Per the comparative analysis, the average lot area is 19,464 square feet and the average floor area of structures is 11,491 square feet. Thus, in analyzing the comparative properties the restrictive area of the subject site ensures that the site cannot be developed in a manner commensurate with development upon other parcels of land with the same zoning.

Additionally, PDD No. 98 Sec. 51P-98.105(3) establishes that existing residential structures may not be remodeled or replaced so as to exceed the existing number of dwellings in each existing structure. Any multiple-family or duplex structure that is remodeled for a lesser number of units will thereafter be limited to the more restrictive number of units.

Thus, staff concludes that the subject site is unique and different from most lots in this MF-2 Multiple Family designation within PDD No. 98 considering its restrictive lot area and restrictive floor area which neither can be increased through enlarging the number of dwellings on the lot which restricts the site from being developed in a manner commensurate with development upon other parcels of land with the same zoning.

The applicant has the burden of proof in establishing the following:

- That granting the variance to the side yard setback regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same MF-2 Multiple Family zoning classification/designation.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same MF-2 Multiple Family zoning classification/designation.

Additionally, the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- 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 (Submission of Rolls to Taxing Units), Tax Code;

- 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 is authorized to physically occur;
- Compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- Compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- The municipality consider the structure to be a nonconforming structure.

As of April 11, 2022, five letters have been submitted in opposition of the request and none in support of the request.

If the board were to grant these side yard setback variance requests and impose the submitted site plan as a condition, development would be limited to what is shown on this document. Granting these variance requests will not provide any relief to the Dallas Development Code regulations.

### **Timeline:**

January 3, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. Additionally, the applicant submitted evidence (**Attachment A**) with the application.

January 23, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

February 3, 2022: The Board of Adjustment Senior Planner emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the February 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

March 2, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board.

No review comment sheets were submitted in conjunction with this application.

March 22, 2022: The Board held the request under advisement until April 19, 2022.

April 11, 2022: No updates have been provided.

### **BOARD OF ADJUSTMENT ACTION: March 22, 2022**

**APPEARING IN FAVOR:** Joseph DePumpo 4715 Reiger Ave. Dallas, TX.

**APPEARING IN OPPOSITION:** Leah Kagan 4728 Victor St. Dallas, TX.

Jim Anderson 4706 Swiss Ave. Dallas, TX.

**MOTION: Lamb**

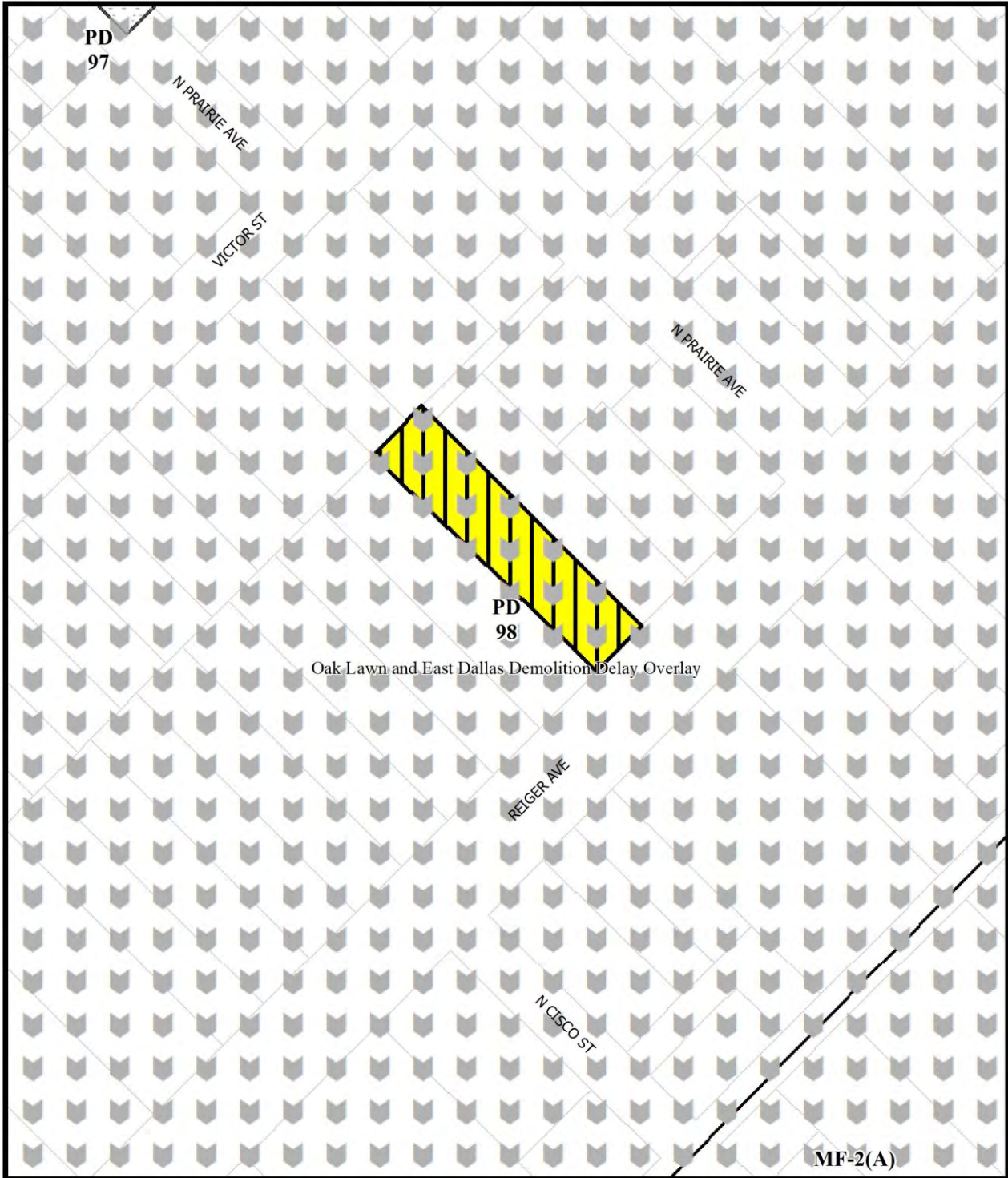
I move that the Board of Adjustment in request No. BDA 212-017, **hold** this matter under advisement until **April 19, 2022**.

**SECONDED: Halcomb**

**AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann**

**NAYS: 0 -**

**MOTION PASSED: 5-0 (unanimously)**

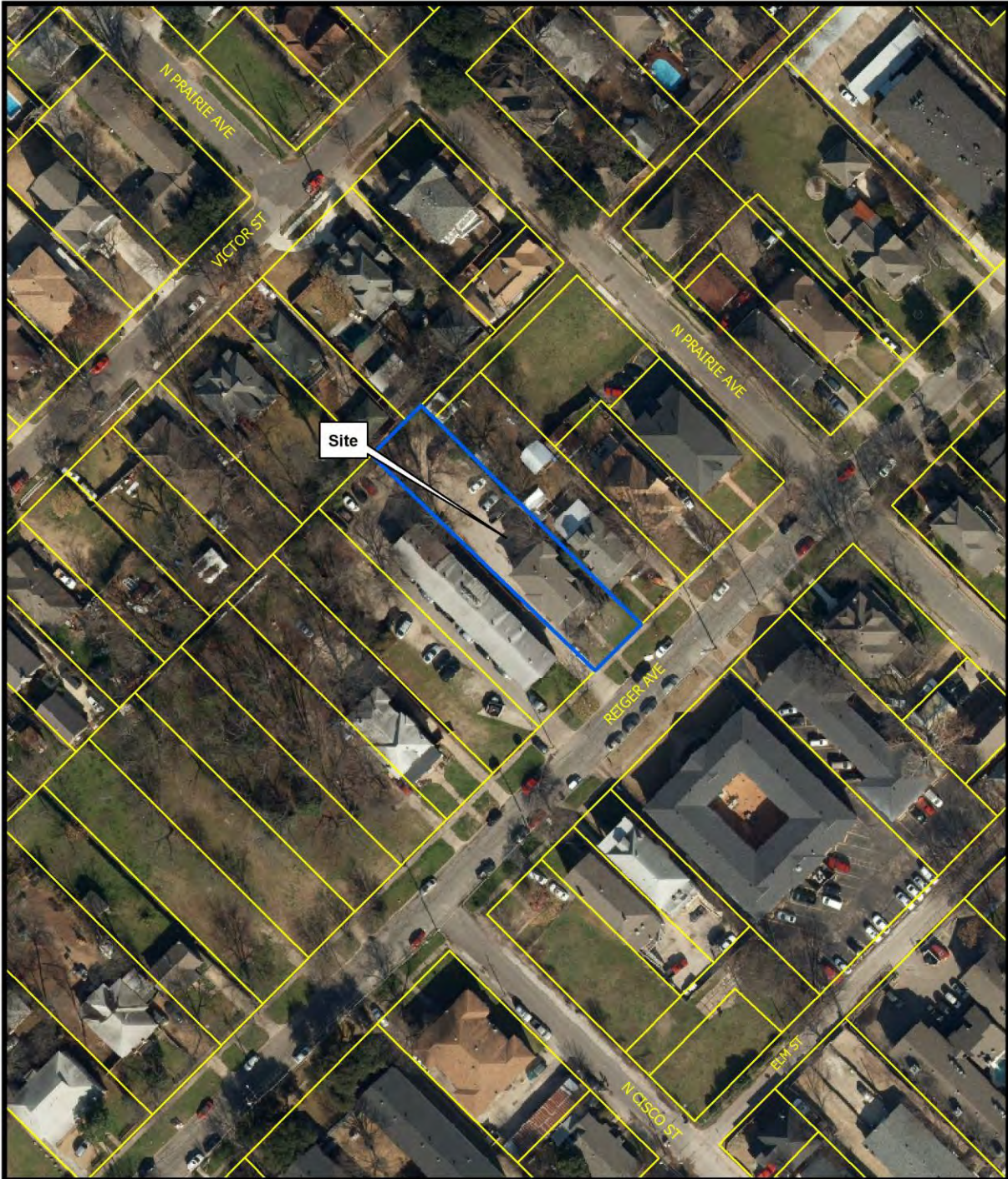


1:1,200

# ZONING MAP

Case no: BDA212-017

Date: 2/1/2022



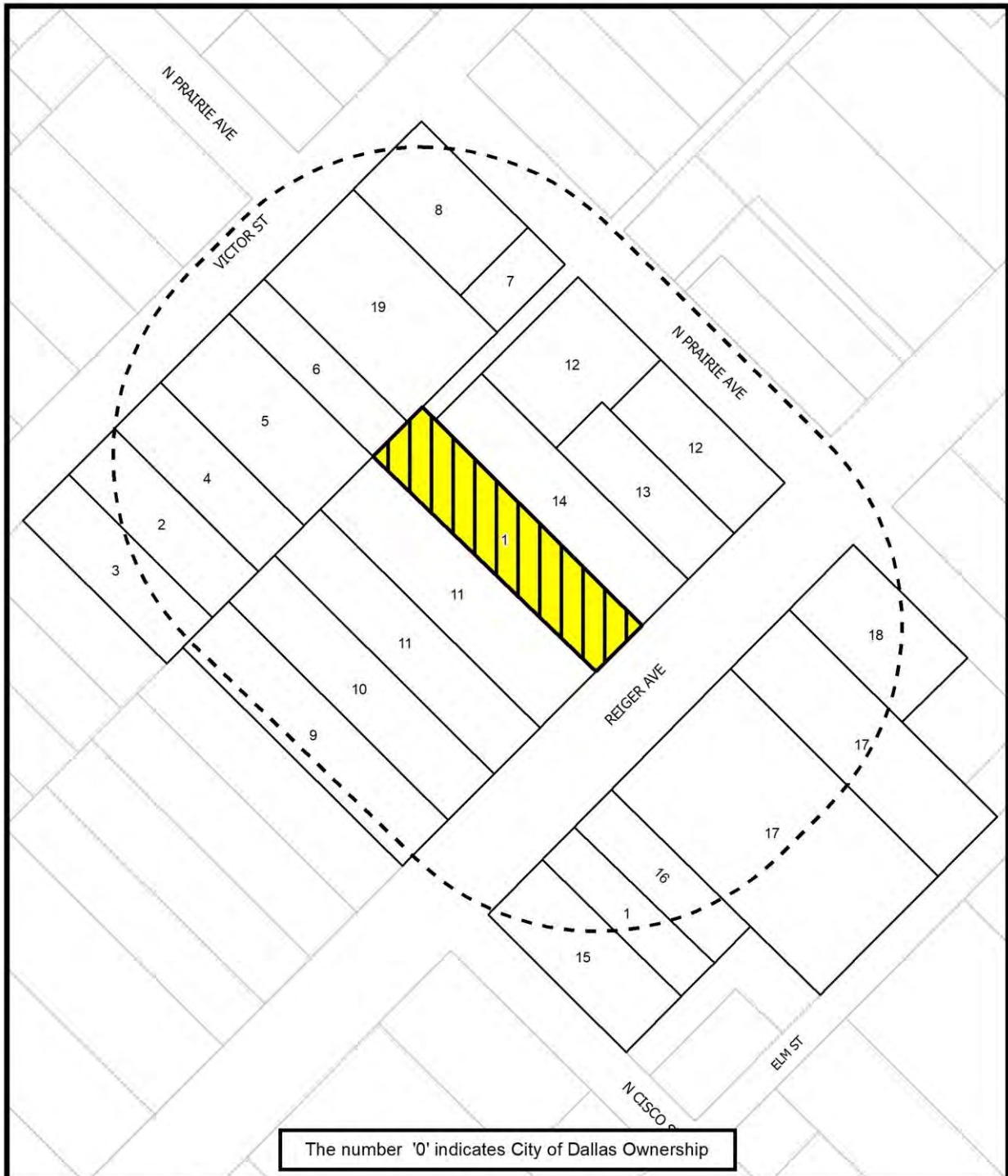
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# AERIAL MAP

Case no: BDA212-017

Date: 2/1/2022





1:1,200

# NOTIFICATION

**200'**

AREA OF NOTIFICATION

**19**

NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA212-017**

Date: **2/1/2022**

02/01/2022

## ***Notification List of Property Owners***

***BDA212-017***

### ***19 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	4715 REIGER AVE	SONICK LLC
2	4716 VICTOR ST	Taxpayer at
3	4712 VICTOR ST	MENDEZ BALDEMAR
4	4720 VICTOR ST	Taxpayer at
5	4726 VICTOR ST	ANDERSON EDWARD M JR
6	4728 VICTOR ST	KAGAN LEAH C
7	321 N PRAIRIE AVE	HOLMES MICHELLE
8	4742 VICTOR ST	HALFORD RANDAL A &
9	4701 REIGER AVE	MIELKE LEROY
10	4705 REIGER AVE	THOMAS GRAHAM
11	4709 REIGER AVE	WWGA 4711 REIGER LLC
12	313 N PRAIRIE AVE	SIMCOE LLC
13	4725 REIGER AVE	HANN KEVIN D & LISA
14	4721 REIGER AVE	BAYER JOEL &
15	4702 REIGER AVE	MAY JORGE RAUL &
16	4710 REIGER AVE	ELKHOURY NEHMAT
17	4718 REIGER AVE	ELLESTAD REIGER PROPERTIES LLC &
18	4726 REIGER AVE	GR DEV LLC
19	4738 VICTOR ST	BARNES ROBIN L



APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 212-017

Data Relative to Subject Property: 4715 Reiger Ave.

Date: 1-3-22

Location address: Dallas, Texas 75246 Zoning District: PD 98

Lot No.: SW 50' Block No.: F/799 Acreage: .274 Census Tract: 15.02

of LT 1 Street Frontage (in Feet): 1) 50' 2) 3) 4) 5)

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): SONICK LLC/Joseph F. DePumpo

Applicant: Joseph F. DePumpo Telephone: 817-707-8695

Mailing Address: 927 Turnberry Lane, Southlake, TX Zip Code: 76092

E-mail Address: joe@jonistar.com

Represented by: Telephone:

Mailing Address: Zip Code:

E-mail Address:

Affirm that an appeal has been made for a Variance X, or Special Exception, of Northwest corner SYSB of 6' encroachment (providing 4' SYSB) and southwest corner SYSB of 1'5" encroachment (providing 8'7" SYSB). Required SYSB is 10'.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

- Structure was build in 1918, prior to zoning, and is currently nonconforming.
- Lot contains less land area than lots in vicinity.
- Structure is only 2,945 sq. ft., whereas stuctures on lots in vicinity are much larger.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

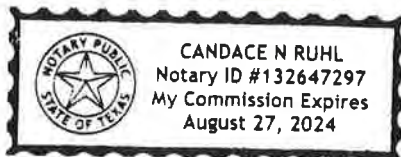
Before me the undersigned on this day personally appeared Joseph F. DePumpo (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: (Affiant/Applicant's signature)

Subscribed and sworn to before me this 30 day of December, 2021

(Rev. 08-01-11)



(Notary Public signature) Notary Public in and for Dallas County, Texas

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

I hereby certify that Joseph DePumpo

did submit a request for a variance to the side yard setback regulations  
at 4715 Reiger Avenue

BDA212-017. Application of Joseph DePumpo for a variance to the side yard setback regulations at 4715 REIGER AVE. This property is more fully described as PT of Lot 1, Block F/799, and is zoned PD-98, which requires a side yard setback of 10 feet. The applicant proposes to construct and maintain a multi-family residential structure and provide a 4 foot side yard setback on the northeast side, which will require a 6 foot variance to the side yard setback regulations on the northeast side, and provide a 8 foot 7 inch side yard setback on the southwest side, which will require a 1 foot 5 inch variance to the side yard setback regulations on the southwest side.

Sincerely,

  
David Session, Building Official

**Revised Attachment to Application/Appeal to the Board of Adjustment  
for Variance for Property at 4715 Reiger Ave.**

Under Section 51A-3.102(d)(10) of the Dallas City Code, the Board of Adjustment has the “powers and duties . . . to grant variances . . . provided that:

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) the variance is not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.”

This application for a variance meets each of these requirements as discussed below.

**Subpart A - Not Contrary to Public Interest**

The requested variance is not contrary to the public interest. The subject property was built in 1918, long before any zoning laws existed, and thus has been nonconforming for many decades. The site plan shows that the existing setback on one side of the structure varies from 4 ft., to 8.5 ft. Moving that side of the structure inward to comply with the 10 ft. setback requirement would destroy the structural design and aesthetics of the building as shown in the elevation plans. Thus, literal enforcement of the 10 ft. setback requirement would, for all practical purposes, require the structure to be demolished, which would result in unnecessary hardship. The spirit of the ordinance will be observed and substantial justice done by granting the requested variance.

**Subpart B - Necessary to Permit Development of a Specific Parcel of Land**

The average lot size and average structure size for multifamily properties adjacent to the subject property are substantially larger than the lot size and structure size for the subject property. For example, the average lot size for the multifamily properties listed below is **19,464 sq. ft.** But the lot size of the subject property is only **11,950 sq. ft.** And the average structure size for those same properties is **11,491 sq. ft.** But the structure size for the subject property is only **2,945 sq. ft.** All the properties are in PD-98 zoning. Two

of the properties are directly across the street from the subject property and the third is immediately next door to it.

	<b>Lot size</b>	<b>Structure size</b>
<i>Directly across the street</i>		
4718 Reiger Ave.	29,250	17,900
4722 Reiger Ave.	14,625	8,542
<i>Property on left when viewed from street</i>		
4711 Reiger Ave.	14,518	8,032
<i>Average</i>	19,464	11,491

This comparison demonstrates that the lot at issue “differs from other parcels of land by being of such a restrictive area . . . that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning” as required by Subpart B.

**Subpart C - Not Sought to Relieve a Self-Created or Personal Hardship**

The requested variance is not sought to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

Applicant is an attentive and responsible property owner who has owned this property for over sixteen years. In addition to this variance request, Applicant has submitted a permit application to renovate and substantially improve the structure, which will benefit the neighborhood and provide even nicer living accommodations at the property. Applicant plans to continue to hold the property for many years to come.

The property contains a three-unit apartment building and the tenants in one of the units have lived there for over fifteen years. A tenant in another unit, who recently moved out, had lived there for over six years. Other tenants have lived in the building for longer than five-year periods under Applicant’s ownership. These long-term tenancies show that Applicant provides well-maintained housing at fair rental rates for stable families, which benefits the community. Applicant’s history shows that it does not seek this variance solely for financial reasons.

## **Section 211.009 of the Local Government Code Provides Additional Support for Granting the Requested Variance**

Section 211.009 of the Local Government Code lists additional items the Board may consider in determining whether a failure to grant a variance would result in an unnecessary hardship to the Applicant. Specifically, Section 211.009(a)(3) allows the Board to authorize a variance that “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 ordinance is observed and substantial justice is done.”

Section 211.009(b-1), in turn, lists the following grounds the Board may consider in determining unnecessary hardship:

In exercising its authority under Subsection (a)(3), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary 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 being in compliance 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 a nonconforming structure.

Local Government Code § 211.009(b-1), effective September 1, 2021.

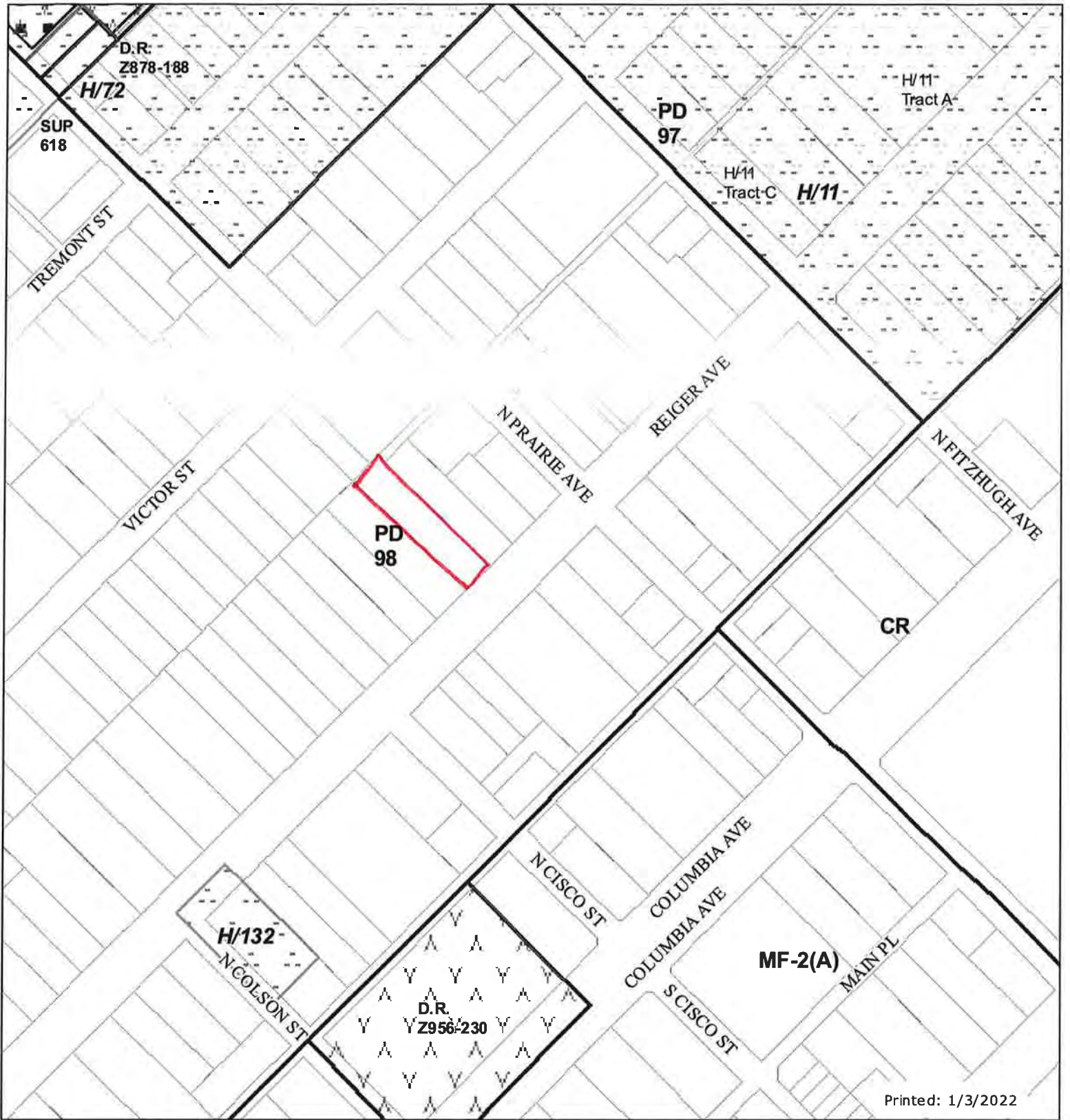
In this case, Sections 211.009(b-1)(1) and (5) show that a failure to grant the variance would result in an unnecessary hardship to the Applicant. Subsection (1) argues in favor of granting the variance because the financial cost of modifying the structure to comply with the 10 ft. side-yard setback is greater than 50 percent of

the appraised value of the structure. Specifically, the Dallas Central Appraisal District's current certified value of the structure is \$144,450. *See* DCAD website. In addition to destroying the aesthetics of the building, the cost of moving the entire side of the building from its existing location (which provides a setback of between 4 ft. and 8.5 ft.) to a 10 ft. setback would greatly exceed \$72,225 (50% of the structure's appraised value).

Subsection 5 also supports granting the variance because the City of Dallas considers the structure to be nonconforming. As explained, the structure was built many decades before the existing 10 ft. setback requirement took effect. Thus, Subsection 5 provides another reason the Board should grant the requested variance.

Applicant meets each requirement of Section 51A-3.102(d)(10)(A)-(C) of the Dallas City Code and has shown that additional considerations in Section 211.009(b-1) of the Local Government Code demonstrate that a refusal to grant the requested variance would cause Applicant unnecessary hardship. Accordingly, Applicant respectfully requests that the Board grant the requested variance.





Printed: 1/3/2022

### Legend

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO Overlay                |
| Peak's Branch        | SPSP Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)



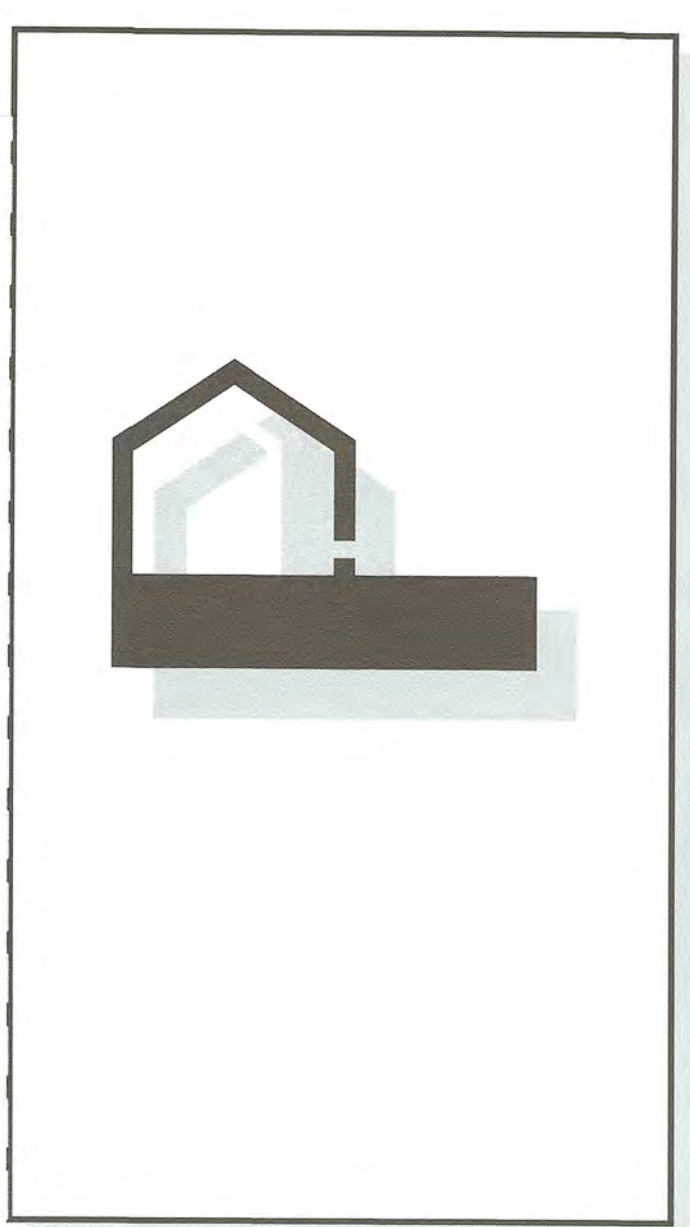


ADDITION  
CITY OF DALLAS PLAT BOOKS  
SCALE 80 FT. EQUALS 1 INCH

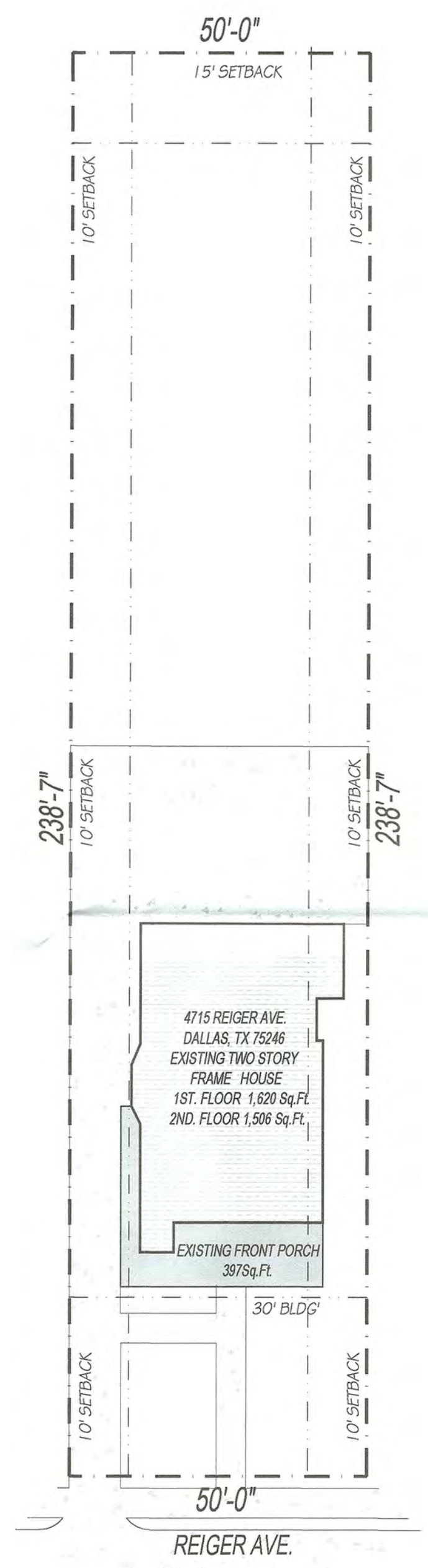


VICINITY MAP  
for reference only

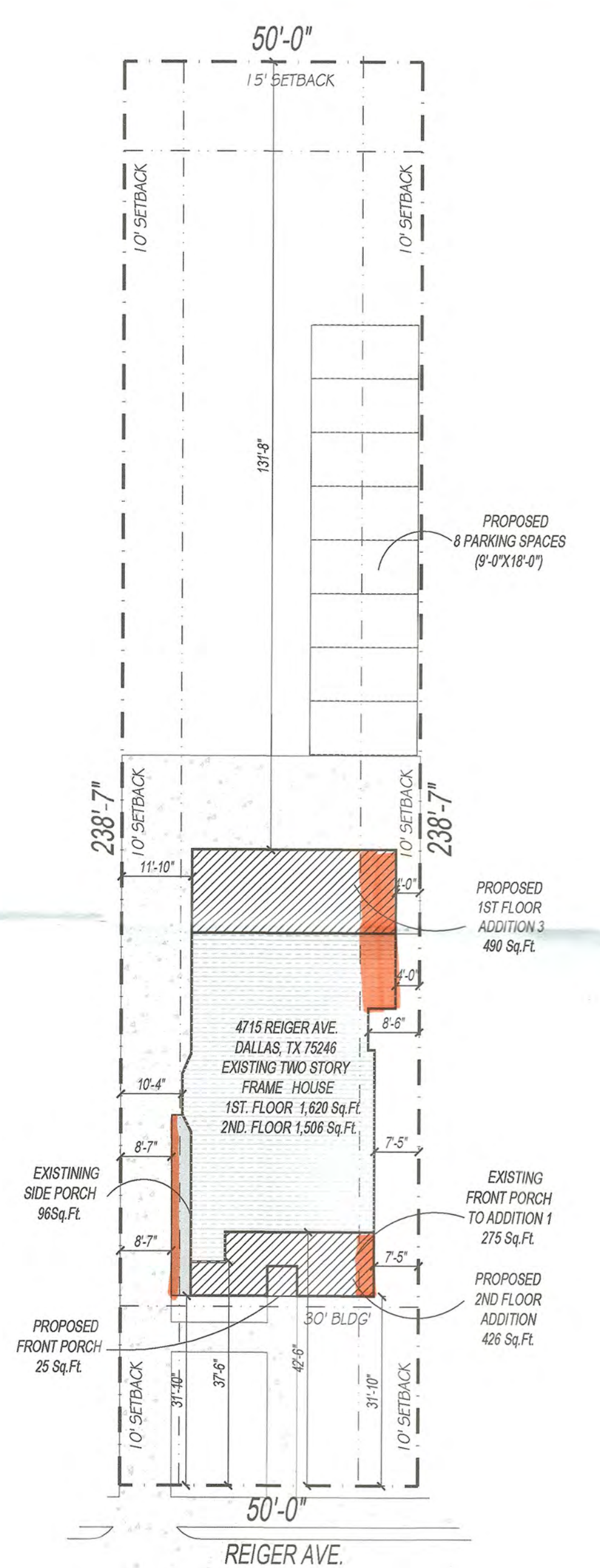
ONLINE PERMIT ONLY



Revision	Date



1 EXISTING SITE PLAN  
Scale: 1'-0":20'



2 PROPOSED SITE PLAN  
Scale: 1'-0":20'

212-917

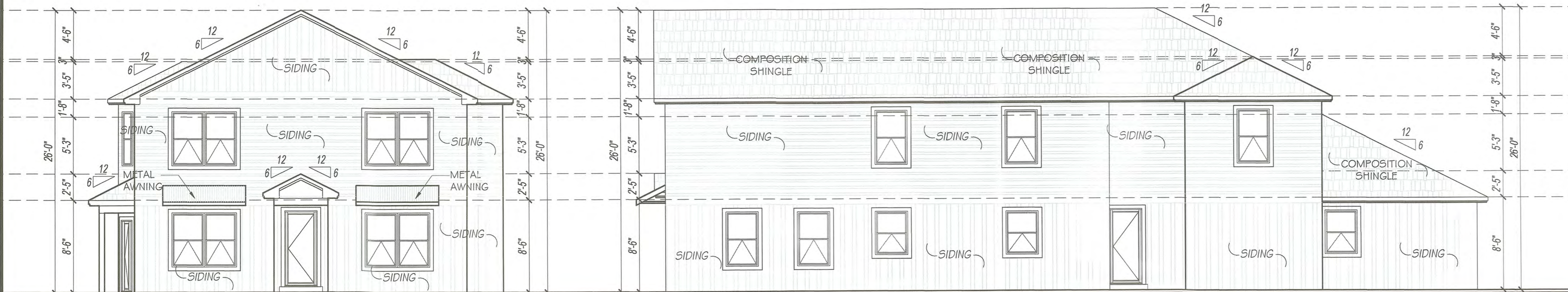
THESE PLANS ARE INTENDED TO PROVIDE BASIC CONSTRUCTION INFORMATION NECESSARY TO SUBSTANTIALLY BUILD THIS STRUCTURE. THESE PLANS MUST BE VERIFIED AND CHECKED BY THE BUILDER, HOMEOWNER, AND ALL CONTRACTORS OF THIS JOB PRIOR TO CONSTRUCTION. BUILDER SHOULD OBTAIN COMPLETE ENGINEERING SERVICES, H.V.A.C., AND STRUCTURAL BEFORE BEGINNING CONSTRUCTION OF ANY KIND. NOTE: ALL FEDERAL, STATE, AND LOCAL CODES AND RESTRICTIONS TAKE PRECEDENCE OVER ANY PART OF THESE PLANS.

GREAT CARE AND EFFORT HAVE GONE INTO THE CREATION OF THESE BLUEPRINTS. HOWEVER, BECAUSE OF THE VARIANCE IN GEOGRAPHIC LOCATIONS, FC & AH WILL NOT ASSUME LIABILITY FOR ANY DAMAGES DUE TO ERRORS, OMISSIONS, OR DEFICIENCIES ON THESE PLANS. OWNER/BUILDER MUST COMPLY WITH LOCAL BUILDING CODES PRIOR TO COMMENCEMENT OF CONSTRUCTION.

THE PURCHASE OF THESE PLANS ENTITLES THE BUYER TO CONSTRUCT THIS HOUSE ONLY ONCE. ANY COPYING, TRACING, OR ALTERING OF THESE PLANS IS NOT PERMITTED. VIOLATORS WILL BE SUBJECT TO PROSECUTION UNDER COPYRIGHT LAWS.

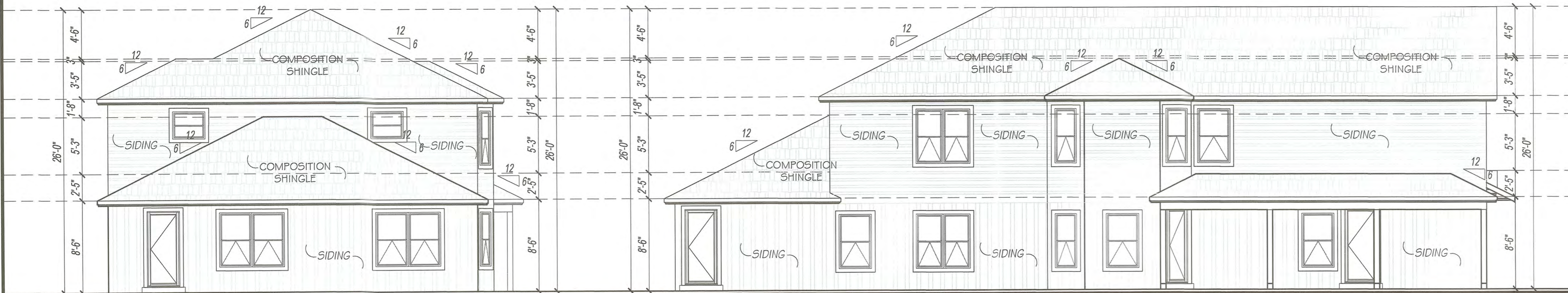
Project Name & Address  
4715 REIGER AVE.  
DALLAS, TX  
75246

Project SITE	Sheet
Date 09/01/21	<b>1.0</b>
Scale 1'-0"=20'	
Drawn By AH	



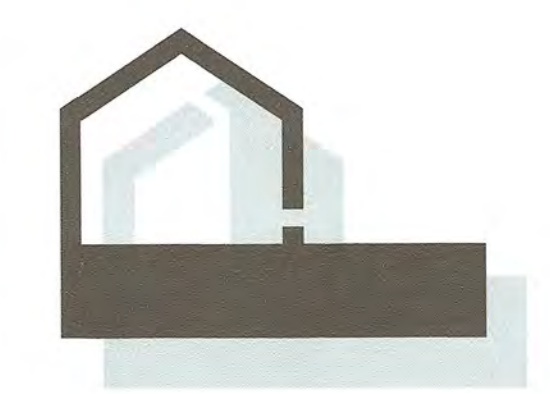
**1 FRONT ELEVATION**  
Scale: 3/16"=1'-0"

**2 RIGHT ELEVATION**  
Scale: 3/16"=1'-0"



**3 REAR ELEVATION**  
Scale: 3/16"=1'-0"

**4 LEFT ELEVATION**  
Scale: 3/16"=1'-0"



Revision	Date

THESE PLANS ARE INTENDED TO PROVIDE BASIC CONSTRUCTION INFORMATION NECESSARY TO SUBSTANTIALLY BUILD THIS STRUCTURE. THESE PLANS MUST BE VERIFIED AND CHECKED BY THE BUILDER, HOMEOWNER, AND ALL CONTRACTORS OF THIS JOB PRIOR TO CONSTRUCTION. BUILDER SHOULD OBTAIN COMPLETE ENGINEERING SERVICES, HVAC, AND STRUCTURAL BEFORE BEGINNING CONSTRUCTION OF ANY KIND. NOTE: ALL FEDERAL, STATE, AND LOCAL CODES AND RESTRICTIONS TAKE PRECEDENCE OVER ANY PART OF THESE PLANS.

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THE PURCHASE OF THESE PLANS ENTITLES THE BUYER TO CONSTRUCT THIS HOUSE ONLY ONCE. ANY COPYING, TRACING, OR ALTERING OF THESE PLANS IS NOT PERMITTED. VIOLATORS WILL BE SUBJECT TO PROSECUTION UNDER COPYRIGHT LAWS.

Project Name & Address  
4715 REIGER AVE.  
DALLAS, TX  
75246

Project ELEVATIONS	Sheet
Date 09/01/21	<b>2.0</b>
Scale 3/16"=1'-0"	
Drawn By AH	

512-417  
2-417

# **BDA212-017 \_ATTACHMENT\_A**

## **Revised Attachment to Application/Appeal to the Board of Adjustment for Variance for Property at 4715 Reiger Ave.**

Under Section 51A-3.102(d)(10) of the Dallas City Code, the Board of Adjustment has the “powers and duties . . . to grant variances . . . provided that:

- (A) the variance is not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) the variance is necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) the variance is not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.”

This application for a variance meets each of these requirements as discussed below.

### **Subpart A - Not Contrary to Public Interest**

The requested variance is not contrary to the public interest. The subject property was built in 1918, long before any zoning laws existed, and thus has been nonconforming for many decades. The site plan shows that the existing setback on one side of the structure varies from 4 ft., to 8.5 ft. Moving that side of the structure inward to comply with the 10 ft. setback requirement would destroy the structural design and aesthetics of the building as shown in the elevation plans. Thus, literal enforcement of the 10 ft. setback requirement would, for all practical purposes, require the structure to be demolished, which would result in unnecessary hardship. The spirit of the ordinance will be observed and substantial justice done by granting the requested variance.

### **Subpart B - Necessary to Permit Development of a Specific Parcel of Land**

The average lot size and average structure size for multifamily properties adjacent to the subject property are substantially larger than the lot size and structure size for the subject property. For example, the average lot size for the multifamily properties listed below is **19,464 sq. ft.** But the lot size of the subject property is only **11,950 sq. ft.** And the average structure size for those same properties is **11,491 sq. ft.** But the structure size for the subject property is only **2,945 sq. ft.** All the properties are in PD-98 zoning. Two

of the properties are directly across the street from the subject property and the third is immediately next door to it.

	<b>Lot size</b>	<b>Structure size</b>
<i>Directly across the street</i>		
4718 Reiger Ave.	29,250	17,900
4722 Reiger Ave.	14,625	8,542
<i>Property on left when viewed from street</i>		
4711 Reiger Ave.	14,518	8,032
<i>Average</i>	19,464	11,491

This comparison demonstrates that the lot at issue “differs from other parcels of land by being of such a restrictive area . . . that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning” as required by Subpart B.

**Subpart C - Not Sought to Relieve a Self-Created or Personal Hardship**

The requested variance is not sought to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

Applicant is an attentive and responsible property owner who has owned this property for over sixteen years. In addition to this variance request, Applicant has submitted a permit application to renovate and substantially improve the structure, which will benefit the neighborhood and provide even nicer living accommodations at the property. Applicant plans to continue to hold the property for many years to come.

The property contains a three-unit apartment building and the tenants in one of the units have lived there for over fifteen years. A tenant in another unit, who recently moved out, had lived there for over six years. Other tenants have lived in the building for longer than five-year periods under Applicant’s ownership. These long-term tenancies show that Applicant provides well-maintained housing at fair rental rates for stable families, which benefits the community. Applicant’s history shows that it does not seek this variance solely for financial reasons.

## **Section 211.009 of the Local Government Code Provides Additional Support for Granting the Requested Variance**

Section 211.009 of the Local Government Code lists additional items the Board may consider in determining whether a failure to grant a variance would result in an unnecessary hardship to the Applicant. Specifically, Section 211.009(a)(3) allows the Board to authorize a variance that “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 ordinance is observed and substantial justice is done.”

Section 211.009(b-1), in turn, lists the following grounds the Board may consider in determining unnecessary hardship:

In exercising its authority under Subsection (a)(3), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary 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 being in compliance 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 a nonconforming structure.

Local Government Code § 211.009(b-1), effective September 1, 2021.

In this case, Sections 211.009(b-1)(1) and (5) show that a failure to grant the variance would result in an unnecessary hardship to the Applicant. Subsection (1) argues in favor of granting the variance because the financial cost of modifying the structure to comply with the 10 ft. side-yard setback is greater than 50 percent of

the appraised value of the structure. Specifically, the Dallas Central Appraisal District's current certified value of the structure is \$144,450. *See* DCAD website. In addition to destroying the aesthetics of the building, the cost of moving the entire side of the building from its existing location (which provides a setback of between 4 ft. and 8.5 ft.) to a 10 ft. setback would greatly exceed \$72,225 (50% of the structure's appraised value).

Subsection 5 also supports granting the variance because the City of Dallas considers the structure to be nonconforming. As explained, the structure was built many decades before the existing 10 ft. setback requirement took effect. Thus, Subsection 5 provides another reason the Board should grant the requested variance.

Applicant meets each requirement of Section 51A-3.102(d)(10)(A)-(C) of the Dallas City Code and has shown that additional considerations in Section 211.009(b-1) of the Local Government Code demonstrate that a refusal to grant the requested variance would cause Applicant unnecessary hardship. Accordingly, Applicant respectfully requests that the Board grant the requested variance.



April 6, 2022

Ms. Jennifer Munoz and Board of Adjustment, Panel A  
1500 Marilla St., 5BN  
Dallas, TX 75201

RE: BDA 212-071(PD)

Dear Ms. Munoz and Board Members:

Members of Peak's Addition Homeowner's Association and adjacent neighbors to 4715 Reiger Avenue met with the property owner, Mr. Joseph DePumpo, on March 20<sup>th</sup>, a day prior to the initial Board of Adjustment hearing on this case. The neighborhood's concerns regarding the proposed set-backs were discussed, and multiple options were suggested at that time.

Subsequent to the hearing, Mr. DePumpo reached out to two of our board members, Dr. Patricia Simon, our president, and Ms. Leah Kagan, our secretary. Lengthy discussions ensued, both on the phone and via e-mail. It was made clear to Mr. DePumpo that in addition to the safety of the immediate neighbors with respect to fire code, the fabric of the historic neighborhood is of great concern. The neighbors came to an agreement that if Mr. DePumpo would give a "nod" to the fact that his property is a house built in the early 1900's by maintaining a front porch which is in alignment with the original porches to the East of his property, we would agree to a five-foot side yard set-back, as is required for single-family structures. However, if he insists on making the structure look like the multi-family structures built after 1920 by adding the front addition, then we would expect him to adhere to the set-backs set forth by code for multi-family structures; that being ten-feet.

Mr. DePumpo presented a picture (attached) as an example of what he felt could achieve his goal of increased interior space, while maintaining a porch. The majority of neighbors stated they could live with this porch concept. Yet, in the same correspondence to Ms. Kagan and Dr. Simon, he correctly stated that PD98 does not require a front porch. He felt that we are "creating leverage to require one". We want to be clear, that we are attempting to compromise—not create leverage. We do not need to agree to a five-foot side yard set-back, as this property's use is Multi-family, and is required to have a ten-foot set-back. There is no hardship here.

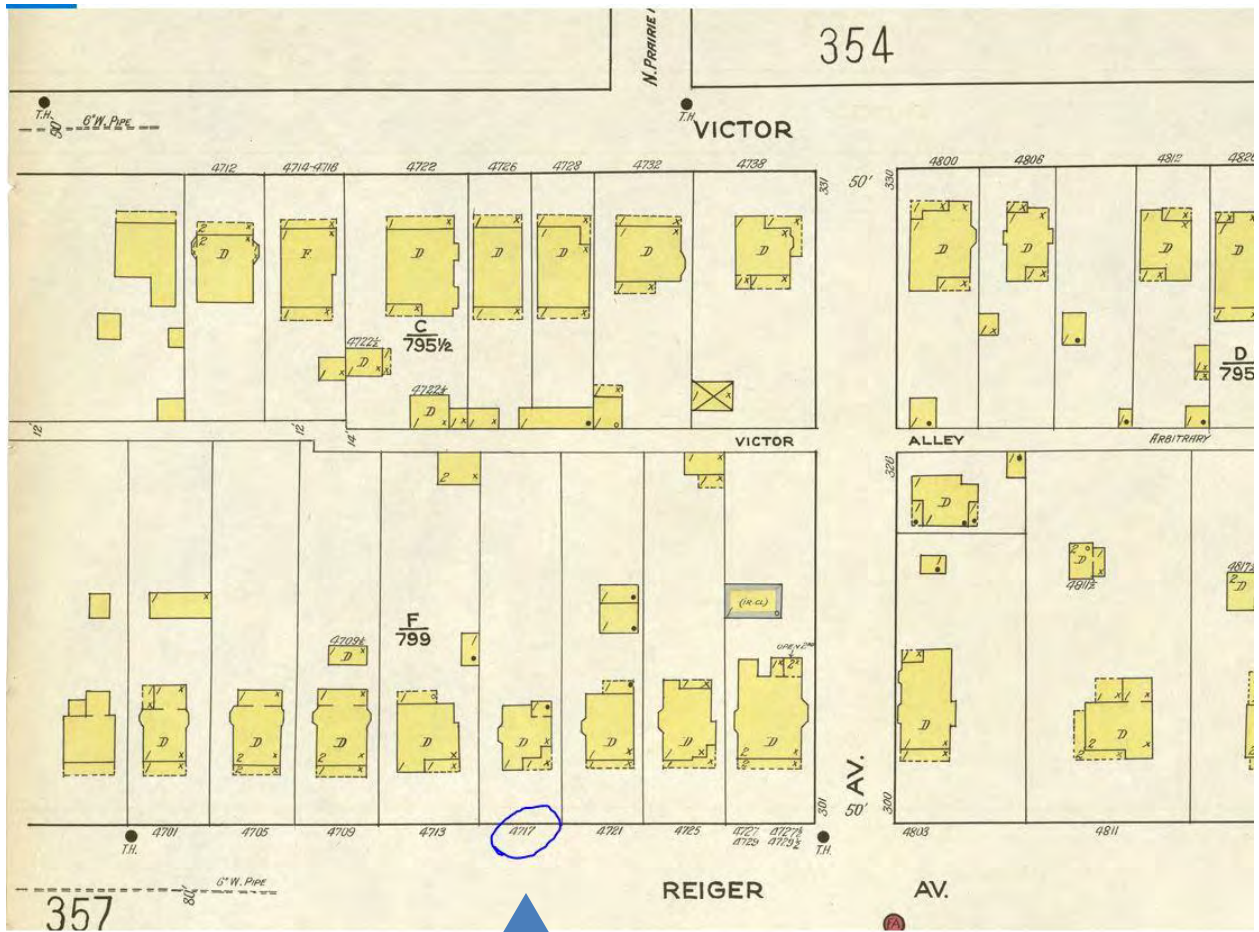
The rhythm and space of the block-face is of utmost importance to PD98—a PD whose sole goal is to stabilize this single-family neighborhood. If Mr. DePumpo cannot agree to the porch, we respectfully do not agree to anything less than a ten-foot side-yard setback.

Best regards,

Jim Anderson  
2nd Vice President  
Peak's Addition Homeowner's Association



Porch proposed by Mr. Joseph DePumpo in email correspondence to Leah Kagan and Patricia Simon on Friday, March 25, 2022.



4515 Reiger Avenue circa 1922  
(previously known as 4717 Reiger)

Panel A

04-19-22

BDA212-017

4715 Reiger Ave.

(Opposition Letters)

**From:** [Munoz, Jennifer](#)  
**To:** [Jackson, Latonia](#); [Daniel, Pamela](#)  
**Subject:** FW: Opposition to BDA212-017(PD)  
**Date:** Monday, March 21, 2022 12:48:28 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

Please share.

Sincerely,



**Jennifer Muñoz**

*Chief Planner/Board Administrator  
Planning Manager (Interim)*

**City of Dallas** | [www.dallascityhall.com](http://www.dallascityhall.com)

Planning and Urban Design  
1500 Marilla Street, 5BN  
Dallas, TX 75201  
O: 214-670-4208

**Working Remotely, please call:**

**Google Voice: 972-926-3691**

[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)



**\*\*OPEN RECORDS NOTICE:** *This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.\*\**

How am I doing? Please contact my supervisor at [andreea.udrea@dallascityhall.com](mailto:andreea.udrea@dallascityhall.com).

---

**From:** Mac Anderson <[REDACTED]>  
**Sent:** Monday, March 21, 2022 12:43 PM  
**To:** Munoz, Jennifer <jennifer.munoz@dallascityhall.com>  
**Subject:** Opposition to BDA212-017(PD)

**External Email!**

Dear Ms. Munoz and Board of Adjustment:

I would first like to state the short notification by the city in this matter is unacceptable. I received my letter on Thursday and received a callback from City planner Pamela Daniels on Friday to explain specifically what the property owner was proposing. The examples on the back of the letter of the before and after of the structure are the size of a postage stamp and hard to makeout with the use of a magnifying glass.The mail in form is unreadable and totally useless if they expect it to receive it by mail by Tuesday.To my understanding this should have been sent out 30 days in advance to residents to give them time to make an informed decision. With that said, I'm opposed to changing

the setbacks because it's against fire codes and poses a danger to surrounding residences in a neighborhood of predominantly wood framed structures.

Hopefully we can meet somewhere in the middle but I'm not willing to change regulations to facilitate business. I have worked hard over the past fifty years to cleanup and preserve one of Dallas's oldest residential neighborhoods and make it a desirable place live. This is my home and not a business.

Sincerely,  
Edward Anderson  
4726 Victor street  
Dallas ,Texas 75246

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Leah Kagan](#)  
**To:** [Munoz, Jennifer](#)  
**Subject:** BDA 212-017(PD)  
**Date:** Friday, April 8, 2022 10:39:56 AM  
**Attachments:** [LCK response to DePumpo 3.28.22 threatening email and slander.pdf](#)  
[LCK response to 3.25.22 DePumpo non-spam email.pdf](#)  
[DePumpo 4.3.22 email.pdf](#)  
[DePumpo - 3.25.22 email.pdf](#)

---

**External Email!**

Dear Ms. Munoz:

I write regarding the side-yard setbacks requested by Joe DePumpo for the property at 4715 Reiger Ave. I am the Secretary of the Peaks Addition Homeowners Association. I am also the owner and resident at 4728 Victor Street, the property directly adjacent to Mr. DePumpo's multi-family structure on Reiger.

Dr. Simon (Patty), is the President of our homeowners association. She and I have spent several hours talking to and corresponding with Mr. DePumpo about his plans with the multi-family (3 unit) structure at 4715 Reiger Ave. We met with him in person, along with our Vice President, Jim Anderson, and two long-time neighbors, Mac (40+ year resident and my next door neighbor) and Charlie (30+ year resident on Reiger). In this conversation, we all expressed two primary concerns: 1) the variance requests a 4' setback which is in violation of the fire code and would not be appropriate for either SF or MF and 2) the destruction of the front porch to look more like an apartment building will change the nature and historic character of the neighborhood (our neighborhood is known for its large collection of prairie, victorian, and craftsman style homes). Subsequent to this meeting, at the last hearing before the BoA, Mr. DePumpo asked for the hearing to be carried over so that he can meet with the neighborhood and try to work out a compromise. The BoA acknowledged the importance of doing so.

Although Dr. Simon and I went into these lengthy conversations/correspondence with Mr. DePumpo in good faith and with a desire to achieve what is best for the neighborhood both from a safety perspective while preserving the fabric of the community, the communications from Mr. DePumpo became aggressive, accusatory, and slanderous of me personally. I have attached our email correspondence to this so that you can see the full picture. Mr. DePumpo accused us of being bullies, of leveraging our position, and personally threatened me. Despite this, because it appeared that Mr. DePumpo would agree to a half-porch concept consistent with the neighborhood historic home appearance, and agreed to a 5' SF setback on the 4' setback side (even though he is a MF and that requires a 10' setback), Dr. Simon presented this to the HOA members who had signed the petition objecting to Mr. DePumpo's variance. The responses received indicated that there would be no objection to the 5' setback and half-porch concept (my vote was to approve the 5' setback and half-porch concept as well). Accordingly, I emailed Mr. DePumpo on March 30, 2022 informing him of the agreed-upon compromise and stated "We are hopeful that this compromise will maintain the integrity of the fabric of this historic community while providing you and your team the financial benefits you seek." In response, Mr. DePumpo seemed to refuse to commit to the half-porch concept - a key to the agreement - and instead informed Dr. Simon and I:

"As for the porch, Section 51A-3.102(d)(10) grants the BOA "the powers and duties . . . [t]o grant

variances from the front yard, side yard, rear yard" setbacks. Thus, it either grants or denies a requested variance. Neither it nor the City has the power to enforce a private agreement between a neighborhood association and a property owner to build a porch, install a bird bath, paint the shutters a certain color, plant trees, or any other requirement the neighborhood association has imposed as a condition to withdrawing its objection to a requested variance. The neighborhood association's recourse if the property owner violates the agreement would be a suit against the property owner for breach of contract. If we decide to do this project, I will have our architect modify the existing plans to show a porch along the lines of the picture I sent you. But I'm not going to that expense now."

Given this response, it appears that Mr. DePumpo is no longer interested in this project and apparently not willing to follow through with the half-porch concept. He appears to be relying upon the idea that the neighborhood's only recourse would be litigation against him. Certainly, neither I nor our HOA have any interest in litigating with Mr. DePumpo or anyone else. If Mr. DePumpo cannot agree clearly and with certainty to the half-porch and 5' setback compromise the neighborhood agreed to, then I must oppose his request for a variance.

I think it is also important to note that the concerns expressed by me and my neighbors come from a place of dedication to this community. We invested in property here. We actually live in the homes we invested in. Some of us have lived here for many decades. We are working together for the betterment of this unique, diverse, urban residential neighborhood. Mr. DePumpo lives in South Lake. Mr. DePumpo purchased the Reiger property over a decade ago and has allowed it to fall into some disrepair. Now that the property values have increased in our neighborhood (based on the tireless work of those who invested and actually improved and lived in the homes they bought), Mr. DePumpo wants to continue to bastardize a once SF historic home to get a little extra rent on his three units. I do not find that to be consistent with what is best for the rhythm, flow, and interest of Peaks Addition. For those of us who live here, who care about the importance of having proper spacing between our homes, who care about preserving the historic charm of our porches (yes! we have porch parties and porch fest and yard of the month!), what Mr. DePumpo is requesting flies in the face of the fabric of this community, a community he is not a member of.

Please let me know if you need any further documentation from me.  
Thank you for taking the time to consider this important issue.

Leah Kagan  
4728 Victor Street

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.





Leah Kagan &lt;kaganleahc@gmail.com&gt;

**Fwd: 4715 Reiger Variance**

1 message

**Leah Kagan** [REDACTED]  
To: Patty's i-pad [REDACTED]

Sat, Mar 26, 2022 at 9:43 AM

His other email.

Sent from my iPhone

Begin forwarded message:

**From:** Joseph DePumpo [REDACTED]  
**Date:** March 25, 2022 at 2:10:44 PM CDT  
**To:** kaganleahc [REDACTED] pasimor [REDACTED]  
**Subject:** 4715 Reiger Variance

Leah and Patty,

Below is an example of the porch concept I had in mind. I will meet with our construction people later today or tomorrow to see if it is feasible. It will significantly devalue Unit 1 in our building as I explained last evening.

I can't emphasize enough how irritated my people are over your group's use of the requested variance to impose requirements like a front porch that have nothing to do with a variance to the setback requirement. The inquiry in Section 51A-3.102(d)(10) of the City Code is whether the proposed variance to the setback is contrary to public policy. Instead of addressing that question, your group is using the variance as a baseball bat to bludgeon people like me into submitting to its personal aesthetic preferences. That's improper. Several PDs and zoning ordinances in Dallas require front porches and are very specific as to their size. If your group wants to mandate front porches on multifamily properties, then go seek a change to PD 98.

And when I push back or question this tactic, I get shouted down as being insensitive to the neighborhood because I don't live there, which is absolutely ridiculous. You should be embracing, not villainizing, us. We had planned to make a significant investment in that property, which would have benefited the entire group.

Also, I received a notice this morning stating that the deadline to present information for consideration by the Board is April 9. I hope your group will let me know whether it intends to withdraw its opposition before then so I'm not surprised at that hearing like the last one.

Regards,

Joe  
[REDACTED]



I also wanted to clarify what my folks find so distasteful about the position your group has taken.

It concerns your group's use of the variance requirement to impose requirements like a porch that have nothing to do with the variance.

Specifically, the section of the Dallas City Code that allows the Board of Adjustment to grant variances (51A-3.102(d)(10)) contains three factors. Only one (the public interest factor) applies to your group. It states:

(A) ***the variance is not contrary to public interest*** when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so the spirit of the ordinance will be observed and substantial justice done.

Thus, the only question is whether the proposed variance to the setback requirement

The neighbors immediately adjacent to me don't care about our proposed setback and for those who do (like Leah), I've repeatedly said that I'm willing to work with them to address their concerns.

But your group is using the variance to dictate

public interest question is limited to the proposed variance to the required setback.

There are three factors





Leah Kagan &lt;kaganleah@gmail.com&gt;

## 4715 Reiger Variance

Leah Kagan  
To: Joseph DePumpo  
Cc: pasimon

Mon, Mar 28, 2022 at 8:17 AM

Hi Joe

I received both versions of your email.

Recall that it was your request to move the hearing for the sole purpose of meeting with the neighborhood to get them on board. Although we are attempting work with you to get neighborhood buy-in, it seems that you would rather dig your heels in. You may remember that the Members of the Board of Adjustment pointed out 1) that the variance you seek is not in compliance with the setbacks for either SF or MF, and 2) that the neighborhood is the oldest and largest collection of prairie style homes with a very active HOA.

While we appreciate that you are willing to invest in this neighborhood, those of us who live here have invested as well; and not just money, but time and effort in bringing this neighborhood back to something that investors like you find attractive to risk your money in. We, however, understand what living in a changing urban mixed-use environment means and we are united in protecting the fabric of this neighborhood so that we can continue to stabilize it. We aren't North Oak Cliff, or South Lake, for that matter, and our neighborhood challenges are not the same. What seems to be lost on you is that we are staunchly against destroying the prairie, craftsman, and Victorian esthetic, the rhythm and space of the neighborhood, and this historic fabric that these things make up. We are happy for investors to come in and contribute to that fabric, but will oppose anyone who views our neighborhood as a place to make a quick buck while creating safety issues (like by not complying with fire code and setbacks). It is the very character of our neighborhood that makes people want to buy and live here. I would assume that you would view this as an opportunity to gain value by adding to that character.

The neighborhood stands willing to work with you, but you have threatened to walk away from the project on multiple occasions, all while insulting us and those who have lived here for 40 years. Patty and I have tolerated it, because we truly want to come to a resolution, and more than anything, we want these 100 year old structures to get the TLC they need. That being said, we want it done right (by code and by character). It's very baffling that you think we are the villains when you've allowed your property to fall into disrepair and now want to profit off the backs of people like Mac and Charlie whom you mock and insult.

When the council agreed with your request to adjourn the hearing for you to work with the neighborhood, I don't think this is what it had in mind. Threats are hardly good-faith.

When we last spoke, Patty and I offered to organize a meeting for you to speak with the neighborhood about this partial porch idea, as well as the setback. I cannot tell from your email asserting that you've moved your workers elsewhere if you actually want that meeting. Please let us know if you truly want to continue with a meeting or whether you have decided to leave this project. Despite your refusal for any of the compromises we proposed, we are still willing to facilitate a neighborhood meeting for you. We want you to succeed, but not at the expense of the fabric of our neighborhood and the safety of our neighbors.

Leah

Sent from my iPhone

On Mar 25, 2022, at 9:42 PM, Joseph DePumpo <joe.depumpo@gmail.com> wrote:

Dear Leah and Patty:

I sent you a lengthy email this morning from a different email account that was returned from Patty's email address as undeliverable. The version in my sent box that may have gone to Leah was an early draft that had a bunch of gibberish at the end. It was obviously corrupted.

The email included the photograph below of a 1/2 porch concept that we might be able to live with, even though it will substantially devalue the front unit of our building, which is very narrow as I described to you yesterday.

The bottom line from my earlier email is that my folks are extremely ticked that your group is using the variance requirement as leverage to force us to build a front porch on our multifamily building. Many Dallas PDs and zoning ordinances have very specific front porch requirements for single family and duplex structures. PD 98 does not require a front porch but your group is using the variance as leverage to create one, on a multifamily property nonetheless.

In all candor, we're extremely surprised by your group's hostile reception toward us and our plan to make serious improvements to our property, which would greatly benefit all of you. I can point you to many addresses, mostly in North Oak Cliff, that we have transformed from run-down pieces of junk to gorgeous properties. The neighborhoods in those areas love us.

Because of the delay caused by your group's objection, we are moving our construction crew to a different project. If your group agrees to drop its objection to the variance, we will likely come back to this project later this year. If not, we will make some perfunctory improvements to the front unit and rent it as is.

I received a notice from the City this morning that the deadline to provide information for the next hearing is April 9. I sincerely hope you will let me know your group's position well in advance of that hearing so I won't be surprised with a bunch of last-minute opposition like the last hearing.

Regards,

Joe



<0INzdIIP58IB0C6E.jpeg>



Leah Kagan &lt;kaganleah@gmail.com&gt;

## 4715 Reiger Variance

Leah Kagan [REDACTED]

Mon, Mar 28, 2022 at 1:10 PM

To: Joseph DePumpo &lt;[REDACTED]&gt;

Cc: "Patricia Simon, DDS" [REDACTED]

Joe

I suggest you go pull whatever plans you want because my home and garage were built at the same time pursuant to the plans that were submitted to the city and approved by the city and fully permitted. We went through all proper channels at each step of the way and passed each and every single inspection with the city for everything on my property, including the garage. Your threats to me are clearly intended to intimidate me and get me to back off of expressing my real concerns about the fire hazard your intended project creates. This is exactly the type of "developer" but not resident behavior the people who live in this neighborhood are worried about. It is also something I am sure the Members of the Board of Adjustment did not have in mind when they granted your request for a delay to meet with the neighbors to get support for your project. Threatening your way into getting neighborhood buy-in won't work here.

Moreover, I never told anyone you were encroaching on their property. I explained your request as clearly described in the public notice was to encroach beyond the legal setbacks for both SF and MF. Indeed, I showed Nikki the notice I received from the city so she could read it for herself. Your continued attempt to malign me, villainize me, and ruin my credibility/reputation will not be tolerated. If you continue to slander me, you can expect legal action.

Please accept this correspondence as a formal request for you to cease and desist from any further slanderous accusations. The next correspondence will be from counsel on my behalf.

Leah

On Mon, Mar 28, 2022 at 12:47 PM Joseph DePumpo [REDACTED] &gt; wrote:

Thank you Patty.

I would appreciate it if you would present it to the group and let me know if they will withdraw their opposition if we would agree to a porch with that general configuration.

I assume you saw Leah's response. I remain absolutely astounded Leah why you are so bent on fighting with me and the level to which you have made it so personal. Why on earth would you tell Nikki and Joel that my plans show that we intend to encroach further toward their property? I can only imagine what you told the other neighbors to secure their signatures.

I was at the property this weekend and confirmed that your garage sits on the line between our properties and thus violates the 5 ft. rear setback. Your statement that it is "permitted" means nothing. People build structures all the time that don't match the approved plans. Please let me know if there are facts or law that I am unaware of that allowed you to build a garage in violation of the setback. Otherwise I will pull your plans when I'm at the City later this week to see how it occurred.

Most fires start in garages. The heavy trees along the property line between my property and the 11-unit apartment building beside me create a significant risk that a fire in your garage could quickly spread to our properties.

As President of the association, Patty, it would be very unfair for the association to turn a blind eye to Leah's violation, because she's an officer, while aggressively persecuting me, an outsider, when I'm going to the effort of

doing the right thing but Leah just did as she pleased.

If there are facts or law I am unaware of Leah that allowed you to legally build your garage on the property line, then please excuse my concern. But this appears to be a clear case of an extremely overzealous activist who thinks that the rules don't apply to her.

Regards,

Joe

On 3/28/2022 11:41 AM, Patricia Simon, DDS wrote:

Hi, Joe!

Sorry for the delayed response.

I'm sorry you feel that we are being hostile! That is not our intent at all. We're really trying to come to a solution for all involved.

The attached picture is a great start. I'm happy to present this to the group, unless you would prefer for us to schedule a meeting as we had previously discussed. Please let me know your preference.

Patty

On Friday, March 25, 2022, 09:42:58 PM CDT, Joseph DePumpo <[REDACTED]> wrote:

Dear Leah and Patty:

I sent you a lengthy email this morning from a different email account that was returned from Patty's email address as undeliverable. The version in my sent box that may have gone to Leah was an early draft that had a bunch of gibberish at the end. It was obviously corrupted.

The email included the photograph below of a 1/2 porch concept that we might be able to live with, even though it will substantially devalue the front unit of our building, which is very narrow as I described to you yesterday.

The bottom line from my earlier email is that my folks are extremely ticked that your group is using the variance requirement as leverage to force us to build a front porch on our multifamily building. Many Dallas PDs and zoning ordinances have very specific front porch requirements for single family and duplex structures. PD 98 does not require a front porch but your group is using the variance as leverage to create one, on a multifamily property nonetheless.

In all candor, we're extremely surprised by your group's hostile reception toward us and our plan to make serious improvements to our property, which would greatly benefit all of you. I can point you to many addresses, mostly in North Oak Cliff, that we have transformed from run-down pieces of junk to gorgeous properties. The neighborhoods in those areas love us.

Because of the delay caused by your group's objection, we are moving our construction crew to a different project. If your group agrees to drop its objection to the variance, we will likely come back to this project later this year. If not, we will make some perfunctory improvements to the front unit and rent it as is.

I received a notice from the City this morning that the deadline to provide information for the next next hearing is April 9. I sincerely hope you will let me know your group's position well in advance of that hearing so I won't be surprised with a bunch of last-minute opposition like the last hearing.



Regards,

Joe





Leah Kagan <kaganleah@gmail.com>

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## 4715 Reiger Variance

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**Joseph DePumpo** <[REDACTED]>

Sun, Apr 3, 2022 at 9:54 PM

To: Leah Kagan <[REDACTED]>

Cc: "Patricia Simon, DDS" <[REDACTED]>

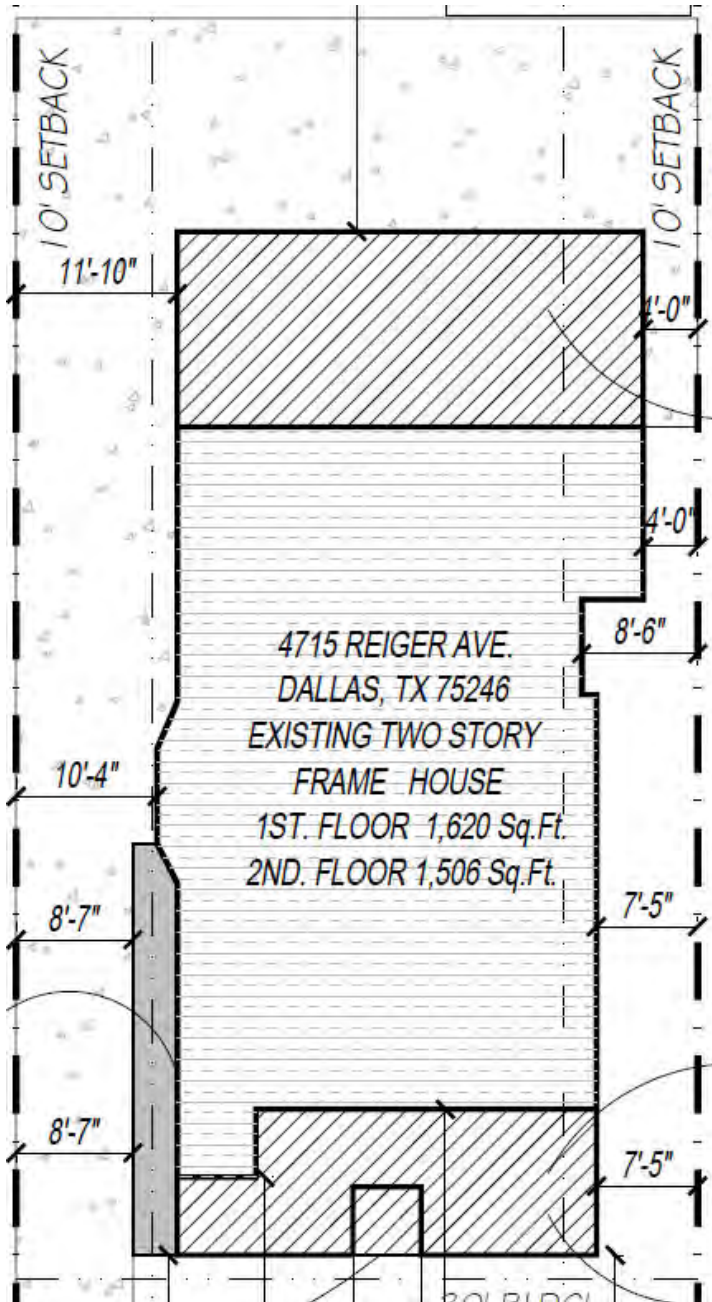
Leah,

The only issue before the Board of Adjustment is whether to grant a variance for the side-yard setbacks shown below. I will have my architect modify the site plan to show a 5 ft. setback for the rear addition as we discussed and submit that as the new request.

As for the porch, Section 51A-3.102(d)(10) grants the BOA "the powers and duties . . . [t]o grant variances from the front yard, side yard, rear yard" setbacks. Thus, it either grants or denies a requested variance. Neither it nor the City has the power to enforce a private agreement between a neighborhood association and a property owner to build a porch, install a bird bath, paint the shutters a certain color, plant trees, or any other requirement the neighborhood association has imposed as a condition to withdrawing its objection to a requested variance. The neighborhood association's recourse if the property owner violates the agreement would be a suit against the property owner for breach of contract.

If we decide to do this project, I will have our architect modify the existing plans to show a porch along the lines of the picture I sent you. But I'm not going to that expense now. To be honest, your group's aggressiveness is scaring us away. We have too many other opportunities that are more lucrative and where we're welcomed with open arms.

Joe



On 4/3/2022 10:21 AM, Leah Kagan wrote:

Hi Joe

We need a clear agreement from you to the below and a submission from you to the City reflecting the below. We, in turn, will let the Board know that this is the agreement reached with PAHA and that we have no objection to it.

Glad we were able to work this out. Looking forward to something lovely on Reiger!

Leah

Sent from my iPhone

On Apr 3, 2022, at 10:05 AM, Joseph DePumpo [REDACTED] > wrote:

Okay. Thank you. Can you please advise the City that the opposition is withdrawn?

On 3/30/2022 5:52 PM, Leah Kagan wrote:

Dear Joe:

We have presented your proposal to the neighborhood regarding your project at 4715 Reiger. Based on the responses we have received, the neighborhood will support your proposal for a 5 foot setback on the property line you share with Nikki and the front half porch concept consistent with the photograph you provided (and I have reattached here). Please confirm that you are still agreeable to this proposal and let us know how you would like to proceed.

We are hopeful that this compromise will maintain the integrity of the fabric of this historic community while providing you and your team the financial benefits you seek.

Leah

On Mon, Mar 28, 2022 at 11:41 AM Patricia Simon, DDS  
[REDACTED] > wrote:

Hi, Joe!

Sorry for the delayed response.

I'm sorry you feel that we are being hostile! That is not our intent at all. We're really trying to come to a solution for all involved.

The attached picture is a great start. I'm happy to present this to the group, unless you would prefer for us to schedule a meeting as we had previously discussed. Please let me know your preference.

Patty  
[REDACTED]

On Friday, March 25, 2022, 09:42:58 PM CDT, Joseph DePumpo  
[REDACTED] > wrote:

Dear Leah and Patty:

I sent you a lengthy email this morning from a different email account that was returned from Patty's email address as undeliverable. The version in my sent box that may have gone to Leah was an early draft that had a bunch of gibberish at the end. It was obviously corrupted.

The email included the photograph below of a 1/2 porch concept that we might be able to live with, even though it will substantially devalue the front unit of our building, which is very narrow as I described to you yesterday.

The bottom line from my earlier email is that my folks are extremely ticked that your group is using the variance requirement as leverage to force us to build a front porch on our multifamily building. Many Dallas PDs and zoning ordinances have very specific front porch requirements for single family and duplex structures. PD 98 does not require a front porch but your group is using the variance as leverage to create one, on a multifamily property nonetheless.

In all candor, we're extremely surprised by your group's hostile reception toward us and our plan to make serious improvements to our property, which would greatly benefit all of you. I can point you to many addresses, mostly in North Oak Cliff, that we have transformed from run-down pieces of junk to gorgeous properties. The neighborhoods in those areas love us.

Because of the delay caused by your group's objection, we are moving our construction crew to a different project. If your group agrees to drop its objection to the variance, we will likely come back to this project later this year. If not, we will make some perfunctory improvements to the front unit and rent it as is.

I received a notice from the City this morning that the deadline to provide information for the next next hearing is April 9. I sincerely hope you will let me know your group's position well in advance of that hearing so I won't be surprised with a bunch of last-minute opposition like the last hearing.

Regards,

Joe



<0INzdIIP58IB0C6E.jpeg>

**From:** [Munoz, Jennifer](#)  
**To:** [Jackson, Latonia](#); [Daniel, Pamela](#)  
**Subject:** FW: Opposition to BDA212-017(PD) by property owner at 4701 Reiger Avenue  
**Date:** Monday, March 21, 2022 12:49:36 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Sincerely,



**Jennifer Muñoz**

*Chief Planner/Board Administrator  
Planning Manager (Interim)*

**City of Dallas** | [www.dallascityhall.com](http://www.dallascityhall.com)

Planning and Urban Design  
1500 Marilla Street, 5BN  
Dallas, TX 75201  
O: 214-670-4208

**Working Remotely, please call:**

**Google Voice: 972-926-3691**

[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)



*\*\*OPEN RECORDS NOTICE: This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.\*\**

How am I doing? Please contact my supervisor at [andreea.udrea@dallascityhall.com](mailto:andreea.udrea@dallascityhall.com).

---

**From:** MAIL ADMIN [REDACTED]  
**Sent:** Monday, March 21, 2022 12:30 PM  
**To:** Munoz, Jennifer <[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)>  
**Subject:** Opposition to BDA212-017(PD) by property owner at 4701 Reiger Avenue

**External Email!**

As the owner of 4701 Reiger Avenue I am opposed to the proposed variances for 4715 Reiger which would reduce setbacks. The proposals threaten the many years of effort to bring the street up to PD98 code for SF dwellings. When the PD was developed -- Sharon Mielke was on the committee-- the existing MF dwellings were allowed to stand as long as no further structural changes were made. I think these rules should stand.

Also, the setbacks proposed would be in violation of fire code and could

endanger the neighbors.

We stand opposed to the proposal BDA212-017(PD)

LeRoy W Mielke

Sharon Mielke (spouse)

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Patty's i-pad](#)  
**To:** [Munoz, Jennifer](#)  
**Subject:** Fwd: BDA 212-017(PD)  
**Date:** Friday, April 8, 2022 1:33:57 PM

---

External Email!

> Dear Ms. Munoz and Board Members:

>

> I am writing this letter as the owner of 4727 Reiger Avenue and 313 N. Prairie Avenue, both of which are in the notification area of the above referenced case. I am also President of the Peak's Addition Homeowner's Association and have met with the applicant, Mr. Joseph DePumpo, on-site and via phone and email conversations, along with our secretary, Leah Kagan.

>

> Ms. Kagan and I spent over an hour in conversation with Mr. DePumpo, and enumerated multiple options for him that might have been acceptable to the neighborhood. Each suggestion was declined by Mr. DePumpo. He suggested a "half-porch" in the location of the current porch as a compromise, to which we agreed to a five-foot side yard back.

>

> The neighborhood is on the brink of a renaissance. The hard work of the urban pioneers forty years ago is starting to pay off. The ordinances that were fought for, including PD98, are finally bringing single family structures to the vacant lots in the neighborhood. But that renaissance is bringing developers into the neighborhood who do not understand that the multi-family structures that were built in the 1950's through the 1970's are viewed as scars on the face of our streets. Scars from a time that our historic fabric was disrespected and denigrated.

>

> Our greatest assets are our historic homes. We want to preserve and protect that. The structure at 4715 Reiger was once a single-family home. It has been added to in multiple "renovations" prior to the ordinance, making it a multi-family structure. The fact that Mr. DePumpo can't add additional units is not a hardship, it is the ordinance— an ordinance that was in place for over two decades when he bought the property. I want to be very clear, that we entered into the conversation with Mr. DePumpo in the spirit of good-faith negotiation. If he no longer wishes to preserve the concept of the porch, then he can have a ten-foot setback as is required for multi-family structures.

> Best regards,

Patricia A. Simon

>

> Sent from my iPad

CAUTION: This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.



**From:** [Scott Berlin](#)  
**To:** [Munoz, Jennifer](#)  
**Cc:** [Liz Gibson](#)  
**Subject:** BDA 212-017(PD)  
**Date:** Friday, April 8, 2022 11:56:35 AM

---

**External Email!**

Hello Jennifer - my name is Scott Berlin and I'm the treasurer for Peaks Addition, and a homeowner at 4821 Victor St, Dallas, TX 75246

I am writing you about the variance on 4715 Reiger Ave. I am opposed to anything less than the 5 foot setback for this property. It really should be ten feet, per code, because of the multi family that it is.

I am only willing to compromise with the property owner if he builds a front porch in order to keep the neighborhood similar. Thank you for your time.

SB

--

Scott A. Berlin

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

Panel A

03-22-22

BDA212-017

4715 Reiger Ave.

(Opposition Reference)

**From:** [Munoz, Jennifer](#)  
**To:** [Jackson, Latonia](#)  
**Subject:** Fw: Opposition to BDA212-017(PD)  
**Date:** Monday, March 21, 2022 9:46:18 AM

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**From:** joel bayer [REDACTED]  
**Sent:** Sunday, March 20, 2022 5:51 PM  
**To:** Munoz, Jennifer <jennifer.munoz@dallascityhall.com>  
**Subject:** Opposition to BDA212-017(PD)

**External Email!**

Dear Ms. Munoz and Board of Adjustment:

I reside at 4721 Reiger Ave. (Dallas, 75246) and wish to express my opposition to case number BDA 212-017 (PD). I live next door to this property and anything less than a 5 foot setback is a fire hazard and allowing a variance for the set-back places an undue burden on the adjacent structures.

Thank you for your consideration,  
Joel Bayer  
[REDACTED]

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

March 21, 2022

Ms. Jennifer Munoz and Board of Adjustment, Panel A  
1500 Marilla St., 5BN  
Dallas, TX 75201

RE: BDA 212-071(PD)

Dear Ms. Munoz and Board Members:

I am a property owner within the notification area, owning both 4727 Reiger Avenue and 313 N. Prairie Avenue. My husband and I restored the property at 4727 Reiger Avenue, a project that took over a year. We took it from an eight-unit property to the original four-units, a change that, per the ordinance, can never go back in the other direction. Our property was built in 1910, and is one of the few original multi-family units in the neighborhood. It was clear when we purchased the building that the neighborhood had undergone a period of blight, with many single-family homes having been converted to multi-family dwellings, as was typical in Old East Dallas. It was our understanding that PD98 was put into place in order to stabilize the neighborhood and to bring back single-family structures. In fact, the land within the district is zoned single-family, not multi-family.

The fact that 4715 Reiger is “non-conforming” is irrelevant to the argument for allowing a variance in the side-yard set-backs. In fact, other structures near 4715 Reiger are conforming, and allowing a variance in the set-back is unfair and not equitable to the neighboring properties in light of PD 98. Additionally, this is against fire-code, which requires a minimum 5’ set-back.

Further, I have concerns that enclosing porches could allow for a potential increase in the density of the units, if not by this current owner, then by a future owner. Again, the PD does not allow for an increase in density.

I respectfully request that you deny the variance for side-yard setback.

Sincerely,

Patricia A. Simon

**From:** [Munoz, Jennifer](#)  
**To:** [Jackson, Latonia](#)  
**Subject:** Fw: Ref BDA 212-017 (PD)  
**Date:** Monday, March 21, 2022 9:48:57 AM

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---

**From:** Charlie Jenks [REDACTED]  
**Sent:** Monday, March 21, 2022 9:21 AM  
**To:** Munoz, Jennifer <jennifer.munoz@dallascityhall.com>  
**Subject:** Ref BDA 212-017 (PD)

**External Email!**

Dear Ms Munoz,

I'd like to state my opposition to the proposed variance for the property at 4715 Reiger Ave. The protections to the neighborhood afforded by PD98 were a major consideration when we purchased our home, at 4810 Reiger Ave, over 30 years ago. Any time we ran into a conflict with our improvement plans and PD98 we altered our plans to comply with the ordinance. This was done because we recognize the paramount importance of upholding the integrity of PD98. Each variance granted gnaws away at that strength and threatens every homeowner's investment into this neighborhood.

In fairness to the residence of our neighborhood please don't mess with the setback restrictions  
Charlie Jenks

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Munoz, Jennifer](#)  
**To:** [Jackson, Latonia](#)  
**Subject:** Fw: Opposition to BDA212-017(PD)  
**Date:** Monday, March 21, 2022 9:47:06 AM

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**From:** Leah Kagan [REDACTED]  
**Sent:** Monday, March 21, 2022 7:46 AM  
**To:** Munoz, Jennifer <jennifer.munoz@dallascityhall.com>  
**Subject:** Opposition to BDA212-017(PD)

External Email!

Dear Ms. Munoz and Board of Adjustment:

I live at 4728 Victor St, Dallas TX 75246. My property abuts the 4715 Reiger property seeking a variance. I strongly oppose the variance for 4715 Reiger for the following reasons:

1. Anything less than a 5' setback is a fire hazard, and not in compliance with the fire code. This is a major concern given the age of the homes around the property, including the fact that it is adjacent to my home!
2. This is historically a single family house that was converted to multi-family before the ordinance was put in place to preserve single-family. The ordinance does not allow for increases in the multi-family units or additions to multi-family structures.
3. This parcel is zoned single-family per the ordinance. There is no MF zoning in PD98, but allowed uses as MF for structures that were changed to MF before the ordinance.
4. Allowing a variance for the set-back places an undue burden on the adjacent structures, specifically my home and Nikki's home right next door.

I am strongly opposed to this and request your attention and denial of the request made.

Leah Kagan  
[REDACTED]

Sent from my iPhone

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**From:** [Munoz, Jennifer](#)  
**To:** [Jackson, Latonia](#); [Daniel, Pamela](#)  
**Subject:** FW: Opposition to BDA212-017(PD)  
**Date:** Monday, March 21, 2022 12:48:28 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Please share.

Sincerely,



**Jennifer Muñoz**

*Chief Planner/Board Administrator  
Planning Manager (Interim)*

**City of Dallas** | [www.dallascityhall.com](http://www.dallascityhall.com)

Planning and Urban Design  
1500 Marilla Street, 5BN  
Dallas, TX 75201  
O: 214-670-4208

**Working Remotely, please call:**

**Google Voice: 972-926-3691**

[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)



**\*\*OPEN RECORDS NOTICE:** *This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.\*\**

How am I doing? Please contact my supervisor at [andreea.udrea@dallascityhall.com](mailto:andreea.udrea@dallascityhall.com).

---

**From:** Mac Anderson [REDACTED]  
**Sent:** Monday, March 21, 2022 12:43 PM  
**To:** Munoz, Jennifer <[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)>  
**Subject:** Opposition to BDA212-017(PD)


**External Email!**

Dear Ms. Munoz and Board of Adjustment:

I would first like to state the short notification by the city in this matter is unacceptable. I received my letter on Thursday and received a callback from City planner Pamela Daniels on Friday to explain specifically what the property owner was proposing. The examples on the back of the letter of the before and after of the structure are the size of a postage stamp and hard to makeout with the use of a magnifying glass. The mail in form is unreadable and totally useless if they expect it to receive it by mail by Tuesday. To my understanding this should have been sent out 30 days in advance to residents to give them time to make an informed decision. With that said, I'm opposed to changing

the setbacks because it's against fire codes and poses a danger to surrounding residences in a neighborhood of predominantly wood framed structures.

Hopefully we can meet somewhere in the middle but I'm not willing to change regulations to facilitate business. I have worked hard over the past fifty years to cleanup and preserve one of Dallas's oldest residential neighborhoods and make it a desirable place live. This is my home and not a business.

Sincerely,  
Edward Anderson  
4726 Victor street  


**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.



**From:** [Munoz, Jennifer](#)  
**To:** [Jackson, Latonia](#); [Daniel, Pamela](#)  
**Subject:** FW: Opposition to BDA212-017(PD) by property owner at 4701 Reiger Avenue  
**Date:** Monday, March 21, 2022 12:49:36 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Sincerely,



**Jennifer Muñoz**

Chief Planner/Board Administrator  
Planning Manager (Interim)

City of Dallas | [www.dallascityhall.com](http://www.dallascityhall.com)

Planning and Urban Design

1500 Marilla Street, 5BN

Dallas, TX 75201

O: 214-670-4208

**Working Remotely, please call:**

**Google Voice: 972-926-3691**

[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)



*\*\*OPEN RECORDS NOTICE: This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.\*\**

How am I doing? Please contact my supervisor at [andreea.udrea@dallascityhall.com](mailto:andreea.udrea@dallascityhall.com).

---

**From:** MAIL ADMIN [REDACTED]  
**Sent:** Monday, March 21, 2022 12:30 PM  
**To:** Munoz, Jennifer <[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)>  
**Subject:** Opposition to BDA212-017(PD) by property owner at 4701 Reiger Avenue

**External Email!**

As the owner of 4701 Reiger Avenue I am opposed to the proposed variances for 4715 Reiger which would reduce setbacks. The proposals threaten the many years of effort to bring the street up to PD98 code for SF dwellings. When the PD was developed -- Sharon Mielke was on the committee-- the existing MF dwellings were allowed to stand as long as no further structural changes were made. I think these rules should stand.

Also, the setbacks proposed would be in violation of fire code and could

endanger the neighbors.

We stand opposed to the proposal BDA212-017(PD)

LeRoy W Mielke

Sharon Mielke (spouse)

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Munoz, Jennifer](#)  
**To:** [Jackson, Latonia](#)  
**Subject:** Fw: Opposition to BDA212-017(PD)  
**Date:** Monday, March 21, 2022 9:45:58 AM

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**From:** Nikki McKinney Bayer [REDACTED]  
**Sent:** Sunday, March 20, 2022 5:41 PM  
**To:** Munoz, Jennifer <jennifer.munoz@dallascityhall.com>  
**Subject:** Opposition to BDA212-017(PD)

**External Email!**

Dear Ms. Munoz and Board of Adjustment:

I reside at 4721 Reiger Ave. (Dallas, 75246) and wish to express my opposition to case number BDA 212-017 (PD). I live next door to this property and anything less than a 5 foot setback is a fire hazard.

Thank you,  
Nikki Bayer

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**FILE NUMBER:** BDA212-019(PD)

**BUILDING OFFICIAL'S REPORT:** Application of Mark Drumm represented by Nate Parrott of KFM Engineering and Design for a special exception to the landscape regulations at 536 W. 9<sup>th</sup> Street. This property is more fully described as Part of Lots 18, 19, and 20, in City Block 35/3155, and is zoned (Subdistrict 3) within Planned Development District No. 830, which requires mandatory landscaping. The applicant proposes to construct a multifamily structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

**LOCATION:** 536 W. 9<sup>th</sup> Street

**APPLICANT:** Mark Drumm represented by Nate Parrott of KFM Engineering and Design

**REQUEST:**

A request for a special exception to the landscape regulations is made to demolish the existing structure and construct a 9,779-square-foot retail structure that will not meet the landscape regulations or, more specifically, will not provide the required street buffer zone along the street frontage due to an existing underground 12-inch water utility and overhead electrical lines along the property boundary which prohibit planting in the right-of-way and within ten feet of the utility line.

**UPDATES:**

On March 31, 2022, the representative provided an alternate landscape plan to the Chief Arborist to which comments were provided via the Arborist report (**Attachment A**).

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE AND TREE PRESERVATION REGULATIONS:**

The board may grant a special exception to the landscape and tree preservation regulations of this article upon making a special finding from the evidence presented that:

- (1) strict compliance with the requirements of this article will unreasonably burden the use of the property.
- (2) the special exception will not adversely affect neighboring property; and
- (3) the requirements are not imposed by a site-specific landscape plan approved by the city plan commission or city council.

In determining whether to grant a special exception, the board shall consider the following factors:

- the extent to which there is residential adjacency.
- the topography of the site.
- the extent to which landscaping exists for which no credit is given under this article.
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION:**

The City of Dallas chief arborist submitted a memo regarding the applicant’s request and recommending approval (**Attachment C**).

Rationale:

- The chief arborist recommends approval of the proposed revised alternate landscape plan. While the landscape plan has several deficiencies, these deficiencies are based primarily on building proximity to the street right-of-way and the amount of lot coverage relative to open space, all allowed by city zoning regulations. The conditions of PDD No. 830 made supportive conditions to allow 1) site trees to be planted in the right-of-way, and 2) for street trees to be minimized to small trees due to reduced planting spaces as well as the location of public utilities. Thus, staff believes that strict compliance with the landscaping regulations in Article X unreasonably burdens this use of this property under this design.

**BACKGROUND INFORMATION:**

**Zoning**

<u>Site:</u>	Subdistrict 3 within PDD No. 830
<u>Northwest:</u>	Subdistrict 8 within PDD No. 830
<u>North:</u>	Subdistrict 3 within PDD No. 830
<u>East:</u>	Subdistrict 3 within PDD No. 830
<u>South:</u>	Subdistrict 3 within PDD No. 830
<u>West:</u>	Subdistrict 8 within PDD No. 830

**Land Use:**

The subject sites are developed with single family dwelling units. Surrounding properties to the northwest and west are developed with single-family dwelling units while the

properties immediately adjacent to the south and east are developed with multifamily dwelling units. The property immediately adjacent to the north across, W. 9<sup>th</sup> Street is developed with a public school [Bishop Arts Academy].

**Zoning/BDA History:**

There have not been any recent board or zoning cases in the vicinity within the last five years.

**GENERAL FACTS/STAFF ANALYSIS:**

The request for a special exception to the landscape regulations is made to raze the existing single-family dwelling units and construct a multifamily structure that will not meet the minimum landscape requirements.

The subject site consists of three parcels (Lots 18, 19, and 20). at the intersection of N. Llewellyn Avenue and W. 9<sup>th</sup> Street. The first parcel (Pt Lots 19 & 20) is developed with two one-story, single family dwelling units consisting of approximately 1,057 square feet and 1,252 square feet, respectively, and constructed in 1945, according to Dallas County Appraisal District records. The second parcel (Lot 19) is developed with a one-story, dilapidated, single-family dwelling unit and detached garage consisting of approximately 1,806 square feet, constructed in 1945. The third and last parcel (Lot 18) is developed with a one-story, single family dwelling units and a detached garage consisting of approximately 1,638 square feet and constructed in 1945.

The Dallas Development Code requires full compliance with the landscape regulations when nonpermeable coverage on a lot or tract is increased by more than 2,000 square feet, or when work on an application is made for a building permit for construction work that increases the number of stories in a building on the lot or increases by more than 35 percent or 10,000 square feet, whichever is less, the combined floor areas of all buildings on the lot within a 24-month period. In this case, the existing structure will be demolished. The construction of the proposed multifamily structure triggers compliance with landscape regulations.

The City of Dallas chief arborist submitted a memo regarding the applicant's request (**Attachment C**).

**The chief arborist's memo states the following with regard to "request":**

The applicant is seeking a special exception to the landscaping requirements of Article X. The property is in the PDD No. 830 Subdistrict 3 which contains additional requirements for street trees.

**The chief arborist's memo states the following with regard to "provision":**

The proposed landscape plan provides a narrow strip of landscaping on the property at the edge of the building foundation on both street fronts and two enclosed areas facing 9<sup>th</sup> Street.

- Street buffer zone: Meets Article X urban streetscape (street buffer zone) requirements on 9<sup>th</sup> Street, but not on Llewellyn Street.
- Street trees are provided with two small trees for a required one large tree, as allowed by PDD No. 830. All street trees are small trees.
- The requirement for site trees is met on the parkway, as allowed by PDD No. 830.

**The chief arborist’s memo states the following with regard to “deficiencies”:**

- The plan does not provide for the Article X urban streetscape conditions along Llewellyn Street. Requirements include a minimum six-foot wide planting area and one design option.
- The property requires 15 landscape design option points (Sec. 10.126). Although the designer presented elements of landscape design options, including the benches in the enclosed seating areas, the parkway conditions are limiting to meeting the ability to attain the required number of points for a lot of this size.

**The chief arborist’s revised memo states the following with regard to the “recommendation”:**

The chief arborist recommends approval of the proposed revised alternate landscape plan as presented on March 30. The landscape plan has several deficiencies based primarily on building proximity to the street right-of-way and due to the amount of lot coverage relative to open space, all allowed by city zoning regulations. The conditions of PD 830 supported the allowance for 1) site trees to be planted in the right-of-way, and 2) for street trees to be minimized to small trees due to reduced planting spaces as well as the location of public utilities. I believe that strict compliance with the landscaping regulations in Article X unreasonably burdens this use of this property under the approved structural design.

As of April 11, 2022, one letter has been submitted in opposition of the request while none have been submitted in support of the request.

If the board were to grant this request and impose the submitted alternate revised landscape plan as a condition to the request, the site would be provided an exception from compliance with minimum landscape requirements for the street buffer zone requirements.

**Timeline:**

January 6, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

- January 23, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 3, 2022: The Board Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official's report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the February 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- March 2, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board.
- March 3, 2022: The Development Services Chief Arborist submitted a report detailing the recommendation (**Attachment A**) based on a revised landscape plan.
- March 22, 2022: The Board held the request under advisement until April 19, 2022.
- March 30, 2022: The representative submitted a revised landscape plane for consideration (**Attachment B**).
- March 31, 2022: The Development Services Chief Arborist submitted a revised report detailing the recommendation based on a revised landscape plan (**Attachment C**).



**BOARD OF ADJUSTMENT ACTION: March 22, 2022**

APPEARING IN FAVOR: Nate Parrott 4005 Pecan Dr. Dallas, TX

APPEARING IN OPPOSITION: None.

MOTION: **Lamb**

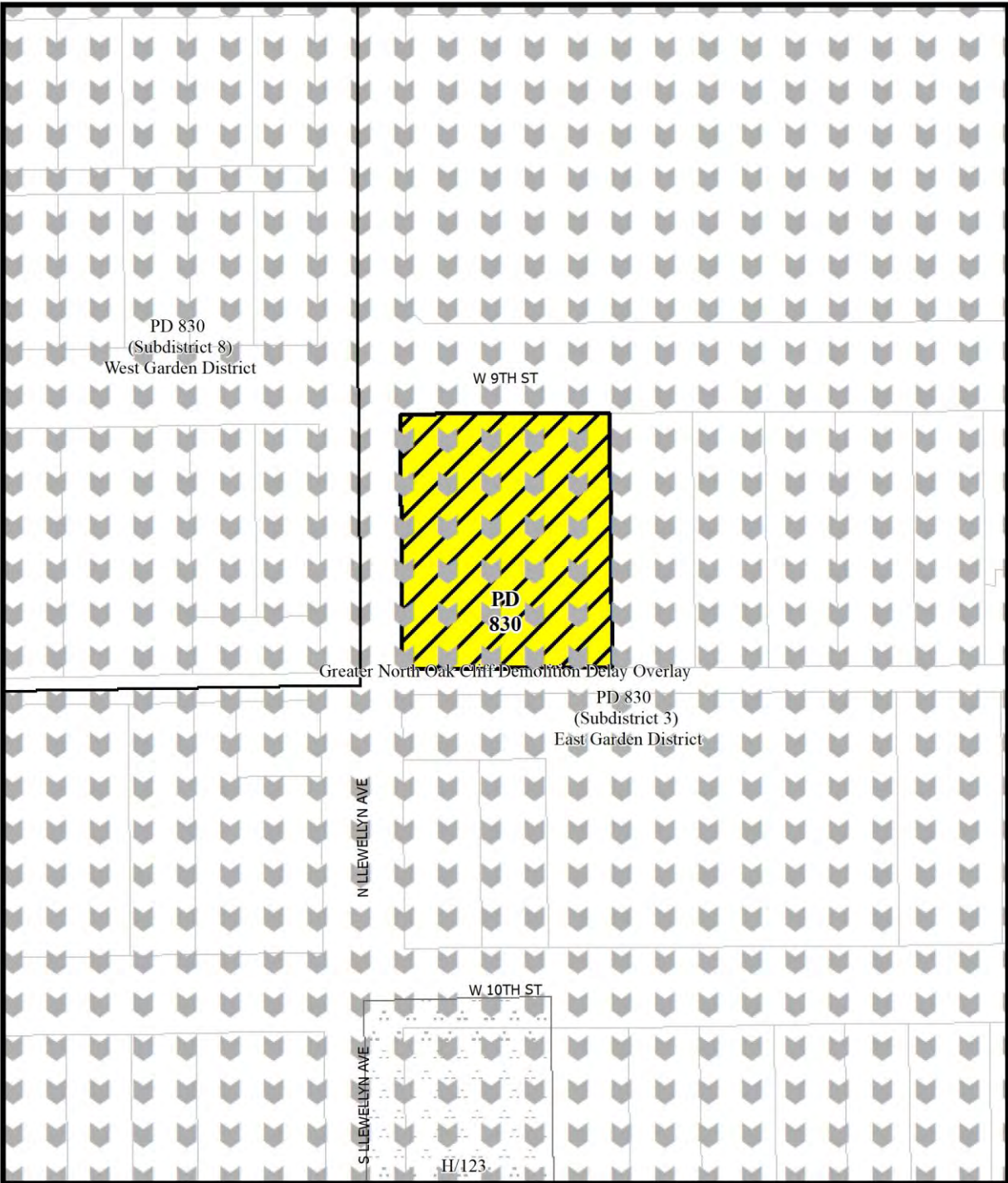
I move that the Board of Adjustment in request No. BDA 212-019, **hold** this matter under advisement until **April 19, 2022**.

SECONDED: **Halcomb**

AYES: 5 – Narey, Frankford Lamb, Halcomb, Neumann

NAYS: 0 -

MOTION PASSED: 5-0 (unanimously)

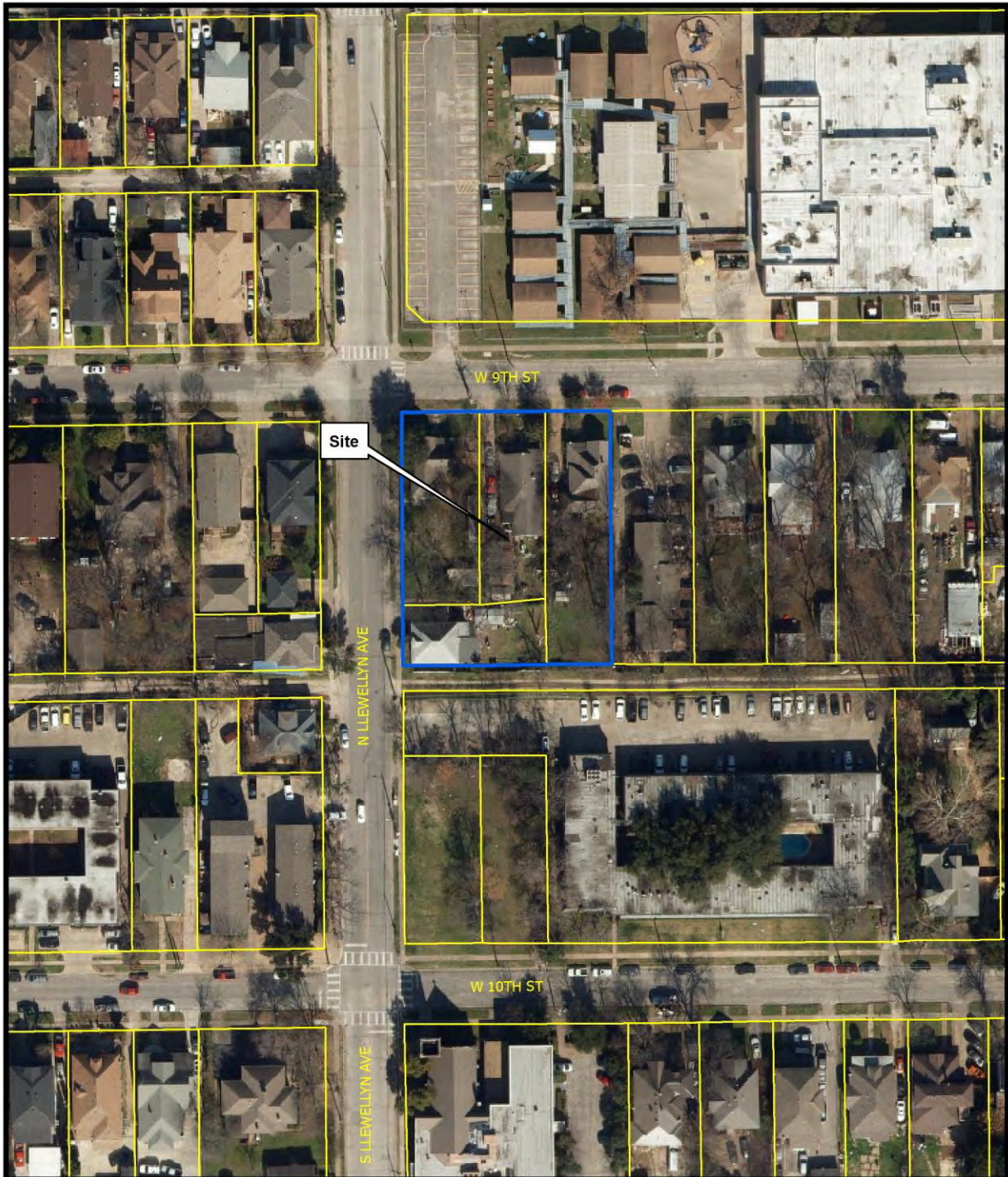


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# ZONING MAP

Case no: BDA212-019

Date: 2/1/2022

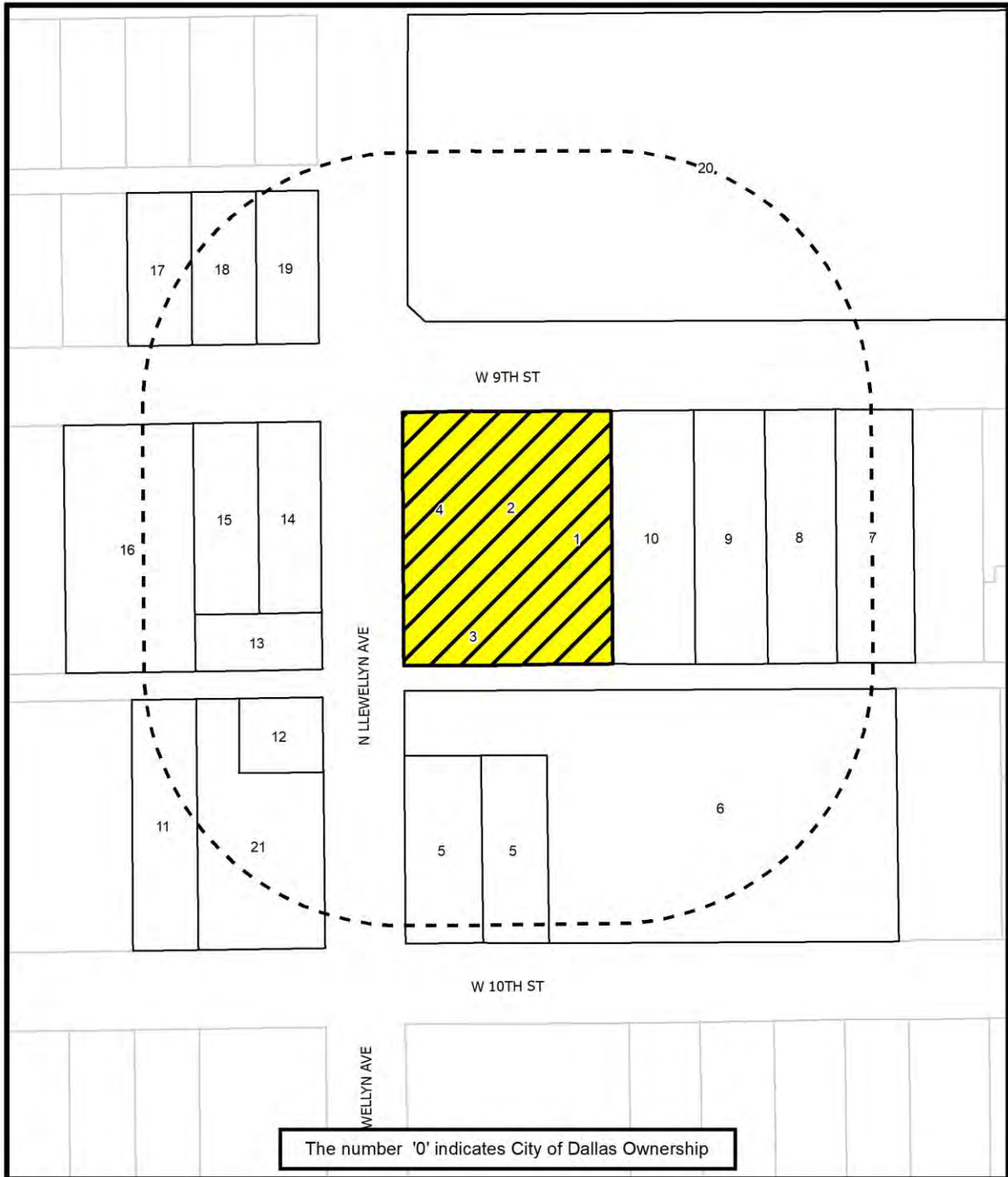


1:1,200

# AERIAL MAP

Case no: BDA212-019

Date: 2/1/2022



1:1,200

# NOTIFICATION

**200'** AREA OF NOTIFICATION  
**21** NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA212-019**  
 Date: **2/1/2022**

02/01/2022

## ***Notification List of Property Owners***

***BDA212-019***

### ***21 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	528 W 9TH ST	BISHOP DEV 2 LLC
2	532 W 9TH ST	CARDENAS GERONIMO GARZA
3	114 N LLEWELLYN AVE	BISHOP DEV 2 LLC
4	536 W 9TH ST	RUSH CAROL L
5	539 W 10TH ST	VALERO JESSE III & DIANE
6	515 W 10TH ST	KENSINGTON RIVERFALL LLC
7	514 W 9TH ST	LAM RICARDO
8	516 W 9TH ST	WILLIAMS OLA JUANITA
9	520 W 9TH ST	BOWLES LAURA
10	522 W 9TH ST	NORTH OAK CLIFF COMMUNITY
11	611 W 10TH ST	TORRES PABLO A
12	109 N LLEWELLYN AVE	FOUR SHELBY INC
13	113 N LLEWELLYN AVE	SALAS JOSE & IGNACIA
14	600 W 9TH ST	LAKE MILLINGTON INDUSTRIES LLC
15	604 W 9TH ST	READ JOHN H II &
16	610 W 9TH ST	MEDINA BILLY &
17	609 W 9TH ST	NUNO SALVADOR & MARIA D
18	607 W 9TH ST	HERNANDEZ JOSE A
19	603 W 9TH ST	PADILLA LUZ
20	201 N ADAMS AVE	Dallas ISD
21	601 W 10TH ST	FLORES GUSTAVO & ROSA E



City of Dallas

APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 212-019

Data Relative to Subject Property:

Date: 01/10/2022 1-6-22 cot

Location address: 536 W. 9th Street

Zoning District: PD830 (Subdistrict 3) E

Lot No.: PT of LT 18, 19, 20 Block No.: 35/3155 Acreage: .725 AC Census Tract: 47.00

Street Frontage (in Feet): 1) 169 LF 2) 208 LF 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): The Shelter Companies

Applicant: Mr. Mark Drumm Telephone: 214-766-5522

Mailing Address: 10939 Yorkspring Drive Dallas TX Zip Code: 75218

E-mail Address: drumm@sheltercompaniesllc.com

Represented by: KFM Engineering and Design Nate Parrott, PLA Telephone: 260-413-6577

Mailing Address: 3501 Olympus Blvd. Suite 100 Dallas, TX Zip Code: 75019

E-mail Address: nparrott@kfm-llc.com

Affirm that an appeal has been made for a Variance \_\_, or Special Exception \_\_, of Site and Landscape requirements

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

Landscape plan- Site cannot meet required landscape requirements because of site visibility, conflict with utilities and site constraints

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

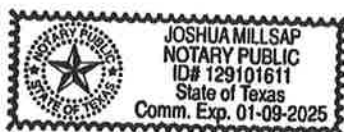
Before me the undersigned on this day personally appeared MARK E DRUMM  
(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature]  
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 10<sup>th</sup> day of JANUARY, 2022

(Rev. 08-01-11)



[Signature]  
Notary Public in and for Dallas County, Texas

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks

Chairman

**Building Official's Report**

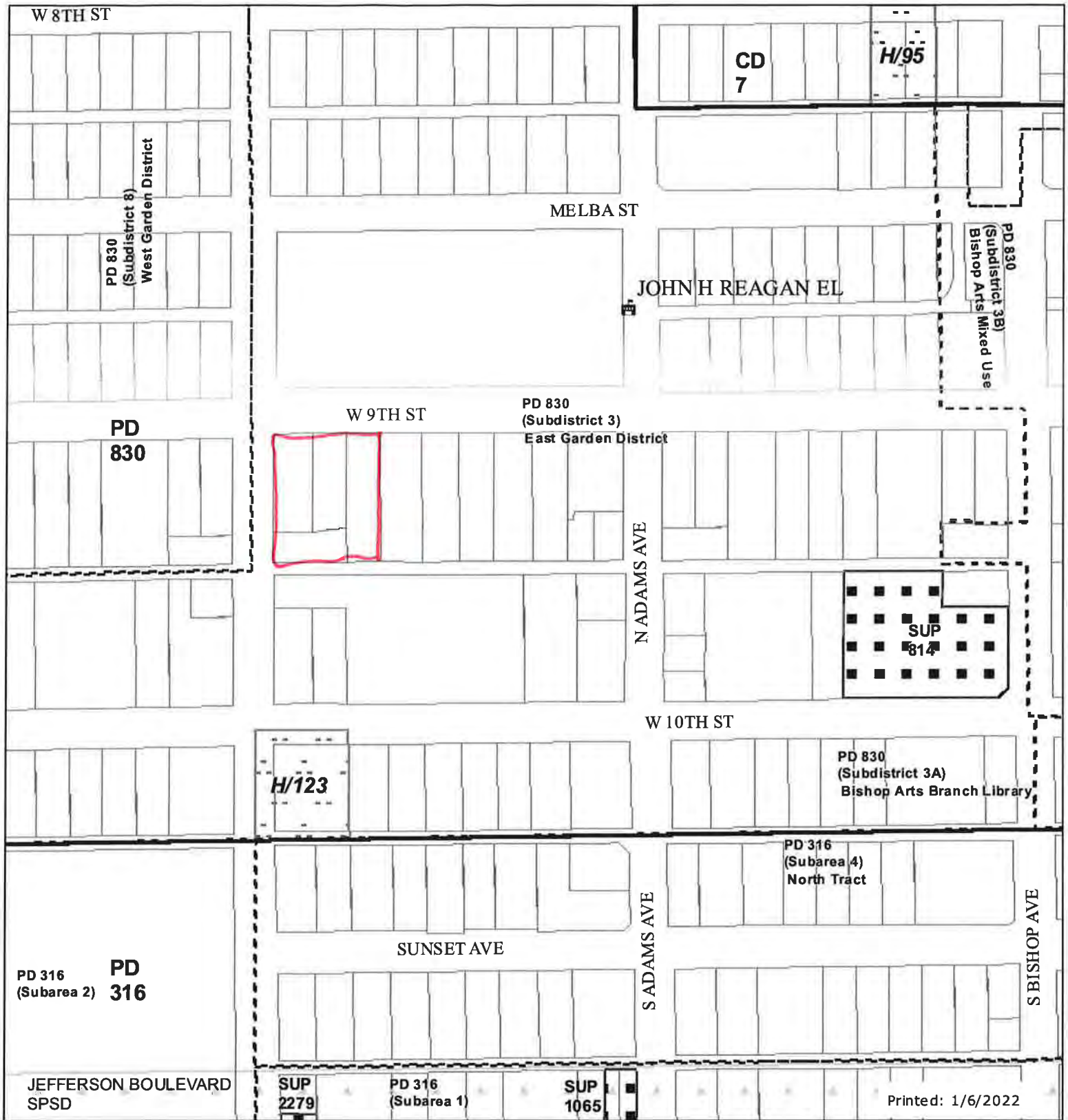
I hereby certify that Mark Drumm  
represented by KFM Engineering and Design  
did submit a request for a special exception to the landscaping regulations  
at 536 W 9th Street

BDA212-019. Application of Mark Drumm represented by KFM Engineering and Design for a special exception to the landscaping regulations at 536 W 9TH ST. This property is more fully described as Pt of Lots 18, 19, 20, Block 35/3155, and is zoned PD-830 (subdistrict 3) E, which requires mandatory landscaping. The applicant proposes to construct a multi-family structure and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

Sincerely,

  
David Session, Building Official





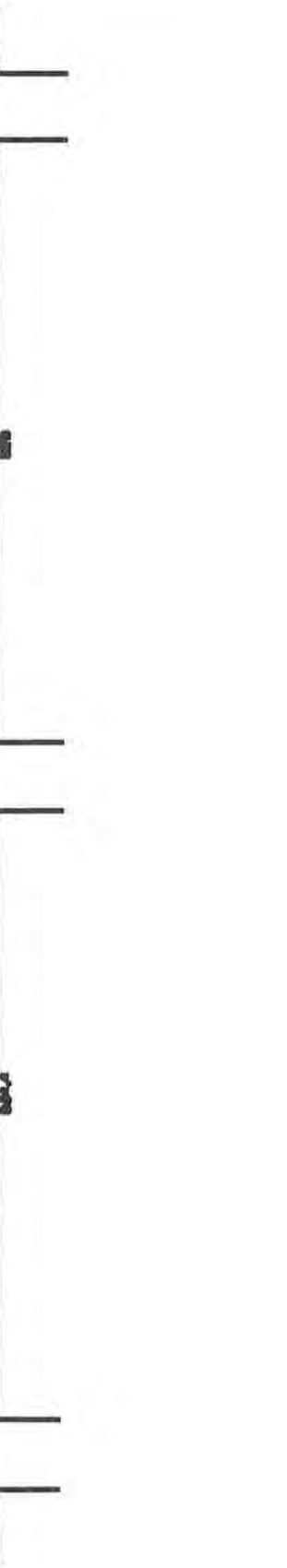
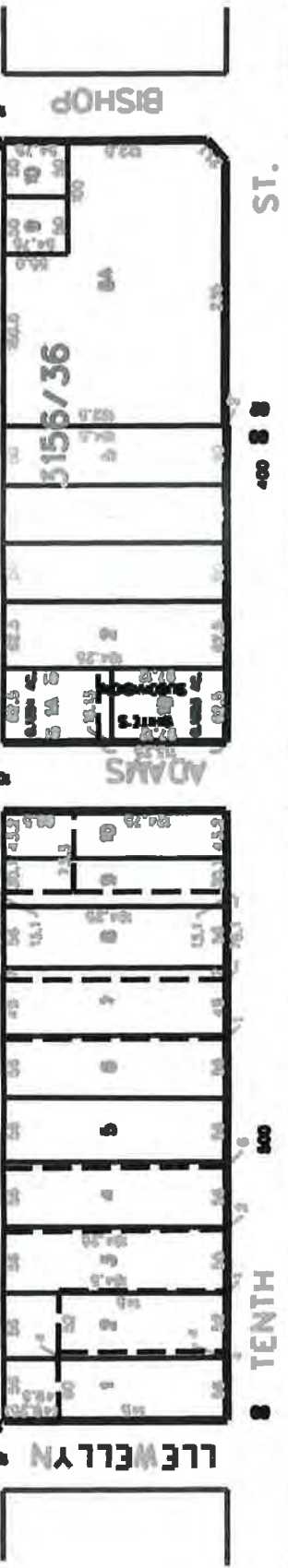
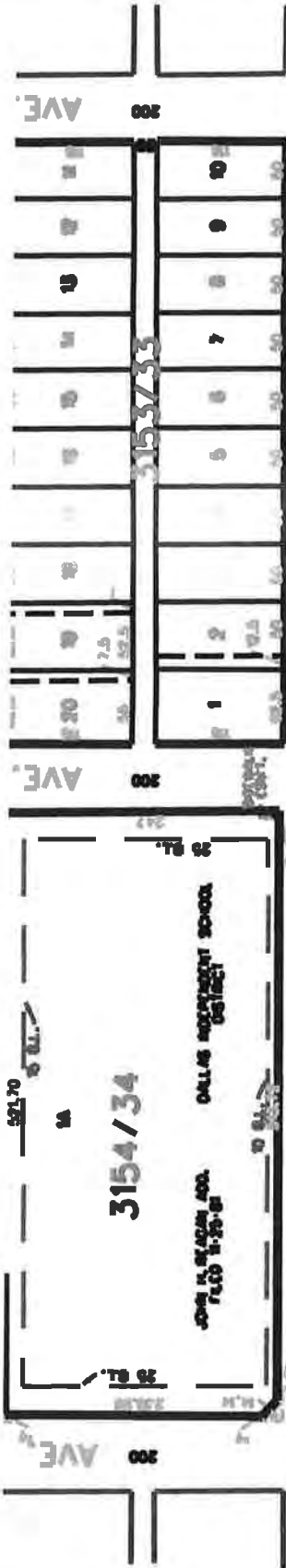
### Legend

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | Railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay                |
| Peak's Branch        | SPSP Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)





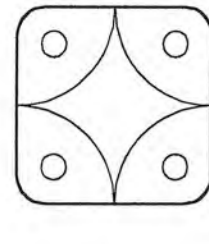


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Studio Group

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**Owner:**  
The Shelter Companies, LLC  
1772 Reuth Street, Suite 800  
Dallas, Texas 75201  
214.766.5522

**General Contractor:**  
RWA Construction  
10000 Katy, Suite 300  
Addicks, Texas 75001  
214.978.0177

**Civil Engineer:**  
KFM Engineering & Design  
3501 Olympus Boulevard, Suite 100  
Frisco, Texas 75039  
817.418.4536

**Architect:**  
KFM Engineering & Design  
12225 Greenville Ave., #980  
Dallas, TX 75243  
972.335.5585

**Structural Engineer:**  
Strand Systems Engineering, Inc.  
1003 Technology Boulevard West  
Frisco, Texas 75039  
972.620.8204

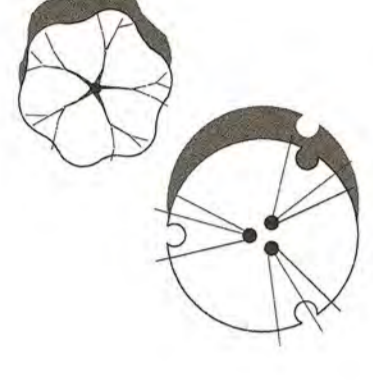
**MEP Engineer:**  
Sutton Edge Engineering, LLC  
5600 Termyson Parkway, Suite 250  
Plano, Texas 75024  
214.767.7300

**Interior Designer:**  
WORKSHOP | studio  
10000 Katy, Suite 206  
Dallas, Texas 75248  
214.215.8680

**Landscape Architect:**  
KFM Engineering & Design  
3501 Olympus Boulevard, Suite 100  
Frisco, Texas 75039  
817.418.4536

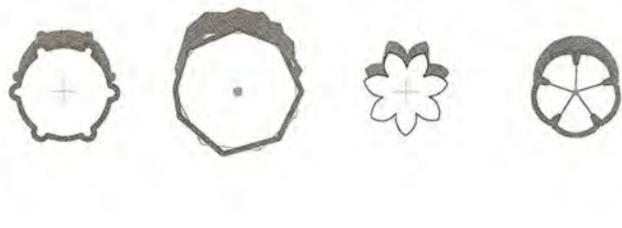
**PLANT KEY - GROUND LEVEL**

**ORNAMENTAL TREES**



**COMMON NAME**  
CRIMSON QUEEN MAPLE  
OKLAHOMA TEXAS REDBUD

**SHRUBS**



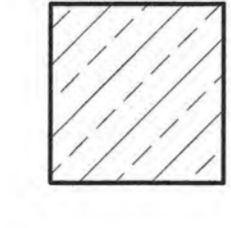
**COMMON NAME**  
WINTER GEM BOXWOOD  
WINTERGREEN BOXWOOD, GLOBE SHAPE  
HOLLY FERN  
HELENE VON STEIN LAMB'S EAR

**LARGE EVERGREEN SHRUBS**



**COMMON NAME**  
MAKI PODOCARPUS

**GROUND COVERS**



**COMMON NAME**  
STANDARD LIRIOPE

**City of Dallas Landscape Requirements - Article X  
Avid Living Bishop Arts District**

**Street Buffer Zones**

Required: One 3" Caliper large or medium tree per 40' of street frontage, except when existing conditions allow two small trees to substitute for each required tree. All street trees must be provided along the entire length of the lot.  
Provided: (6) 8' Ht. Min. Ornamental trees along Llewellyn Ave and (8) 8' Ht. Min along 9th Street

**Urban Streetscape:**

Required: If approved must have a 6' width planting area of open soil and covered soil conditions.  
Provided: 6' width planting area of open soil and covered soil conditions.

**Interior Zone:**

Required: All required large and medium trees must be a minimum of 3" caliper. Minimum landscape area is 160 sf with a minimum soil width of 8'. The center of the trunk must be a minimum of 4' from pavement  
Provided: BOA (Board of Adjustments Application)

**Site Trees**

Required: Must have (1) 2" Caliper Tree per 4,000 sf of Lot Area  
Provided: BOA (Board of Adjustments Application)

**Screening of off-street loading spaces:**

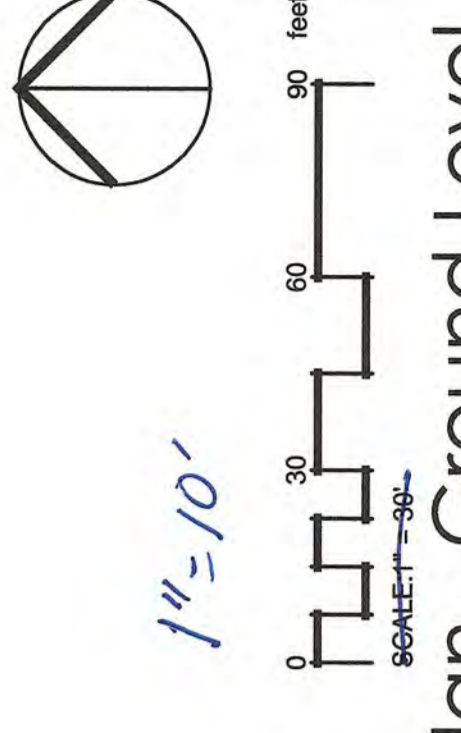
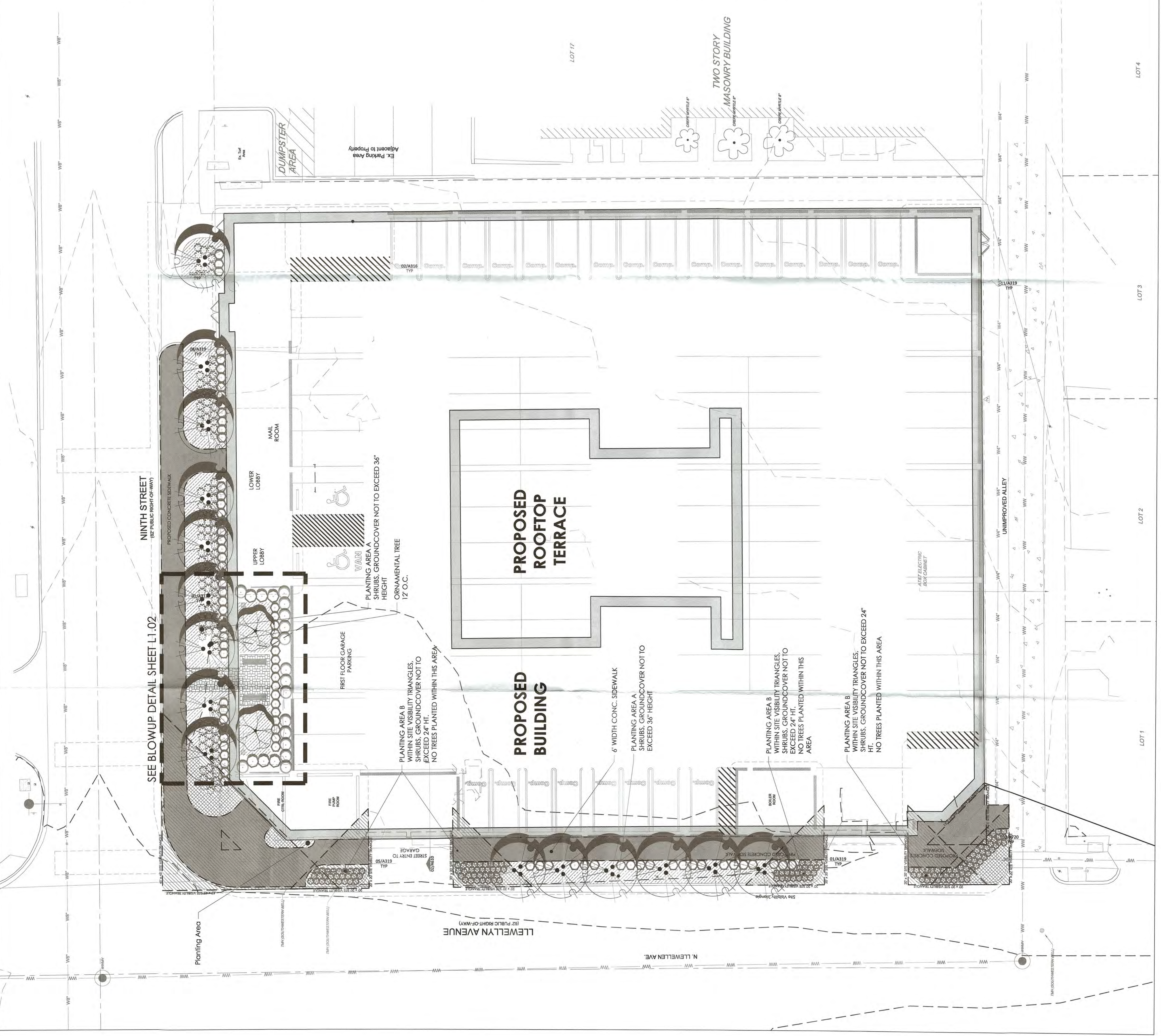
Required: Must be screened from residential adjacency. Must also be screened from all public streets.  
Provided: NA

**Pedestrian uses - 25 points maximum**

Provide private or publicly accessible pedestrian facilities for at least 5% of the building site  
Options: Urban streetscape (minimum of 2 amenity types)  
\_x\_ Benches  
\_x\_ Enhanced Pavement

**Pavements - 15 points maximum**

Provide enhanced or special pavement to a minimum of 25% of all outdoor vehicular pavement or 5% pedestrian use pavement  
Options: \_x\_ Enhanced vehicular pavement. Texture 3pts and Color 3 pts  
\_x\_ Permeable vehicular pavement - 5pts  
\_x\_ Enhanced pedestrian walkways. Texture 3pts and Color 3pts



12/23/21  
21201  
L1.01

# BDA212-019\_ATTACHMENT\_A

## Memorandum



CITY OF DALLAS

Date March 3, 2022

To Pamela Daniel, Sr. Planner  
Jennifer Munoz, Board Administrator

Subject BDA #212-019 536 W 9<sup>th</sup> Street Arborist report

### Request

The applicant is seeking a special exception to the landscaping requirements of Article X. The property is in the PD 830 Subdistrict 3 which contains additional requirements for street trees.

### Provision

The proposed landscape plan provides a narrow strip of landscaping on the property at the edge of the building foundation on both street fronts and two enclosed areas facing 9<sup>th</sup> Street.

- Street buffer zone: Meets Article X urban streetscape (street buffer zone) requirements on 9<sup>th</sup> Street, but not on Llewellyn Street.
- Street trees are provided with two small trees for a required one large tree, as allowed by PD 830. All street trees are small trees.
- The requirement for site trees is met on the parkway, as allowed by PD 830.

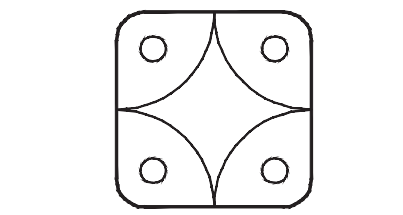
### Deficiency

- The plan does not provide for the Article X urban streetscape conditions along Llewellyn Street. Requirements include a minimum six-foot wide planting area and one design option.
- The property requires 15 landscape design option points (Sec. 10.126) but are not provided for, or listed, on the landscape plan. Partial points may have been provided but are not stated.

### Recommendation

The chief arborist recommends approval of the proposed revised alternate landscape plan. The landscape plan has several deficiencies based primarily on building proximity to the street right-of-way and the amount of lot coverage relative to open space, all allowed by city zoning regulations. The conditions of PD 830 made supportive conditions to allow 1) site trees to be planted in the right-of-way, and 2) for street trees to be minimized to small trees due to reduced planting spaces as well as the location of public utilities. I believe that strict compliance with the landscaping regulations in Article X unreasonably burdens this use of this property under this design.

Philip Erwin  
Chief Arborist  
Building Inspection



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Owner:  
**The Shelter Companies, LLC**  
1722 Routh Street, Suite 800  
Dallas, Texas 75201  
214.766.5522

General Contractor:  
**KWA Construction**  
16800 Westgrove Drive, Suite 300  
Addison, Texas 75001  
214.978.0177

Civil Engineer:  
**KFM Engineering & Design**  
3501 Olympus Boulevard, Suite 100  
Coppell, Texas 75019  
817.416.4536

Architect:  
**DOMUS STUDIO GROUP INC**  
12225 Greenville Ave., #980  
Dallas, TX 75243  
972.535.5585

Structural Engineer:  
**Strand Systems Engineering, Inc.**  
10003 Technology Boulevard West  
Dallas, Texas 75220  
972.620.8204

MEP Engineer:  
**Sutton Eldridge Engineering, LLC**  
5600 Tennyson Parkway, Suite 290  
Plano, Texas 75024  
214.763.7300

Interior Designer:  
**WORKSHOP | studio**  
17110 Dallas Parkway, Suite 286  
Dallas, Texas 75248  
214.215.8680

Landscape Architect:  
**KFM Engineering & Design**  
3501 Olympus Boulevard, Suite 100  
Coppell, Texas 75019  
817.416.4536

Avid Living  
at  
Bishop Arts

W. 9th Street at  
N. Llewellyn Ave  
Dallas, TX 75208

PERMIT  
SET

ISSUE DATES  
PROGRESS SET: 09.01.2021  
PRICING SET: 10.15.2021  
PERMIT SET: 12.23.2021

REVISIONS

PRELIMINARY  
NOT FOR CONSTRUCTION  
**KFM**  
ENGINEERING & DESIGN  
LANDSCAPE ARCHITECT: Nathan R. Parrott  
TBAE No.: 3237 DATE: 3/6/22

21201

LS1.01

PLANT KEY - GROUND LEVEL

ORNAMENTAL TREES	COMMON NAME
	CRIMSON QUEEN MAPLE
	WHITE CRAPE MYRTLE SINGLE-TRUNK
SHRUBS	COMMON NAME
	ROSE CREEK ABELIA
	WINTERGREEN BOXWOOD, GLOBE SHAPE
	DWARF YAUPON
	HELENE VON STEIN LAMB'S EAR
LARGE EVERGREEN SHRUBS	COMMON NAME
	MAKI PODOCARPUS
GROUND COVERS	COMMON NAME
	STANDARD LIRIOPE

LEGEND

	TELEPHONE LINE
	GAS LINE
	WATER LINE
	OVERHEAD ELECTRICAL LINE
	WASTEWATER LINE

NOTE

- PROPOSED BUILDING DOORS SHALL NOT OPEN INTO THE PUBLIC RIGHT-OF-WAY
- FINAL TREE PLACEMENT ALONG NINTH STREET AND LLEWELLYN AVENUE WILL BE FIELD COORDINATED WITH EXISTING UTILITY LINES

X Street Buffer Zone (SBZ) - Required 16. Provided 18. Must have one 3" caliper large or medium tree per 40' of street frontage, except when existing conditions allow two small trees to substitute for each required tree. All street trees must be provided along the entire length of the lot, excluding paved surfaces at points of ingress/egress, and within an area measured from the property boundary, unless authorized for distance from the street curb.

Right-of-way	Minimum	Average Depth	Minimum Depth	Maximum Depth	
Arterial and community collectors	15 feet	10 feet	5 feet	30 feet	10.125(b)(1)
Local and residential collectors	10 feet	7.5 feet	5 feet	25 feet	

**Ninth St**  
Gross Street Frontage - 162.27'  
Street Frontage Within Driveways - 30.56'  
Net Street Frontage - 131.71/40'  
Trees Required - 3.3 = 4 large; 8 small  
Trees Provided - 8 small

**Llewellyn Ave**  
Gross Street Frontage - 194.48'  
Street Frontage Within Driveways - 0  
Net Street Frontage - 194.48/40'  
Trees Required - 4.9 = 5 large; 10 small  
Trees Provided - 10 small

**Provided Urban Streetscape** - (Option) If approved, must have a six-foot wide planting area of open soil and covered soil conditions. A minimum of one design option must be provided in the front yard or right-of-way area, as written in code.  
**X Right-of-Way** - (Option) May be used for SBZ, if qualified. Must provide SBZ area of a minimum of 5' depth along the property line. The right-of-way must be suitable for planting by city standards.

Ninth St - 8.5' street buffer zone  
Llewellyn Ave - 3.5' street buffer zone (not compliant with Article X)

5 (5) **Building facade - 15 points maximum.** Facade planting areas adjacent to public streets or private driveways.

- Options:
- 1) X Standard design, 5 pts.
  - 2) Enhanced design\*, 10 pts.
  - 3) Additional grouping of medium/small trees, 5 pts.
  - 4) One small tree per 30 ft. within 15 feet of facade, 5 pts. 10.125(b)(5)

10 (6) **Pedestrian uses - 25 points maximum.** Provide private or publicly accessible pedestrian amenities for at least 5% of the lot area. Options:

- 1) Urban streetscape (minimum of 2 amenity types): X Benches; X Lamps; Enhanced sidewalk (not available for option 7); 8-ft. Unobstructed sidewalk; Water feature; 10 pts.
- 2) Special amenities in building site, exclude private courtyards 5 pts. (private), 10 pts. (public);
- 3) Habitat restoration adjacency, 10 pts. (private), 15 pts. (public);
- 4) Athletic fields, 10 pts., or 20 pts. (on lots over 10 acres). 10.125(b)(6)

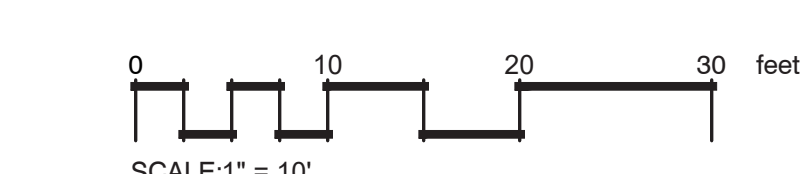
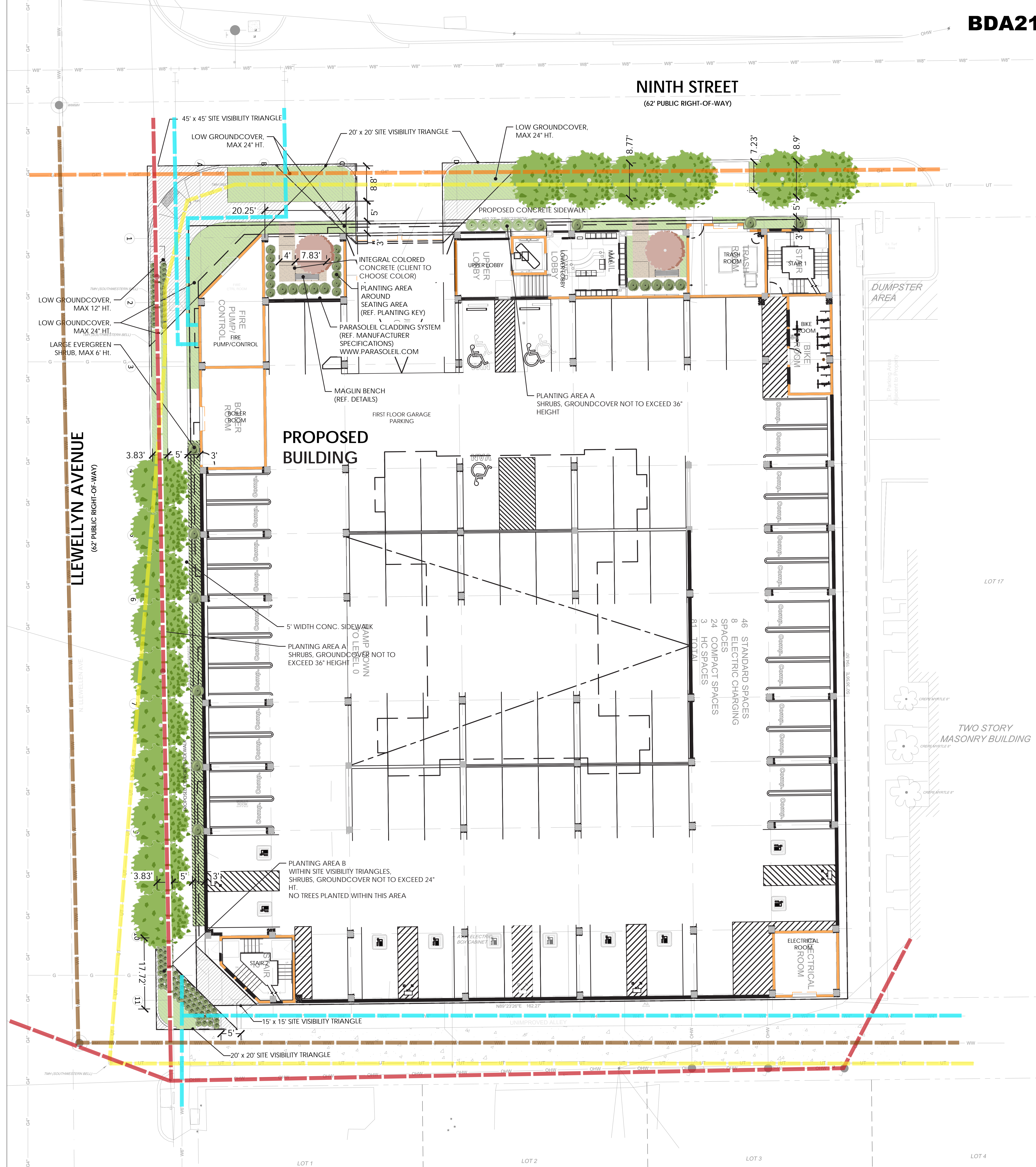
Soil and Planting Area Requirements

Tree Locations

In General

(C) Required - two-and-one-half feet from pavement  
Provided - less than two-and-one-half feet from pavement

(D) Required - five feet from electrical transmission boxes, fire hydrants, in-ground or above-ground utility access, underground local utility lines, and water meters.  
Provided - within five feet of underground local utility lines



Landscape Plan - Ground Level

Memorandum



CITY OF DALLAS

Date March 31, 2022  
To Pamela Daniel, Sr. Planner  
Jennifer Munoz, Board Administrator  
Subject BDA #212-019 536 W 9<sup>th</sup> Street Arborist report – Rev. alt. landscape plan 3/30/22

**Request**

The applicant is seeking a special exception to the landscaping requirements of Article X. The property is in the PD 830 Subdistrict 3 which contains additional requirements for street trees.

**Provision**

The proposed landscape plan provides a narrow strip of landscaping on the property at the edge of the building foundation on both street fronts and two enclosed areas facing 9<sup>th</sup> Street.

- Street buffer zone: Meets Article X urban streetscape (street buffer zone) requirements on 9<sup>th</sup> Street, but not on Llewellyn Street.
- Street trees are provided with two small trees for a required one large tree, as allowed by PD 830 when planting space is inadequate or for utilities. All street trees are small trees.
- The requirement for site trees is met on the parkway, as allowed by PD 830.

**Deficiency**

- The plan does not provide for the Article X urban streetscape conditions along Llewellyn Street. Requirements include a minimum six-foot wide planting area and one design option.
- The property requires 15 landscape design option points (Sec. 10.126). Although the designer presented elements of landscape design options, including the benches in the enclosed seating areas, the parkway conditions are limiting to meeting the ability to attain the required number of points for a lot of this size.

**Recommendation**

The chief arborist recommends approval of the proposed revised alternate landscape plan as presented on March 30. The landscape plan has several deficiencies based primarily on building proximity to the street right-of-way and due to the amount of lot coverage relative to open space, all allowed by city zoning regulations. The conditions of PD 830 supported the allowance for 1) site trees to be planted in the right-of-way, and 2) for street trees to be minimized to small trees due to reduced planting spaces as well as the location of public utilities. I believe that strict compliance with the landscaping regulations in Article X unreasonably burdens this use of this property under the approved structural design.

Philip Erwin  
Chief Arborist

# Building Inspection

Panel A

04-19-22

BDA212-019

536 W. 9th St.

(Opposition Letters)

**From:** [Laura Bowles](#)  
**To:** [Daniel, Pamela](#)  
**Subject:** Panel A Hearing 3/22/22  
**Date:** Tuesday, March 22, 2022 9:41:25 AM

---

**External Email!**

Good morning,

I am unable to attend the hearing today for special exception to the landscape regulations at 536 W 9th St due to a full time job.

I live at 520 W 9th St and I oppose this special exception to the landscape regulations.

Replacing a large green space with shrubs, trees, and small 'planting areas' the size of a sheet of plywood will not supersede what has been lost. The current landscape regulations ensure the bare minimum of green space surrounding buildings for a neighborhood feel. I am not opposed to new buildings if they remain within current regulations, such as it has been for many years. Decreasing green space increases a city feel and also decreases chances for those to experience nature. Increased crime, decreased interaction with neighbors, and increased health complications have all been associated with the decreasing of green spaces currently required within the current regulations.

Please feel free to contact me if you have any questions or concerns.

Laura Bowles  
520 W 9th St

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.



**FILE NUMBER:** BDA212-020(PD)

**BUILDING OFFICIAL'S REPORT:** Application of Stephen Marley represented by Alfred Pena for 1) a variance to the side yard setback regulations of five-feet to construct an accessory structure zero feet from the property line, within a required five-foot side yard setback; and, 2) a variance to the single-family use regulations to construct and maintain a 798-square-foot accessory structure (39.54 percent of the 2,018-square-foot floor area of the main structure) which will require a 294-square-foot variance to the floor area ratio of the main structure at 1218 N. Clinton Avenue. This property is more fully described as Lot 5 in City Block 15/3802 and is zoned Subarea 1 within Conservation District No. 13, in which a minimum side yard setback of five feet must be maintained, and an accessory structure may not exceed 25 percent of the floor area of the main structure.

**LOCATION:** 1218 N. Clinton Avenue

**APPLICANT:** Stephen Marley represented by Alfred Pena

**REQUESTS:**

The applicant proposes to construct and maintain an accessory structure with approximately 798 square feet of floor area wholly into a required five-foot side yard setback on a site developed with a single-family dwelling.

**UPDATES:**

There have been no updates to the request. However, on April 8, 2022, the applicant requested a postponement (**Attachment B**).

**STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, **side yard**, rear yard, lot width, lot depth, lot coverage, **floor area** for structures accessory to single-family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;

- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**STAFF RECOMMENDATION (first & second requests):**

Denial:

Rationale:

Staff concluded that the subject site is not unique and different from most lots in Subarea 1 within Conservation District No. 13 considering the evidence (**Attachment A**) neither meets the variance standard by comparing the parcels of land nor proved how the subject land is of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning. While the evidence (**Attachment A**) reflected a comparative analysis of twelve properties, the analysis focused on year built, floor area of structures, floor area of variances submitted, average percentage of these variances, average floor area allowed by these variances, and the floor area of existing quarters for five of the comparative properties. Additionally, the evidence (**Attachment A**) provides an overview of how the regulations for the zoning district restrict development on the subject site yet fails to address that the same twelve properties contain the same zoning and regulations that are not prohibitive. All things considered; the evidence (**Attachment A**) does not provide a substantive comparative analysis of the land(s) to meet the variance standard and reflect how the site cannot be developed in a commensurate manner. Subsequently, a cost analysis reflecting how compliance of CD No. 13 regulations would exceed 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor would have received a more favorable recommendation.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: Subarea 1 within Conservation District No. 13  
North: Subarea 1 within Conservation District No. 13  
South: Subarea 1 within Conservation District No. 13  
East: Subarea 1 within Conservation District No. 13  
West: Subarea 1 within Conservation District No. 13

## Land Use:

The subject site and all surrounding properties are developed with single-family uses.

## Zoning/BDA History:

There have been five recent related board cases in the vicinity within the last five years.

1. **BDA201-082:** On September 20, 2021, Panel C, Board of Adjustment approved 1) a variance to the side yard setback regulations of four-feet to construct an accessory dwelling unit one-foot from the property line, within a required five-foot side yard setback; and 2) a variance to the single-family use regulations to construct and maintain a 699-square-foot accessory structure (34.8 percent of the 2,005-square-foot floor area of the main structure) at 1107 S. Canterbury.
2. **BDA189-040:** On April 16, 2019, Panel A, Board of Adjustment denied a variance for to the off-street parking regulations of 15' is made to replace an existing approximately 360 square foot garage with parking spaces in it that are accessed from N. Edgefield Avenue to the east with a new approximately 650 square foot garage with parking spaces in it that would be accessed from the alley to the west – parking spaces in this new enclosed structure/garage that would be located 5' from the right-of-way line adjacent to the alley or 15' into the 20' required distance these enclosed parking spaces must be from the alley right-of-way line on a site developed with a single family home at 1107 N. Edgefield Avenue.
3. **BDA189-052:** On May 21, 2019, Panel A, Board of Adjustment approved a variance to the front yard setback regulations to provide a 21-foot front yard setback, which will require a 51-foot variance to the front yard setback at 1828 Kessler Parkway.
4. **BDA178-033:** On March 21, 2018, Panel B, Board of Adjustment approved a variance to the front yard setback regulations of 19' is requested to construct and maintain the aforementioned structure 16' from the front property line or 19' into the required 35' front yard setback; 2. a variance to the off-street parking regulations of 4' is requested as the proposed home would have parking spaces in an enclosed structure (an attached garage) that would be located 16' from the right-of-way line adjacent to the street or as much as 4' into the required 20' distance from the right-of-way line adjacent to Kessler Parkway at 2016 Kessler Parkway.
5. **BDA178-030:** On March 19, 2018, Panel C, Board of Adjustments approved a variance to the front yard of setback 11-foot-3-inch variance to the front yard setback regulations to provide a 20 foot three inch front yard setback at 1520 Olympia Drive.

## **GENERAL FACTS/STAFF ANALYSIS:**

The subject property zoned Subarea 1 within Conservation District No. 13. In this district, a minimum side yard setback of five feet is required. Additionally, an accessory structure cannot exceed 25 percent of the floor area ratio of the main structure. The requests for variances to the side yard setback and maximum floor area ratio regulations focus on constructing and maintaining a 798-square-foot accessory structure. The proposed unit is 39.54 percent of the 2,018 square foot floor area of the main structure, which will require a 294-square-foot variance to the floor area ratio of the main structure. The proposed unit is to be constructed wholly within the required five-foot side property line, or five feet into a required five-foot side yard setback.

DCAD records indicate the following improvements for the property located at 1218 N. Clinton Avenue: “main improvement”: a structure with 2,018 square feet of living area built-in 1924” and “additional improvements”: a 400-square-foot detached garage, a 232 square foot “detached quarters,” and a swimming pool.

The site plan depicts an existing one-story accessory structure with approximately 287 square feet of floor area. The applicant proposes to construct a second story accessory structure with approximately 798 square feet, with the proposed second story addition encroaching wholly into a required five-foot side yard setback. The second story addition with stairs will equate to approximately 39.5 percent of the existing 2,018-square-foot floor area ratio of the main structure.

The property is irregular in shape since it is neither rectangular nor square and according to the application, contains 0.248 acres, or approximately 10,802 square feet in lot area. In Subarea 1 within Conservation District No. 13 the minimum lot size is 7,500 square feet. However, properties within the vicinity are one-and-a half times greater than the minimum lot size.

The applicant has submitted a document comparing the lot sizes and improvements of the subject site with 12 adjacent properties in the same zoning district. However, information contained within the evidence did not provide a comparative analysis of lot area, shape, or slope. Thus, staff cannot determine whether the subject property is restrictive in a manner to prevent commensurate development.

The applicant has the burden of proof in establishing the following:

- That granting the variances will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed, and substantial justice done.

- The variances are necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification.
- The variances would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same zoning classification.

As of April 11, 2022, staff has received eight letters in support of the request and none in opposition to the request.

If the board were to grant a variance to the floor area regulations and a variance to the side yard setback for structures accessory to single-family uses and impose the submitted site plan as a condition, the building footprint of the structure on the site would be limited to what is shown on this document. However, granting these variances will not provide any relief to the Dallas Development Code regulations other than allowing an additional structure on the site to exceed the floor area ratio and encroach into the side yard setback as depicted on the site plan (i.e. development on the site must meet all other code requirements).

**Timeline:**

- January 7, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report. Additionally, the applicant submitted evidence (**Attachment A**) with the application.
- March 1, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- February 3, 2022: The Senior Planner emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application.
  - an attachment that provided the public hearing date and panel that will consider the application; the February 23<sup>rd</sup> deadline to submit additional evidence for staff to factor into their analysis; and the March 4<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and

- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

March 2, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the March public hearings. Review team members in attendance included the following: the Board of Adjustment Chief Planner/Board Administrator, the Building Inspection Senior Plans Examiner, the Board of Adjustment Senior Planner, the Chief Arborist, the Conservation Districts Chief Planner, the Senior Engineer, and the Assistant City Attorney to the board.

No review comment sheets were submitted in conjunction with this application.

March 22, 2022: The Board held the request under advisement until April 19, 2022.

April 8, 2022: The applicant requested a postponement (**Attachment B**) to allow more time to garner support from neighbors.

**BOARD OF ADJUSTMENT ACTION: March 22, 2022**

**APPEARING IN FAVOR:**

Alfredo Pena 410 E. 5<sup>th</sup> St. Dallas, TX  
Stephen Marley 1218 N. Clinton Ave. Dallas,  
TX  
Jason Michael 1300 W. Canterbury Dallas TX

**APPEARING IN OPPOSITION:**

None.

**MOTION: Halcomb**

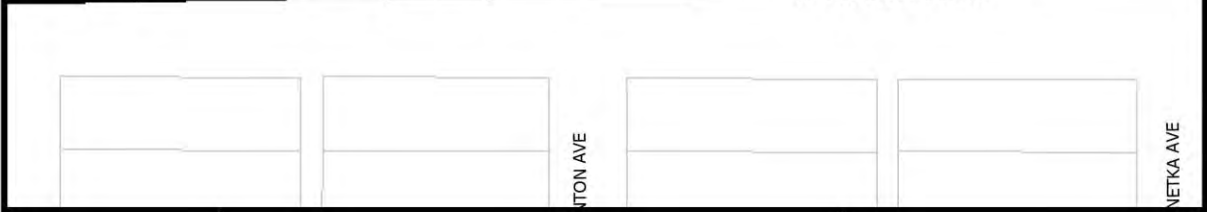
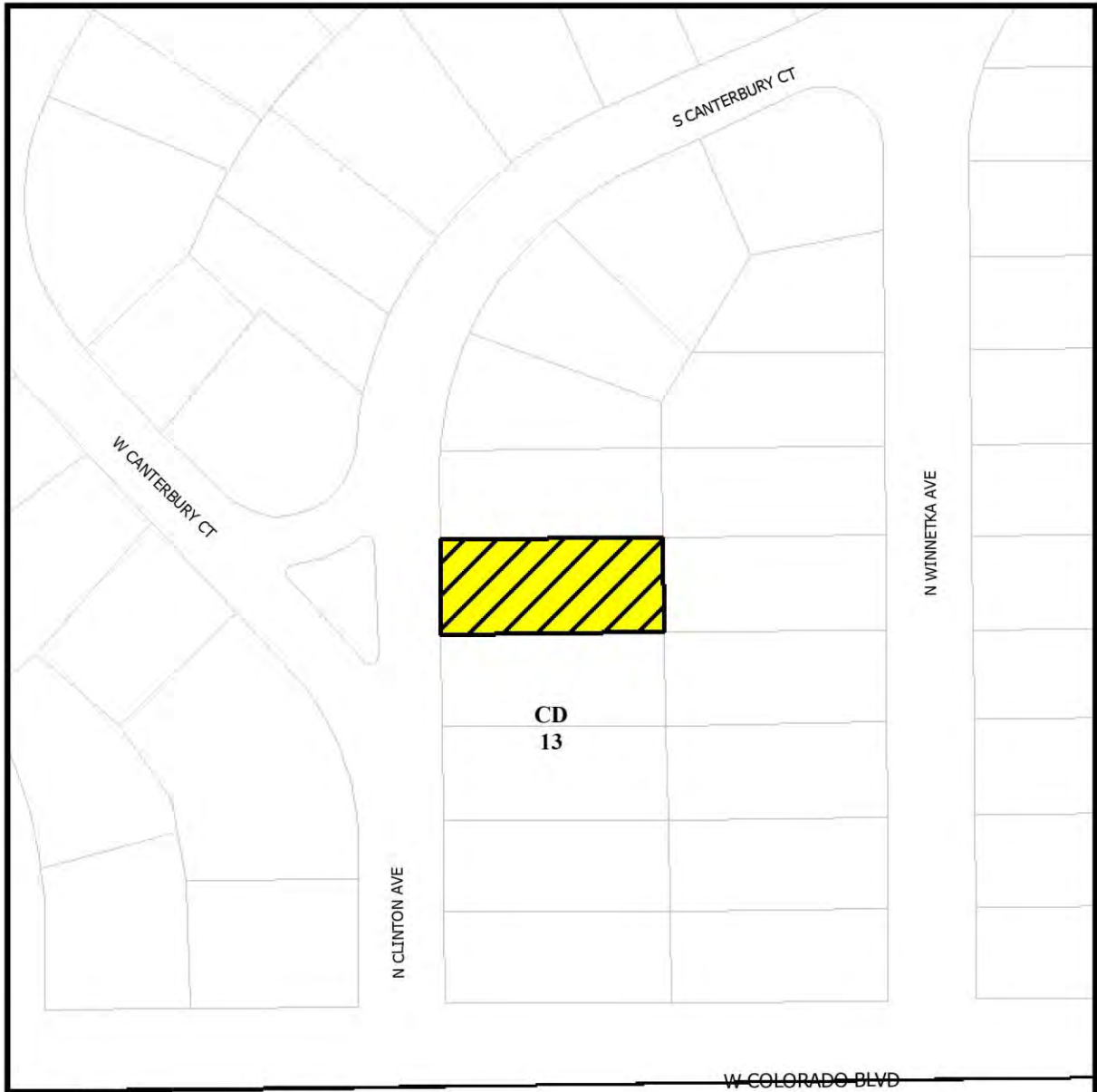
I move that the Board of Adjustment in request No. BDA 212-020, **hold** this matter under advisement until **April 19, 2022**.


**SECONDED: Frankford**

**AYES:** 5 – Narey, Frankford Lamb, Halcomb, Neumann

**NAYS:** 0 -

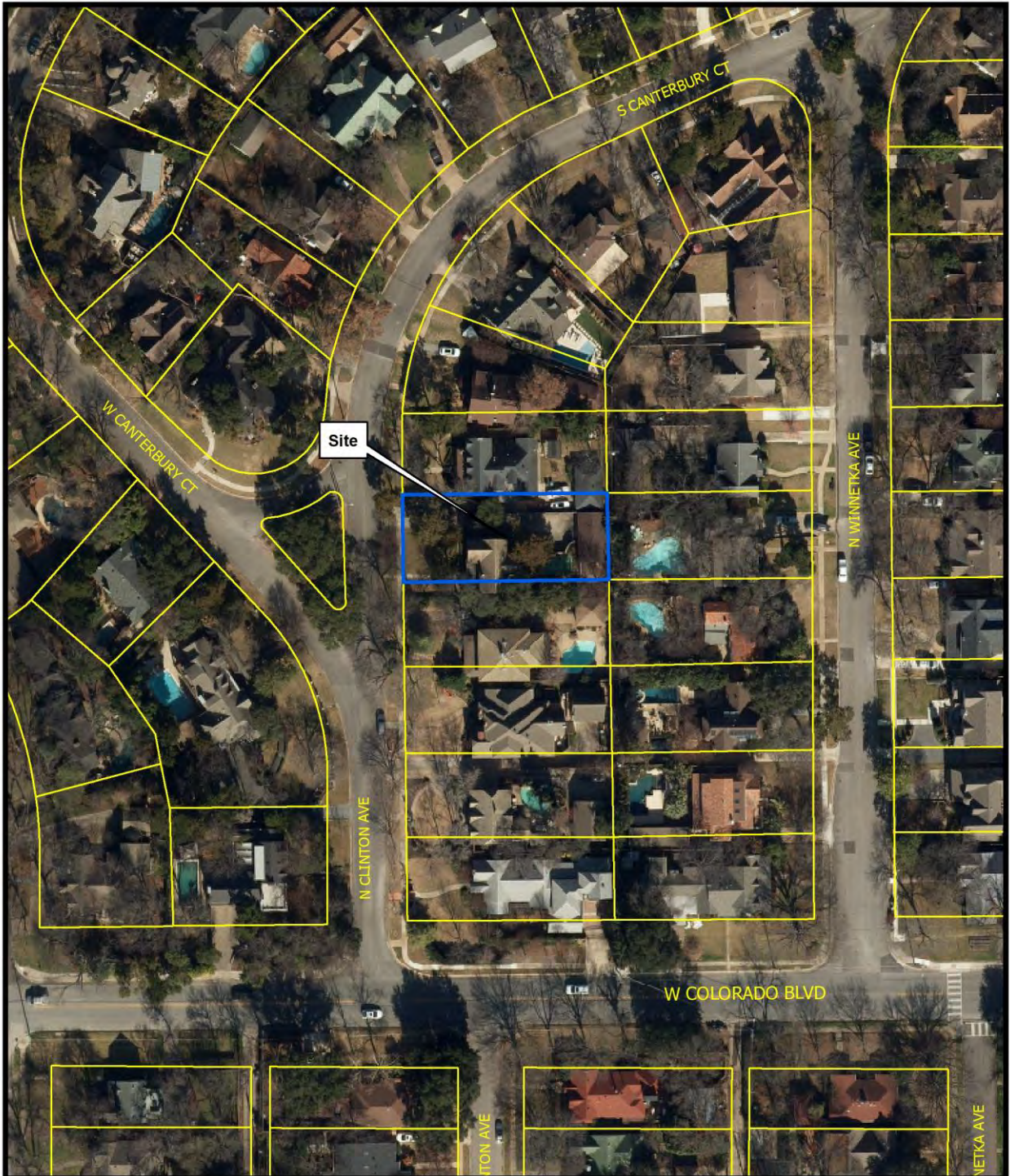
**MOTION PASSED: 5-0 (unanimously)**



  
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# ZONING MAP

Case no: BDA212-020  
Date: 2/1/2022



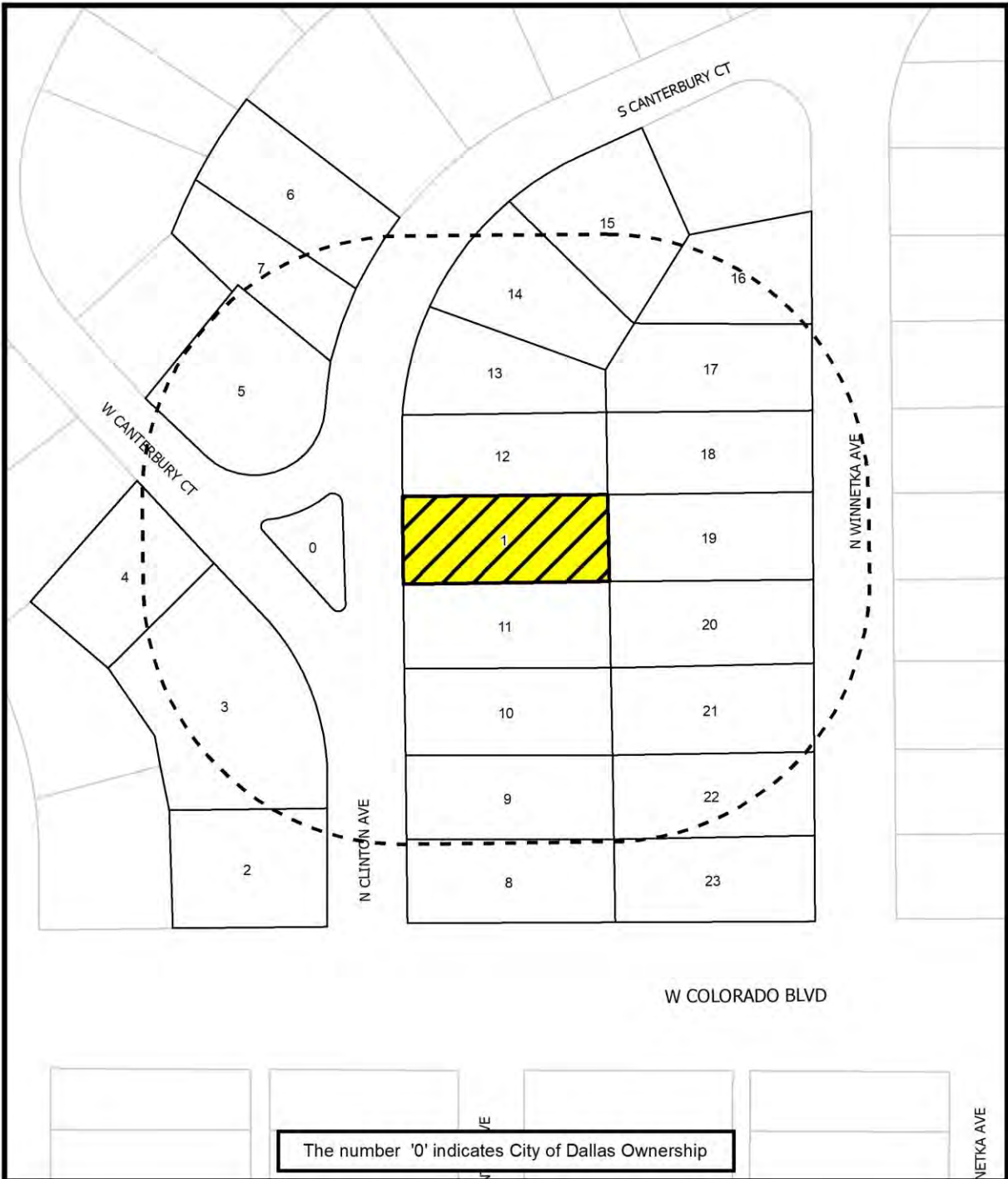
1:1,200

# AERIAL MAP

Case no: BDA212-020

Date: 2/1/2022





  
 1:1,200

**NOTIFICATION**

200' AREA OF NOTIFICATION  
23 NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA212-020**  
 Date: **2/1/2022**

02/01/2022

## *Notification List of Property Owners*

*BDA212-020*

*23 Property Owners Notified*

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	1218 N CLINTON AVE	MARLEY STEPHEN
2	1203 N CLINTON AVE	ROGERS SAMUEL H & KELLY C
3	1217 N CLINTON AVE	GULATI KUNAL & JOSEFA
4	1303 W CANTERBURY CT	SHAW BRIAN PATRICK &
5	1300 CANTERBURY CT	MICHAEL JASON & NICOLE
6	1127 CANTERBURY CT	VAUGHN KATHLEEN S
7	1131 CANTERBURY CT	ZARRELLA JOHN & NANCY
8	1202 N CLINTON AVE	PETERSON JILL
9	1206 N CLINTON AVE	BRUMBAUGH R DAVID &
10	1210 N CLINTON AVE	MONKRES J PIERCE & SANDRA
11	1214 N CLINTON AVE	KOZACK DAVID E &
12	1222 N CLINTON AVE	HARPER STEPHEN PAUL
13	1124 CANTERBURY CT	HILL ANN JOHNSON
14	1118 CANTERBURY CT	LEFTWICH GREGORY S &
15	1112 CANTERBURY CT	ROBINSON REBECCA &
16	1231 N WINNETKA AVE	EVETTS GREGORY A &
17	1227 N WINNETKA AVE	WAKS LAWRENCE & ERIN
18	1225 N WINNETKA AVE	ESCOBEDO CHRIS
19	1219 N WINNETKA AVE	MARTENSEN JEFFREY B &
20	1215 N WINNETKA AVE	MCLARTY CHRISTOPHER &
21	1211 N WINNETKA AVE	MURPHY REBECCA &
22	1207 N WINNETKA AVE	Taxpayer at
23	1203 N WINNETKA AVE	ELLIS LEONARD L III



APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 212-020

Data Relative to Subject Property:

Date: ~~01-06-22~~ 1-7-22 col

Location address: 1218 N Clinton Avenue

Zoning District: CD13 (Subarea 1)

Lot No.: 5 Block No.: 15/3802 Acreage: 0.248 Census Tract: 44.00

Street Frontage (in Feet): 1) 67.2 2) \_\_\_\_\_ 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Stephen Marley

Applicant: Stephen Marley Telephone: \_\_\_\_\_

Mailing Address: 1218 N Clinton, Dallas, TX Zip Code: 75208

E-mail Address: swmarley@gmail.com

Represented by: Alfredo Peña Telephone: 817-602-8161

Mailing Address: 410 E 5th St., Dallas, TX Zip Code: 75203

E-mail Address: fred@tezanto.com

Affirm that an appeal has been made for a Variance X, or Special Exception \_\_, of \_\_\_\_\_

1 - Increase Accessory Structure living space size

2 - Reduce side setback to allow existing structure location to remain

Please Note - The Conservation District zoning allows one accessory dwelling unit.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas

Development Code, to grant the described appeal for the following reason:

Owner wishes to add on to the house in the future but due to proximity slope, the house can only extend rearward on the north half which is limited by a large existing tree and the existing swimming pool. The house is one of the smaller ones on the block making the 25% of living space not sufficient to properly have both a home office and guest suite above the existing garage. The garage footprint is NOT changing.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

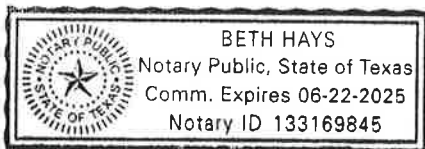
Before me the undersigned on this day personally appeared STEPHEN MARLEY  
(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature]  
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 7th day of JANUARY, 2022

(Rev. 08-01-11)



[Signature]  
Notary Public in and for Dallas County, Texas

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

**I hereby certify that**      STEPHEN MARLEY  
**represented by**            ALFREDO PENA  
**did submit a request**      for a variance to the floor area ratio regulations, and for a variance to the  
side yard setback regulations  
**at**                              1218 N. Clinton Avenue

BDA212-020. Application of STEPHEN MARLEY represented by ALFREDO PENA for a variance to the floor area ratio regulations, and for a variance to the side yard setback regulations at 1218 N CLINTON AVE. This property is more fully described as Lot 5, Block 15/3802, and is zoned CD-13 (Subarea 1), which an accessory structure may not exceed 25% of the floor area of the main structure and requires a side yard setback of 5 feet. The applicant proposes to construct and maintain a single family residential accessory structure with 798 square feet of floor area (39.54% of the 2018 square foot floor area of the main structure), which will require a 294 square foot variance to the floor area ratio regulations, and to construct and maintain a single family residential accessory structure and provide a 0 foot side yard setback, which will require a 5 foot variance to the front side rear yard setback regulations.

Sincerely,

  
David Session, Building Official

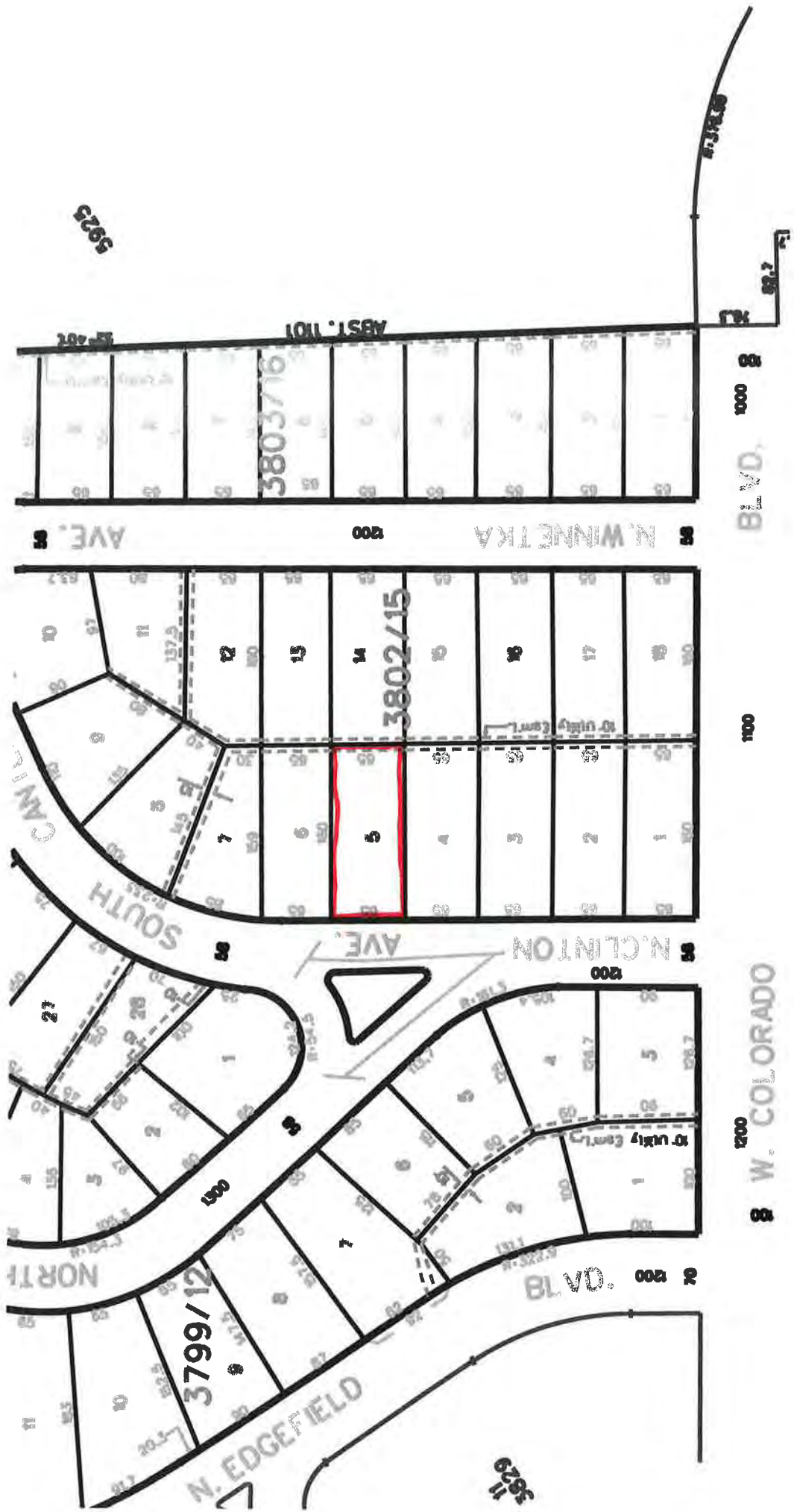


### Legend

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | Railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay                |
| Peak's Branch        | SPSD Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)





5923

ABST. 101

3803/16

AVE. 58

200

N. WINNETKA

BLVD. 1000 8

3802/15

CANTON

SOUTH

AVE. 200

N. CLINTON

100

21

1000

7

BLVD. 200

1200

S. W. COLORADO

N. EDGEFIELD

5829

3799/12

NORTH

4737.8

89.2

75

1000

1000

1000

1000

1000

1000

1000

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1000

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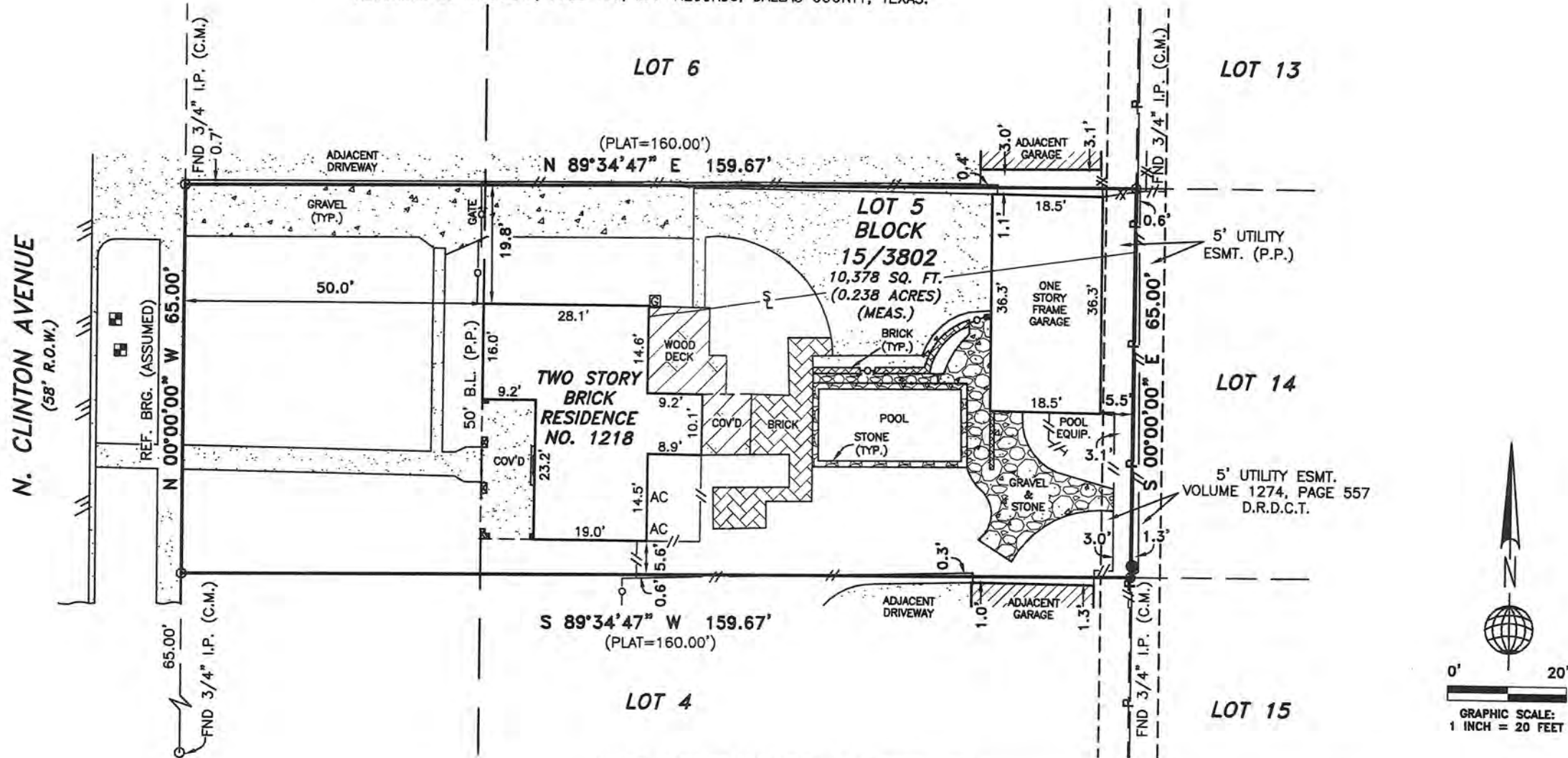
98

99

100

**"SURVEY PLAT"**

LOT 5, BLOCK 15, FIRST INSTALLMENT OF KESSLER PARK, AN ADDITION TO THE CITY OF DALLAS, DALLAS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN VOLUME 3, PAGE 147, MAP RECORDS, DALLAS COUNTY, TEXAS.



SURVEY EXAMINED AND ACCEPTED BY PURCHASERS: \_\_\_\_\_ DATE: \_\_\_\_\_

CERTIFIED TO: HSTX TITLE AND STEPHEN MARLEY GF#:HSTX21-00171 DATE: 03/29/2021 JOB NO.:21-03-081

SYMBOL	LEGEND	FND= FOUND	I.R.= IRON ROD	I.P.= IRON PIPE	ESMT.= EASEMENT	B.L.= BUILDING LINE	(C.M.)= CONTROL MONUMENT
---	WOOD FENCE						
-x-	CHAIN LINK FENCE						
-x-	WIRE FENCE						
o	WROUGHT IRON FENCE						
□	COLUMN						
●	POWER POLE						
⊗	WATER METER						
—	POWERLINE						
—	OVER-HEAD SERVICE LINE						
⊕	TRANSFORMER AND PAD						
⊕	GAS METER						
///	ASPHALT SURFACE						
■	CONCRETE						

I, JASON L. MORGAN, REGISTERED PROFESSIONAL LAND SURVEYOR OF THE STATE OF TEXAS, DO HEREBY CERTIFY THAT THE PLAT HEREON IS A TRUE, CORRECT AND ACCURATE REPRESENTATION OF THE SUBJECT PROPERTY AS DETERMINED BY AN ON THE GROUND SURVEY UNDER MY SUPERVISION. THIS SURVEY MEETS OR EXCEEDS THE MINIMUM STANDARDS PROMULGATED BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYING AND WAS PERFORMED IN CONNECTION WITH TITLE COMMITMENT OF NO. HSTX21-00171 PROVIDED BY HSTX TITLE REFLECTING ONLY THE EASEMENT(S) LISTED IN SCHEDULE "B" OF SAID COMMITMENT. USE OF THIS SURVEY BY ANY OTHER PARTY SHALL BE AT THEIR OWN RISK AND THE UNDERSIGNED IS NOT RESPONSIBLE TO OTHERS FOR ANY LOSS RESULTING THEREFROM. THIS SURVEY IS NOT VALID WITHOUT A RED SEAL AND SIGNATURE.

*Jason L. Morgan*  
JASON L. MORGAN TXRPLS 5587

**Global Land Surveying, Inc.**  
SERVING COLLIN, DALLAS AND DENTON COUNTIES SINCE 2002

GLOBAL LAND SURVEYING, INC.  
P.O. BOX 280369  
PLANO, TEXAS 75026  
PHONE (972) 881-1700  
JMORGAN@GLS-INC.COM  
TBPELS FIRM NO. 10016300

ADDRESS: 1218 N. CLINTON AVENUE

**NOTES:**

- 1) (P.P.) INDICATES BUILDING LINES, EASEMENTS, R.O.W.S, DIMENSIONS, ETC. ARE PER PLAT REFERENCED IN LEGAL DESCRIPTION ABOVE.
- 2) THE PROPERTY SHOWN HEREON APPEARS TO BE SUBJECT TO THE EASEMENTS RECORDED IN VOLUME 1274, PAGE 557, REAL PROPERTY RECORDS OF DALLAS COUNTY, TEXAS.
- 3) THE PROPERTY SHOWN HEREON APPEARS TO BE SUBJECT TO THE TERMS, PROVISIONS, CONDITIONS, BUILDING LINES AND EASEMENTS DESCRIBED IN RESTRICTIVE COVENANTS RECORDED IN VOLUME 1105, PAGE 530, OF THE DEED RECORDS OF DALLAS COUNTY, TEXAS.

**FLOOD STATEMENT:**

ACCORDING TO MY INTERPRETATIONS OF COMMUNITY PANEL NO. 480171 0340J, DATED 08/23/2001, OF THE NATIONAL FLOOD INSURANCE RATE MAPS FOR DALLAS COUNTY, TEXAS, THE SUBJECT PROPERTY APPEARS TO LIE WITHIN FLOOD ZONE "X" AND IS NOT SHOWN TO BE WITHIN A SPECIAL FLOOD HAZARD AREA. THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.

**TEZANTO**  
817.602.8161  
fred@tezanto.com

**REGISTERED ARCHITECT**  
ALFREDO PEÑA  
27434  
STATE OF TEXAS  
Alfredo Peña  
01-07-22

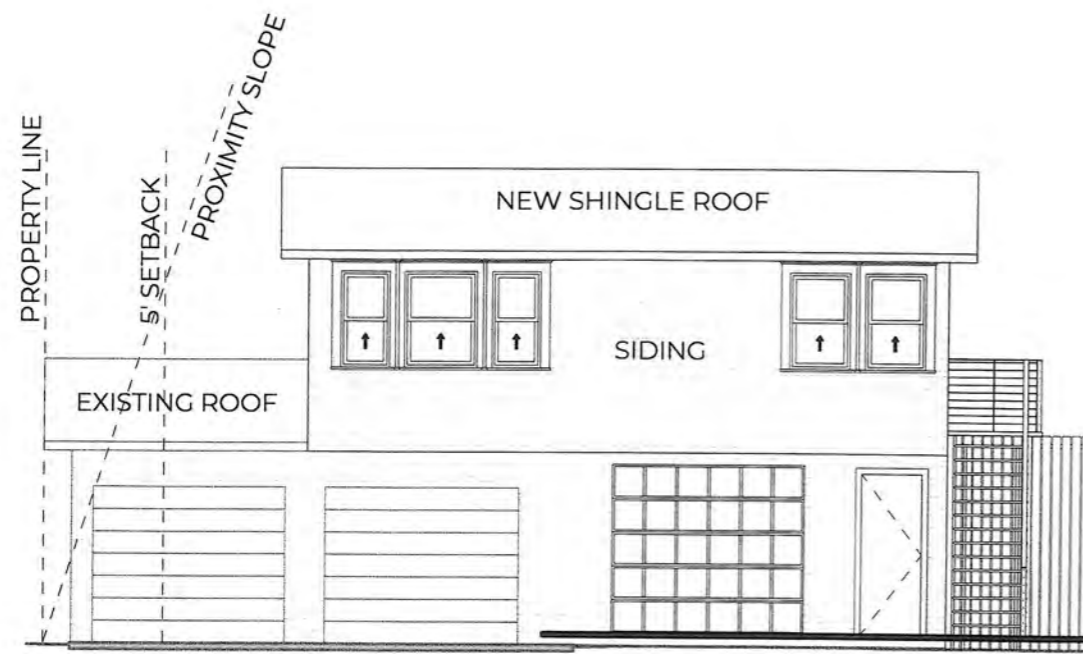
**JESSICA MAROS AND  
STEPHEN MARLEY**  
1218 N CLINTON  
DALLAS, TX 75208

**SURVEY - FOR  
REFERENCE**

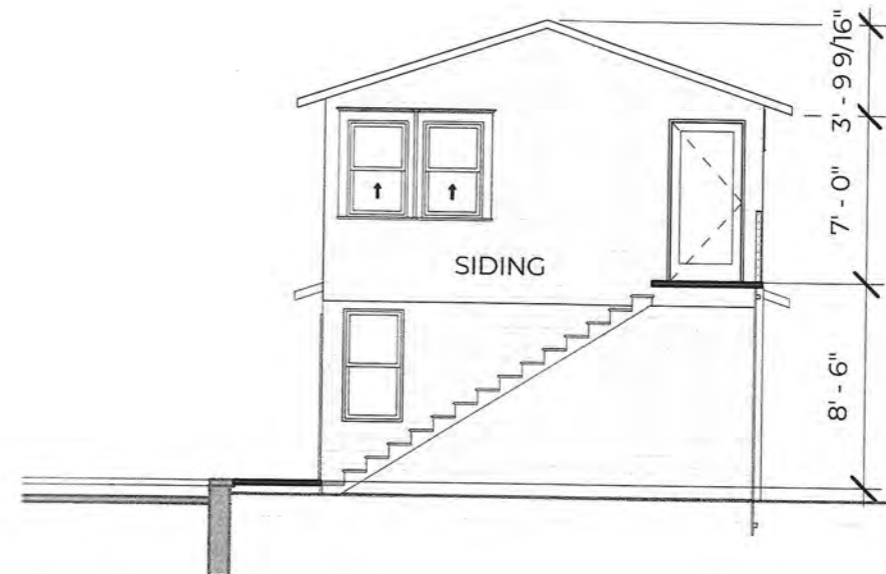
212-020

Project number: 21.06-01  
Date: 01-07-22

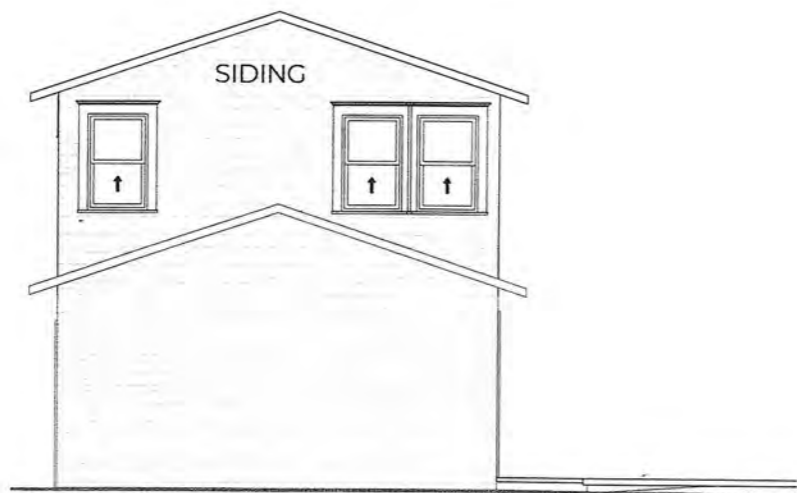
**A-02**



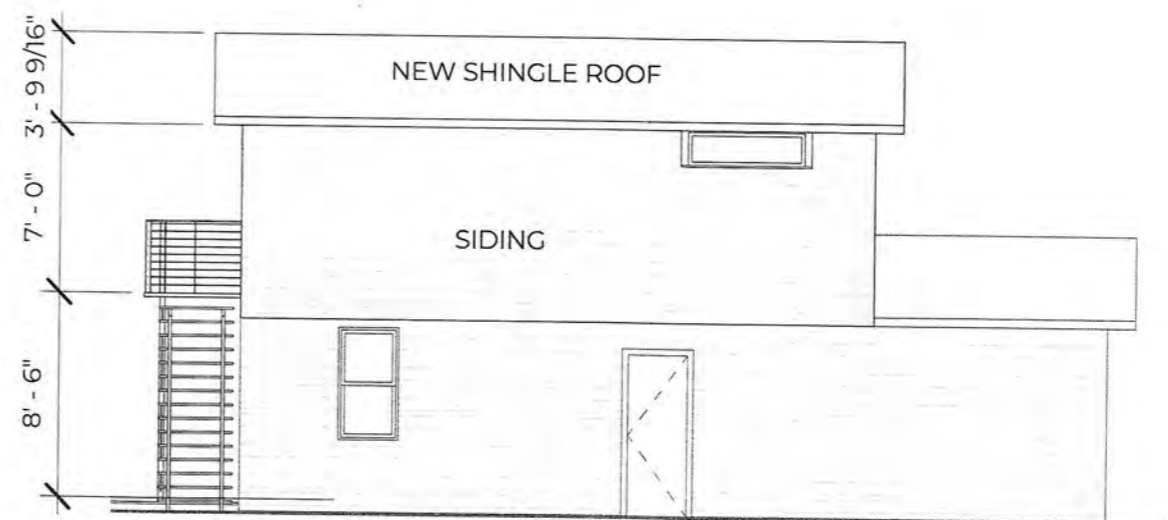
④ **WEST ELEVATION**  
1/8" = 1'-0"



③ **SOUTH ELEVATION**  
1/8" = 1'-0"



② **NORTH ELEVATION**  
1/8" = 1'-0"



① **EAST ELEVATION**  
1/8" = 1'-0"



**TEZANTO**

817.602.8161

fred@tezanto.com



Alfredo Peña  
01-07-22

**JESSICA MAROS AND  
STEPHEN MARLEY**  
1218 N CLINTON  
DALLAS, TX 75208

**EXTERIOR  
ELEVATIONS**

212-020

Project number:

21.06-01

Date:

01-07-22

**A-21**



**ZONING INFORMATION**

ZONING TYPE: CD-13 (SUBAREA 1)  
R-7.5(A)

"EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE DEVELOPMENT STANDARDS OF THE R-7.5(A) SINGLE FAMILY DISTRICT APPLY TO THIS DISTRICT"

DATE LIMIT OF CONTRIBUTING STRUCTURES: 1947

**SITE RESTRICTIONS:**

FRONT SETBACK: 25 FT (R-7.5(A))  
AVERAGE OF BLOCK (CD013)  
SIDE/REAR SETBACKS: 5 FT  
HEIGHT: 30 FT  
HEIGHT LOOMING: 3x DISTANCE FROM SIDE PROPERTY LINE  
LOT COVERAGE: 45%  
FLOOR AREA RATIO: 0.5

**LOT COVERAGE:**

LOT SIZE: 10,378 SQ FT  
ALLOWED LOT COVERAGE: 4,670.10 SQ FT  
FLOOR AREA RATIO SQ FT LIMIT: 5,189 SQ FT  
CURRENT COVERAGE: 1,372 SQ FT - RESIDENCE  
800 SQ FT - ACCESSORY STRUCT.  
**2,172 SQ FT - TOTAL EXISTING COVERAGE**  
CURRENT PERCENTAGE: 20.9%  
PROPOSED INCREASE: 0 SQ FT

**LIVING AREA SQ FT CALCULATIONS FOR ACCESSORY STRUCTURE:**

**HOUSE CALCULATIONS:**

1ST FLR EXISTING SQUARE FOOTAGE (INCLUDING PORCHES): 1,208 SQ FT

2ND FLR EXISTING: 993 SQ FT

**TOTAL:**

**2,201 SQ FT - TOTAL PROPOSED LIVING AREA**

25% FOR ACCESSORY STRUCTURE: 550 SQ FT

EXISTING ACCESSORY STRUCTURE: 800 SQ FT TOTAL

513 SQ FT (PARKING/GARAGE)

**287 SQ FT - EXISTING STUDIO**

POSSIBLE STUDIO INCREASE: 263 SQ FT

PROPOSED STUDIO ADDITION: 486 SQ FT



**TEZANTO**  
817.602.8161  
fred@tezanto.com



**JESSICA MAROS AND  
STEPHEN MARLEY**  
1218 N CLINTON  
DALLAS, TX 75208

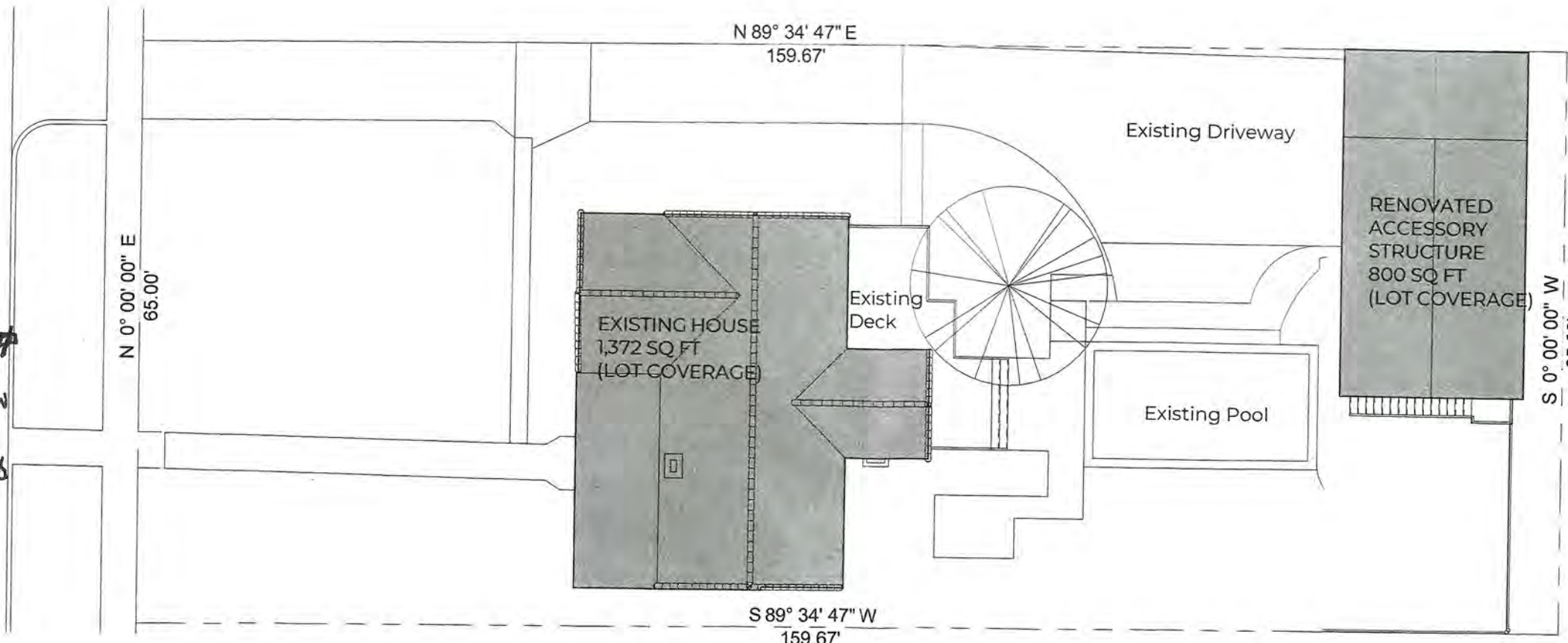
**SITE PLAN**

212-020

Project number: 21.06-01  
Date: 01-07-22

**A-01**

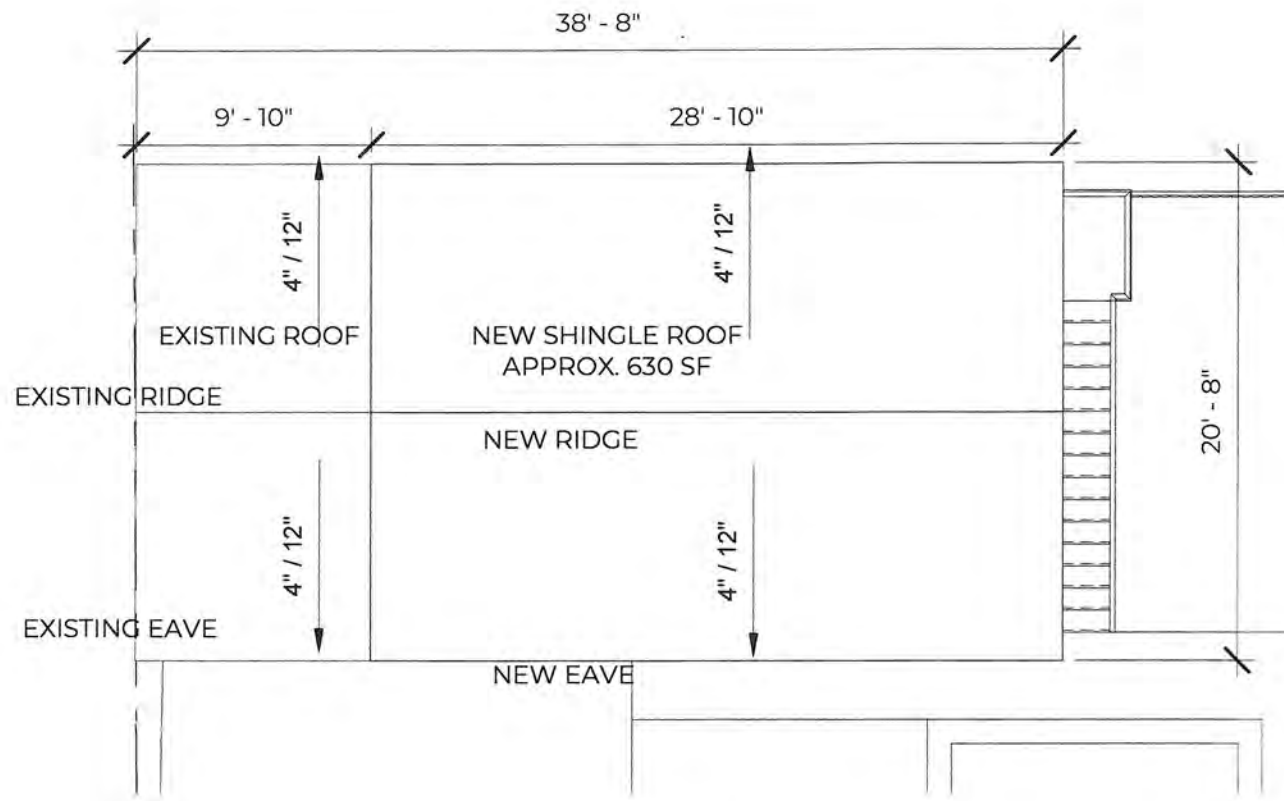
main Structure per  
Dead is 2018#  
2018# x .25 = 504#  
Existing Accessory  
Structure is 672#  
Credit for parking  
space is 374#  
Existing Studio is 287#  
Proposed Studio Addition  
is 486#  
672 + 486 + 287 = 1445#  
1445 - 374 = 1071#



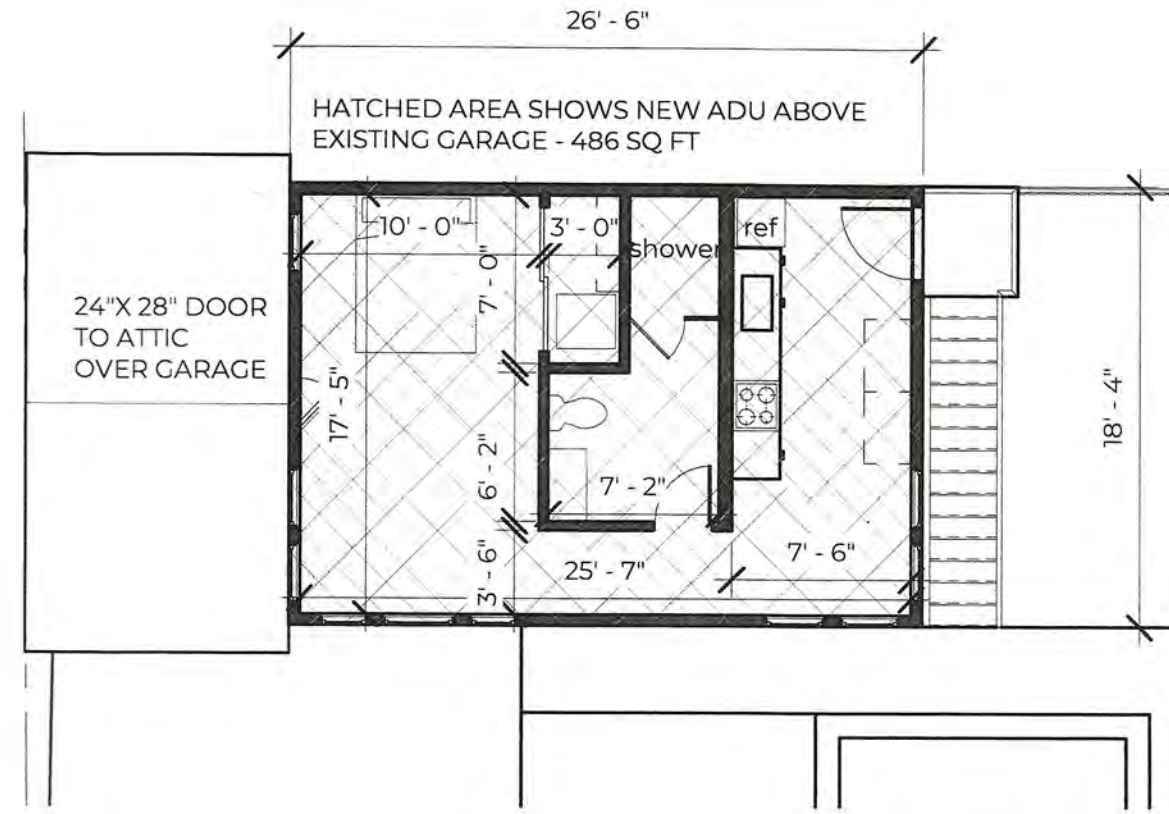
**1 SITE PLAN**  
1/16" = 1'-0"

1/7/2022 1:55:25 PM

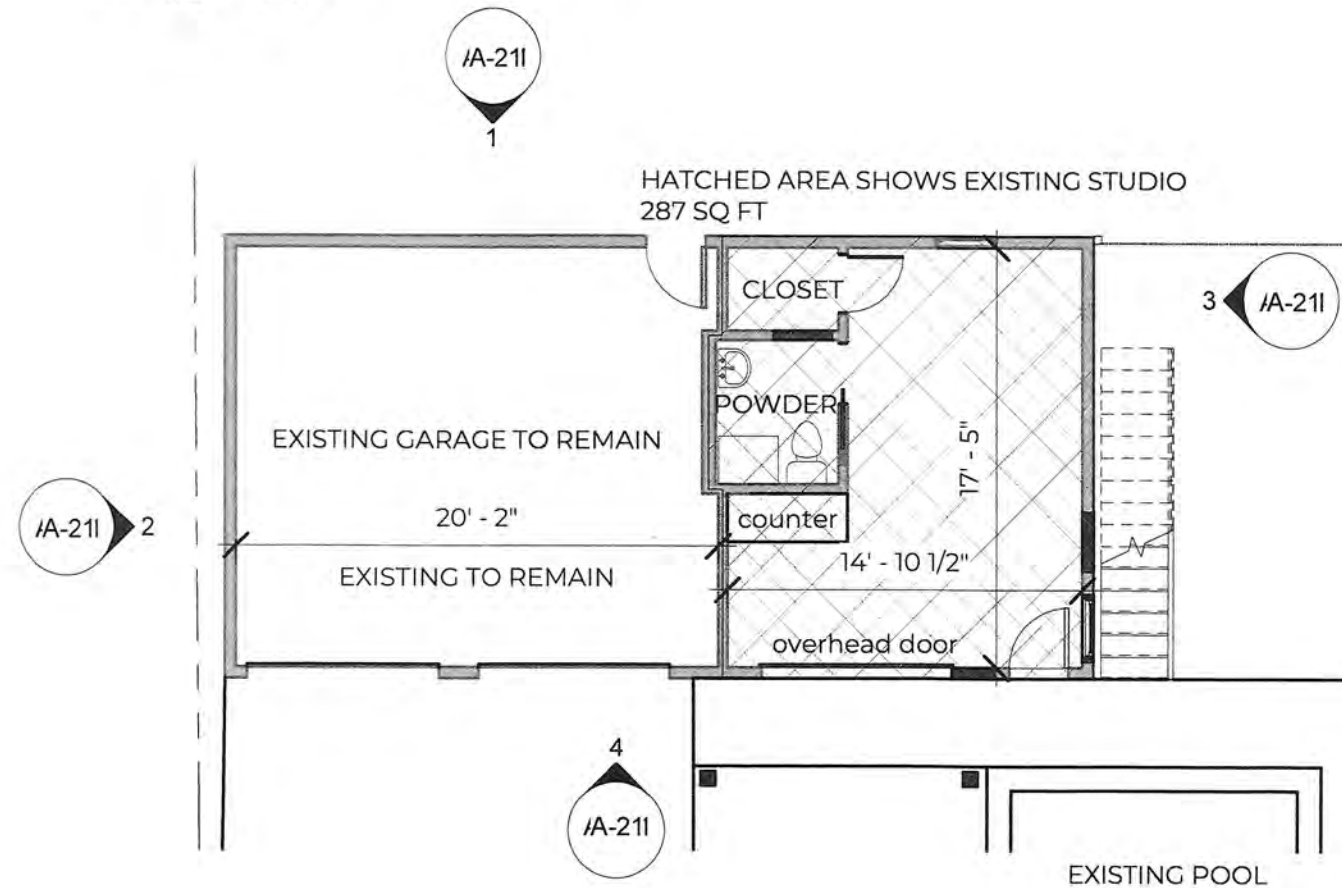




**3 GARAGE ROOF PLAN**  
1/8" = 1'-0"



**2 GARAGE SECOND FLOOR**  
1/8" = 1'-0"



**1 GARAGE FIRST FLOOR**  
1/8" = 1'-0"



**TEZANTO**

817.602.8161  
fred@tezanto.com



Alfredo Peña  
01-07-22

**JESSICA MAROS AND  
STEPHEN MARLEY**  
1218 N CLINTON  
DALLAS, TX 75208

**FLOOR PLANS**

212-020

Project number: 21.06-01

Date: 01-07-22

**A-12**

# Board of Adjustment Appeal

1218 N Clinton Ave, Dallas, TX

BOA Case No: BDA212-020

## Purpose

The purpose of this appeal is to seek a variance to CD-13, Subarea 1 code requirements applicable to 1218 N Clinton Ave, Dallas, TX 75208, specifically:

1. An accessory structure (“ADU”) may not exceed 25% of the floor area of the main structure; and
2. A side yard setback of 5 feet.

Key structure and measurements include:

**Main Structure sq ft:** 2,018 SF (living area per DCAD); 2,201 SF (including covered porches)

**Allowable sq ft:** 505 SF (per DCAD SF); 550 SF (including covered porches SF)

**Proposed sq ft:** 798 SF accessory structure comprised of 298 SF existing and a 500 SF addition (rounded up to account for small measurement variances), representing 40% of existing main structure, or 15% over existing requirement

We are requesting this variance due to the following key factors preventing us from developing the property in a commensurate fashion to properties in the immediate vicinity with the same zoning:

- Disparity in main structure square footage (SF) to comparative properties; and
- Limitations in extending the main structure of the house.

# BOA212-020\_ATTACHMENT\_A

## Project Summary

The proposed plan is to take the existing accessory structure, or ADU, on the property and extend it upwards, while abiding by all rules pertaining to the property's conservation district.

**Floor Area Ratio Variance:** Due to constraints of the property, extending the current size of the main structure is limited, so this project looks to solve this through adding onto the existing accessory structure while avoiding an increase of its current footprint. The variance appeal requests a specific increase to 40% of the main structure, or ~15% above the existing 25% floor to area ratio limit, in order to allow the property to be developed in a commensurate manner to other properties.

**Setback Variance:** The existing accessory structure is a complying structure as it was constructed prior to the establishment of the 5 foot setback ordinance. However, to improve the structure, it must be brought into current compliance. To improve the existing structure, it can no longer stay at its current location without a setback variance. The goal of this setback variance appeal is to simply maintain what is already existing, not to place a larger footprint onto the setback. The existing structure is shown below in **Figure 1.**

**Figure 1. Existing Structure**

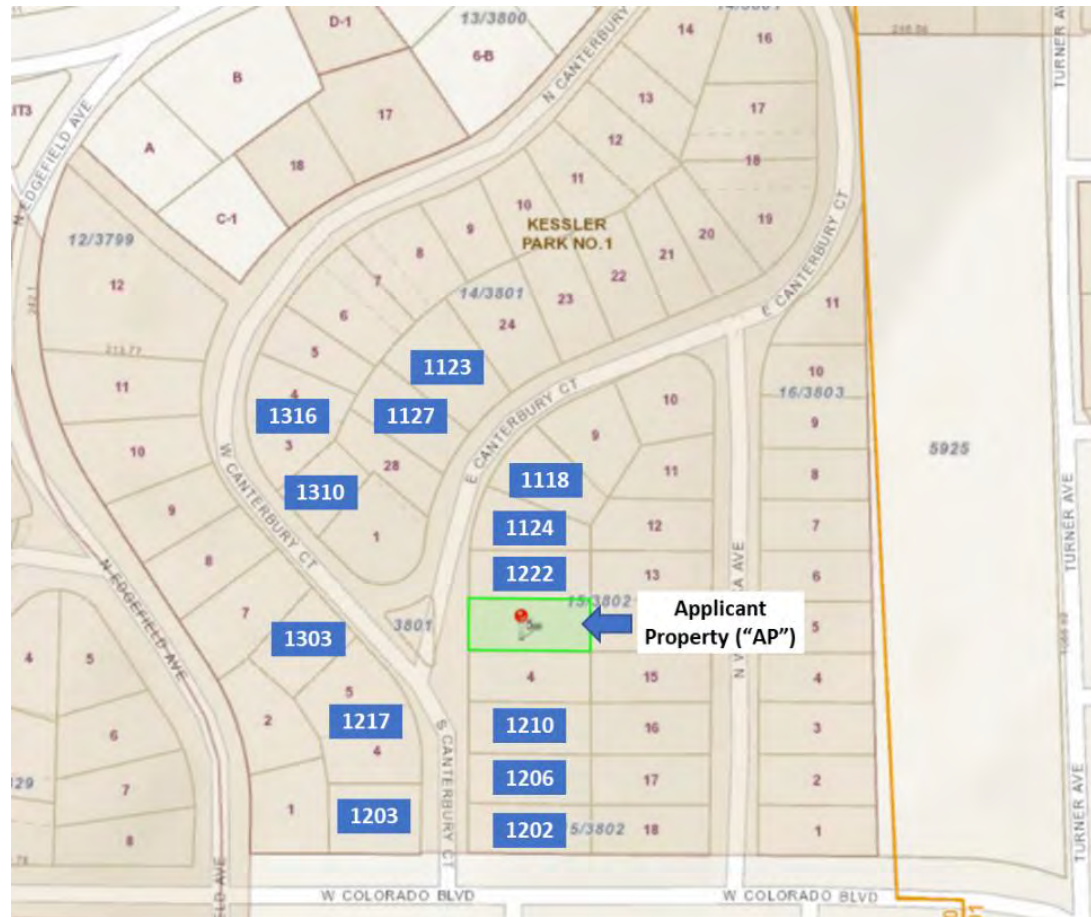


## Comparative Property Data & Main Structure Disparity

The properties shown in **Figure 2** have been used for comparison. The properties are directly adjacent or within very close proximity to the subject property and thus are an indicative sample.

**Figure 2. Comparative Properties**

- 1202 N Clinton Ave
- 1203 N Clinton Ave
- 1206 N Clinton Ave
- 1210 N Clinton Ave
- 1217 N Clinton Ave
- 1222 N Clinton Ave
- 1123 Canterbury Ct
- 1124 Canterbury Ct
- 1118 Canterbury Ct
- 1303 W Canterbury Ct
- 1310 W Canterbury Ct
- 1316 W Canterbury Ct



As shown in the analysis in **Figure 3**, the Applicant Property (“AP”) is roughly 64%, or 1,289 SF, smaller than comparative properties in the immediate vicinity. If the square footage of the AP’s main structure was commensurate with the immediate neighbors, the allowable ADU would be 827 SF, or 29 SF less than the combined requested 798 SF. Additionally, if the SF of the main structure was improved to meet the 25% threshold of the ADU at the proposed 798 SF, the main house would need to be 3,192 SF, or 115 SF less than the average comparable properties in the neighborhood.

**Figure 3. Property Comparison**

St No.	St Name	Year Built	SF Var			Qtrs SF Allowable	Existing Qtrs	Proposed Addtl Qtrs **	Total Qtrs	% of Main	% Overage		
			SF *	From AP	% Var						Qtrs SF Overage	From 25% Code	
1202	N Clinton Ave	1937	4,073	2,055	102%	1,018							
1203	N Clinton Ave	1934	3,022	1,004	50%	756							
1206	N Clinton Ave	1924	2,629	611	30%	657							
1210	N Clinton Ave	2001	3,254	1,236	61%	814	529		529				
1217	N Clinton Ave	1933	4,012	1,994	99%	1,003							
1218	N Clinton Ave	1924	2,018	0	0%	505	298	500	798	40%	294	15%	Applicant Property (AP)
1222	N Clinton Ave	1936	3,010	992	49%	753							
1123	Canterbury Ct	1922	4,266	2,248	111%	1,067	714		714				
1124	Canterbury Ct	1924	3,158	1,140	56%	790	374		374				
1118	Canterbury Ct	1936	2,937	919	46%	734							
1303	W Canterbury Ct	1949	2,701	683	34%	675							
1310	W Canterbury Ct	1929	2,802	784	39%	701							
1316	W Canterbury Ct	1935	3,814	1,796	89%	954	200		200				
Avg. excluding Applicant Property			3,307	1,289	64%	827	<-- Avg. is 29 SF greater than requested at Applicant Property						
Adj. AP SF required to maintain ADU within 25% code			3,192										
Adj. AP SF Variance to Avg SF			(115)										

\* Main Structure (SF) based on Dallas CAD Records and does not take into account covered areas

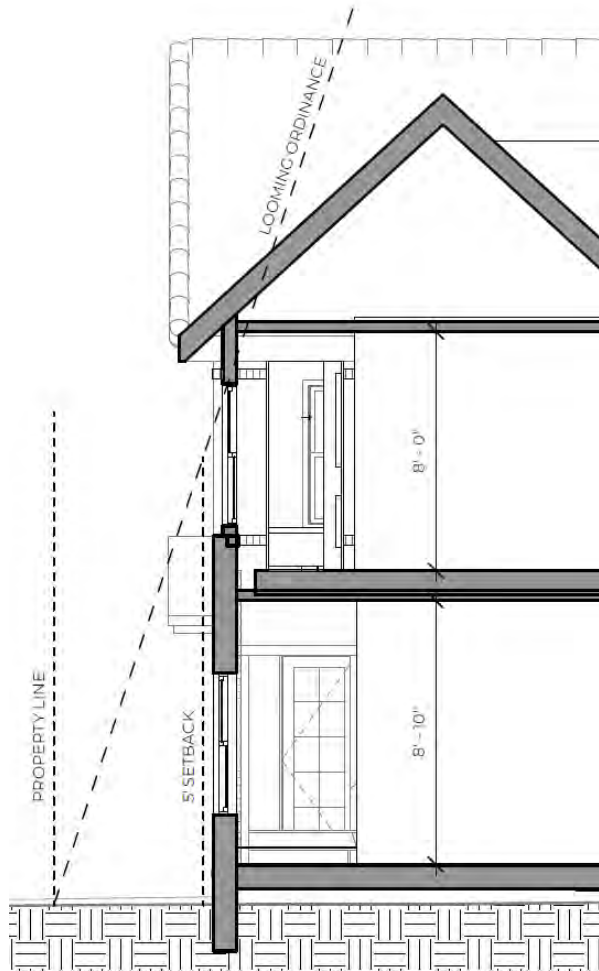
\*\* Proposed Additional Quarters SF rounded up to account for potential small measurement variations and avoid resubmission to BOA

## Development of Main Structure

Options were initially looked at to extend the main structure instead of the current proposed plans for an accessible structure given this can be approved without variances; however, limitations were identified in the feasibility phase that limited the expansion of the main structure to achieve the required SF to meet the 25% requirement:

- Conservation District ordinances, setback rules and aesthetics make extending to the front impossible.
- The main structure sits at two stories and Conservation District ordinances will not allow further upward extension
- Conservation District ordinances, setback rules, anti-looming rules and design requirements of contributing houses make expanding the southern part of the house prohibitive – see **Figure 4**
- Expansion backwards is blocked by a grand, mature eastern redcedar (*Juniperus Virginiana*) designated as “significant” by the City of Dallas under Article X Tree Conservation Regulations as it measures 24” in diameter at 4’6” off the ground. Based on its growing timeline, the age of this tree is estimated to be ~100+ years old. Removal of the tree would have a detrimental impact to the Applicant Property and the surrounding neighborhood (we have made a commitment to maintain the tree) – see **Figure 5**.

**Figure 4. Anti-looming Setback Prohibiting Expansion On Southern Part of Main Structure**



**Figure 5. Significant Eastern Redcedar (*Juniperus Virginia*) in backyard (est. 100+ yrs old)**





## Conclusion

The board of adjustment appeal can grant variances provided that:

- **The Variance is not Contrary to the Public Interest:** providing the variances requested in this appeal will NOT go against the public interest, as the proposed plans:
  - Are in keeping with the main structure contingent upon this variance.
  - Aid in the preservation of a tree whose removal would cause a significant impact to the Applicant Property, all adjacent properties, and the surrounding neighborhood.
- **The Variance is Necessary to Develop the Property in a Commensurate Fashion:** as evidenced above, the current parcel of land is different from all comparison properties in:
  - Main Accessory Sq Footage.
- **The variances are not being requested to relieve a self-created or personal hardship or for financial reasons**
- **The existing accessory structure footprint is NOT increasing.**

# BDA212-020\_ATTACHMENT\_B

**From:** [Stephen Marley](#)  
**To:** [Daniel, Pamela](#)  
**Cc:** [Jackson, Latonia](#)  
**Subject:** Fwd: BDA212-020 (3-22-22)  
**Date:** Friday, April 8, 2022 12:47:08 PM  
**Attachments:** [image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)  
[image010.png](#)  
[image011.png](#)  
[image012.png](#)  
[BOA Panel A Hearing Materials for 1218 N Clinton - BDA212-020 04182022.pdf](#)

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## External Email!

Pamela,

Attached are additional materials for the BOA related to our case - BDA212-020. As mentioned prior, we are requesting a postponement to the May hearing to further compile supporting evidence, perform additional neighbor outreach and receive / document feedback, and submit main house plans to the City that would ultimately impact the size request of one of our variances. I know you mentioned we would have to request that postponement at the April hearing date, but I just wanted to reiterate our desire to postpone.

Given the 1p deadline today, please confirm receipt of this email + materials.


Thank you,

Stephen Marley  
M: (214) 732-5784

----- Forwarded message -----

**From:** Fred Peña <[fred@tezanto.com](mailto:fred@tezanto.com)>  
**Date:** Wed, Mar 30, 2022 at 5:09 PM  
**Subject:** Fwd: BDA212-020 (3-22-22)  
**To:** Stephen Marley <[swmarley@gmail.com](mailto:swmarley@gmail.com)>

see below/attached.

	<b>Fred Peña, AIA</b> Owner   Architect <input type="checkbox"/> 817.602.8161 <a href="http://tezanto.com">tezanto.com</a> <input type="checkbox"/> Dallas, TX
---	---

----- Forwarded message -----

**From:** Jackson, Latonia <[latonia.jackson@dallascityhall.com](mailto:latonia.jackson@dallascityhall.com)>  
**Date:** Fri, Mar 25, 2022 at 1:16 PM

Subject: RE: BDA212-020 (3-22-22)  
To: Fred Peña <[fred@tezanto.com](mailto:fred@tezanto.com)>  
Cc: Daniel, Pamela <[pamela.daniel@dallascityhall.com](mailto:pamela.daniel@dallascityhall.com)>

Good afternoon,

Please see attached in reference to your case. Please let us know if you have any questions.

Thank you,



*LaTonia Y. Jackson*  
*Board Secretary*  
*City of Dallas | [DallasCityNews.net](http://DallasCityNews.net)*  
*Department of Planning and Urban*  
*Design*

*Board of Adjustment*

*Dallas City Hall*

*1500 Marilla St. 5BN*

*O: (214) 670-4545*

*[latonia.jackson@dallascityhall.com](mailto:latonia.jackson@dallascityhall.com)*



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*How am I doing? Please contact my supervisor at [jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)*

**PUBLIC OFFICIALS** – a “Reply All” e-mail may lead to violations of the Texas Open Meetings Act. Please reply only to the sender.

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**From:** Daniel, Pamela <[pamela.daniel@dallascityhall.com](mailto:pamela.daniel@dallascityhall.com)>  
**Sent:** Thursday, March 17, 2022 5:06 PM  
**To:** Fred Peña <[fred@tezanto.com](mailto:fred@tezanto.com)>  
**Cc:** Jackson, Latonia <[latonia.jackson@dallascityhall.com](mailto:latonia.jackson@dallascityhall.com)>  
**Subject:** BDA212-020 (3-22-22)

Fred,

Good afternoon! Please see attached information regarding the Board of Adjustment and your scheduled March case.

It is highly recommended that the representative and/or applicant is registered to speak or is available for questions on behalf of their respective case. *Please submit speaker registration online at the link below. Registration must be submitted no later than Monday, March 21, 2022 for Panel A.*

Online registration isn't required for in-person attendance, however it is helpful to know the capacity in advance. If planning to attend the live hearing, please respond to this email so that I may notate your attendance for record when submitting the anticipated speaker list.

If you have any questions or concerns regarding speaker registration... or any issues with signing up, please feel free to email [latonia.jackson@dallascityhall.com](mailto:latonia.jackson@dallascityhall.com) or contact the office at 214-670-4209.

The docket is also on our webpage at the following link:

<http://dallascityhall.com/government/meetings/Pages/zoning-board.aspx>

With Gratitude!



**Pamela F. Riley Daniel**  
*Senior Planner*  
City of Dallas |  
[www.dallascityhall.com](http://www.dallascityhall.com)  
*Planning & Urban Design*

1500 Marilla St., 5BN

Dallas, TX 75201  
O: (214) 671-5098  
[pamela.daniel@dallascityhall.com](mailto:pamela.daniel@dallascityhall.com)



[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com).

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# Case Summary

## BOA Case No: BDA212-020 for 1218 N Clinton Ave, Dallas, TX 75208

### Purpose:

The current owner of 1218 N Clinton Ave desires to develop his property in a commensurate fashion as the neighbors and add square footage onto existing structures; however, as a result of several significant constraints, the property cannot be developed in a straightforward manner and the development plan requires two variances. The purpose of this appeal is to seek a variance to CD-13, Subarea 1 code requirements, specifically:

- An accessory structure (“AU”) may not exceed 25% of the floor area of the main structure; and
- A side yard setback of 5 feet.

### Key Details & Measurements:

- Lot size = 10,800 SF
- Main Structure = 2,720 SF (proposed improved SF – see **Appendix** for more detail)
- Allowable | Proposed AU = 680 SF (per DCAD SF) | 798 SF (comprised of 298 SF existing and a 500 SF addition), representing a +4% variance request
- Approx. AU construction year = July 2001
- Implementation of CD-13 = May 2005

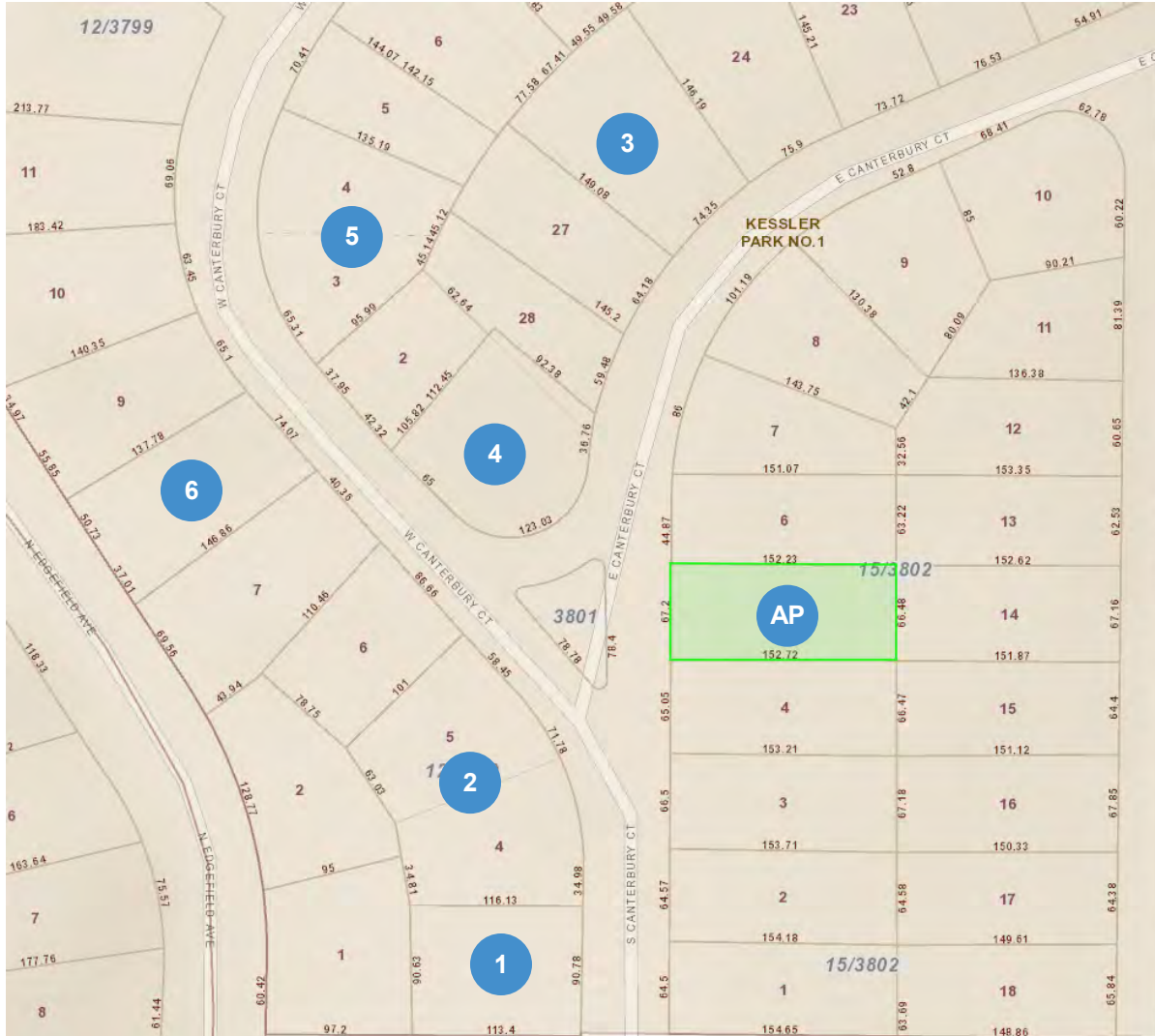
### Rationale for Request:

We are requesting this variance due to the following key factors preventing us from developing the property in a commensurate fashion to properties in the immediate vicinity with the same zoning:

1. Disparity in lot size, approximately 22% smaller in SF, to comparative properties in the immediate vicinity that are within CD-13;
2. Limitations to develop property are environmental (significant tree), code (anti-looming), and historical (existing structure and infrastructure) constraints, not self-created
3. Significant public interest and support of our intended development plan and request.

# 1 Discrepancy In Lot Size

Substantial lot size discrepancy exists comparative to many adjacent properties in the area.



ID	St No.	St Name	Lot SF
1	1203	N Clinton Ave	11,403
2	1217	N Clinton Ave	19,765
AP	1218	N Clinton Ave	10,800
3	1123	Canterbury Ct	12,905
4	1300	Canterbury Ct	12,440
5	1316	W Canterbury Ct	14,820
6	1317	W Canterbury Ct	12,030
Avg. excluding Applicant Property			13,894
Shortage in lot area from comparable average			(3,094)
% shortage			(22.3%)

Source: DCAD

# Limitations Impacting Site

In addition to lot size, several limitations exist that are not self created.

## A. Environmental

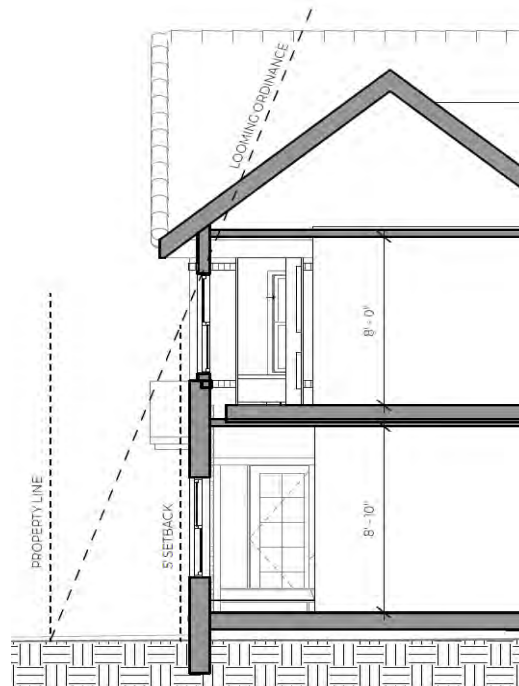
Expansion rearwards on the northern side of the main house is blocked by a grand, mature eastern redcedar (*Juniperus Virginiana*) designated as "significant" by the City of Dallas under Article X Tree Conservation Regulations as it measures 24" in diameter at 4'6" off the ground. Based on its growing timeline, the age of this tree is estimated to be ~100+ years old. Removal of the tree would have a detrimental impact to the Applicant Property and the surrounding neighborhood.

*We have made a commitment to keep and maintain the tree*



## B. Code (Anti-looming)

Conservation District ordinances, setback rules, anti-looming rules and design requirements of contributing houses make expansion rearwards on the southern side of the main house prohibitive.



## C. Historical

Existing AU structure was built prior to implementation of CD-13 and the 5ft side yard setback regulation. The goal of this setback variance is to maintain what is already existing and add a partial second floor to the structure, not place a larger footprint in the setback area.



The footprint of the existing structure cannot be shifted into (south) the property due to existing pool equipment installed by the previous owners and the code requirement to maintain access to the utility easement behind the property.



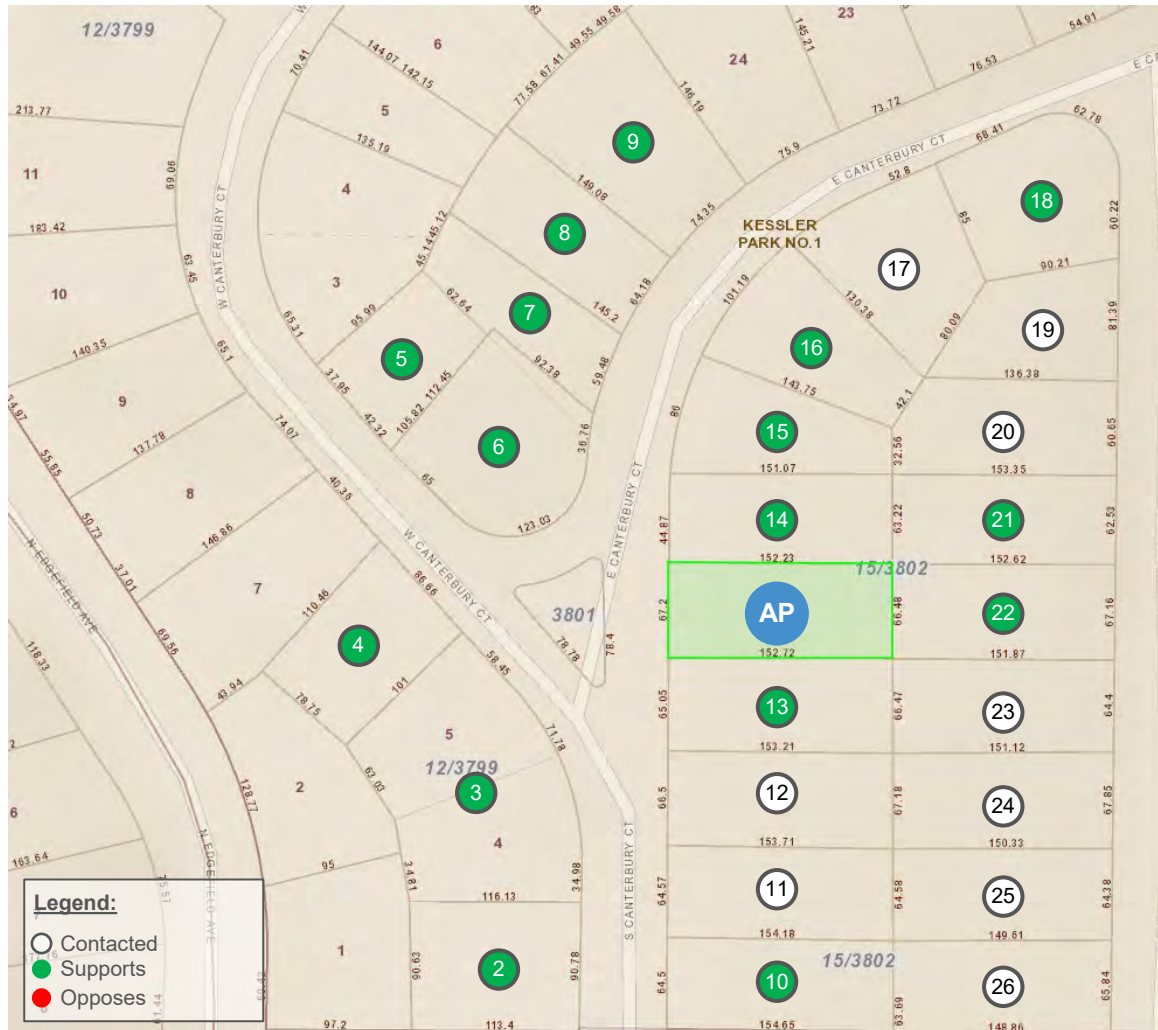
Pool equipment      Access to alleyway.

Constraints A and B negatively impact the potential SF of the main house, resulting in an AU to main house ratio greater than the required 25% threshold and the need for a variance. Constraint C results in the need for a variance to improve a structure that was grandfathered into CD-13.



# Substantial Neighbor Support For Proposed Investment

After speaking directly with neighbors, we have received significant support with most committing to writing a letter to the City to directly support our proposed development plan.



ID	Address	Disposition
AP	1218 N Clinton Ave	n/a
2	1203 N Clinton Ave	
3	1217 N Clinton Ave	Supports
4	1303 W Canterbury Ct	Supports
5	1310 W Canterbury	Supports
6	1300 Canterbury Ct	Supports
7	1131 Canterbury Ct	Supports
8	1127 Canterbury Ct	Supports
9	1123 Canterbury Ct	Supports
10	1202 N Clinton Ave	Supports
11	1206 N Clinton Ave	
12	1210 N Clinton Ave	
13	1214 N Clinton Ave	Supports
14	1222 N Clinton Ave	Supports
15	1124 Canterbury Ct	Supports
16	1118 Canterbury Ct	Supports
17	1112 Canterbury Ct	
18	1235 N Winnetka Ave	Supports
19	1231 N Winnetka Ave	
20	1227 N Winnetka Ave	
21	1225 N Winnetka Ave	Supports
22	1219 N Winnetka Ave	Supports
23	1215 N Winnetka Ave	
24	1211 N Winnetka Ave	
25	1207 N Winnetka Ave	
26	1203 N Winnetka Ave	

In total, 15 neighbors have expressed support for our variance, either verbally or in writing

# Summary

---

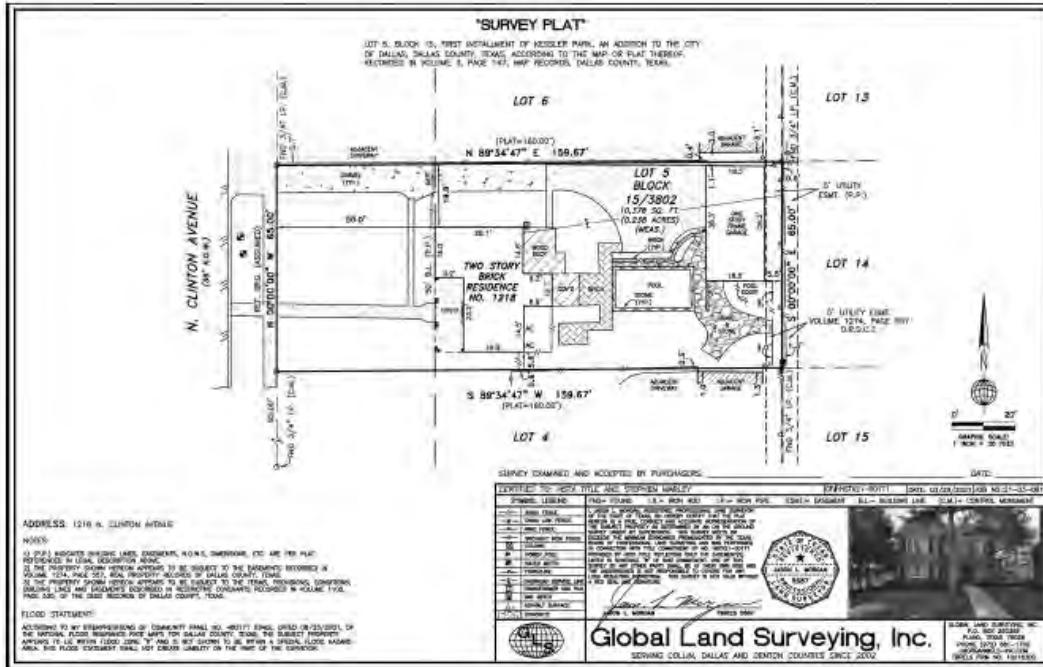
We believe the BOA should grant the variance requests as:

- The variance is necessary to develop the property in a commensurate fashion given lot constraints
- The variance is necessary to develop the property in a commensurate fashion not to relieve a self-created or personal hardship
- The variance is not contrary to public interest and has significant neighbor support
- The development plan does not expand the footprint of the existing grandfathered structure

# **APPENDIX**

## **Site Plan, Floor Plans, & Elevations**

# Site Plan



### ZONING INFORMATION

ZONING TYPE: C-2 (SUBURBAN 1)  
 R-75(A)

EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE DEVELOPMENT STANDARDS SET FORTH IN THIS SECTION SHALL APPLY TO THIS SUBSECTION.

### DATE & LIMIT OF CONTRIBUTING STRUCTURES (A):

### SITE RESTRICTIONS:

- FRONT SETBACK: 25 FT (R-75(A))
- REAR SETBACK: 10 FT (R-75(A))
- SIDE REAR SETBACKS: 5 FT
- HEIGHT: 30 FT
- HEIGHT LOOKING: 10' DISTANCE FROM SIDE PROPERTY LINE
- LOT COVERAGE: 45%
- FLOOR AREA RATIO: 65

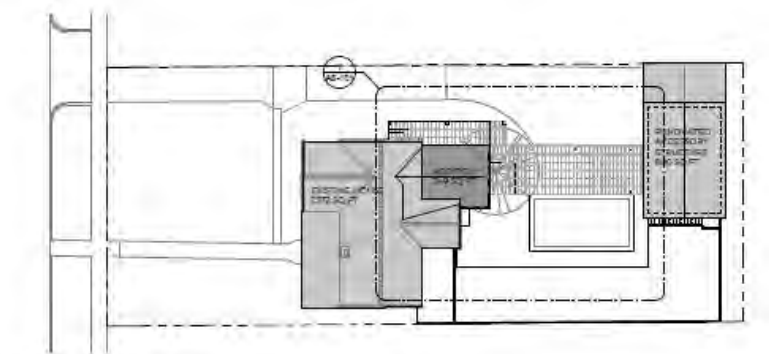
### LIVING AREA SQ FT CALCULATIONS FOR ACCESSORY STRUCTURE:

HOUSE CALCULATIONS:	
FLOOR AREA PER DCAD:	2,000 SQ FT
1ST FLOOR PROPOSED AREA:	1,470 SQ FT
2ND FLOOR PROPOSED AREA:	1,344 SQ FT
<b>TOTAL:</b>	<b>2,730 SQ FT - TOTAL PROPOSED FLOOR AREA</b>
35% FOR ACCESSORY STRUCTURE	
PER DCAD AREA:	700 SQ FT
PER PROPOSED DESIGN:	980 SQ FT
EXISTING ACCESSORY STRUCTURE:	
PER DCAD AREA:	207 SQ FT TOTAL
PER PROPOSED DESIGN:	287 SQ FT - EXISTING STUDIO
PROPOSED STUDIO ADDITION:	
PROPOSED TOTAL FLOOR AREA:	1,775 SQ FT (68.28%)

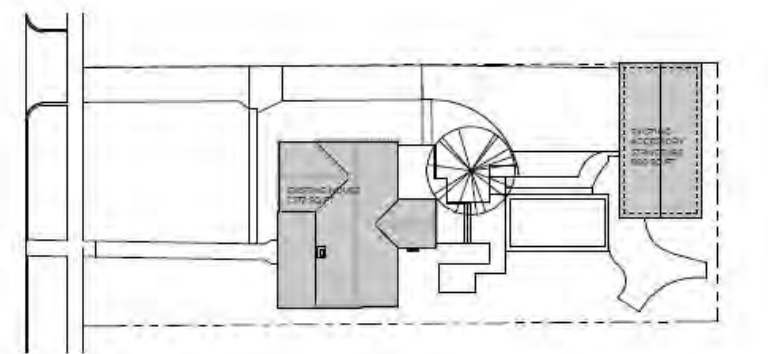
### LOT COVERAGE

LOT AREA:	10,178 SQ FT
ALLOWED LOT COVERAGE:	4,630 SQ FT
FLOOR AREA RATIO (FAR) SQ FT LIMIT:	6,599 SQ FT
CURRENT COVERAGE:	1,370 SQ FT - RESIDENCE
	800 SQ FT - ACCESSORY STRUCTURE
	<b>2,170 SQ FT - TOTAL EXISTING COVERAGE</b>
CURRENT PERCENTAGE:	13.4%
PROPOSED COVERAGE:	24.5%
PROPOSED COVERAGE:	24.5% (2,730 SQ FT / 11,140 SQ FT)

1 SITE SURVEY - FOR REFERENCE

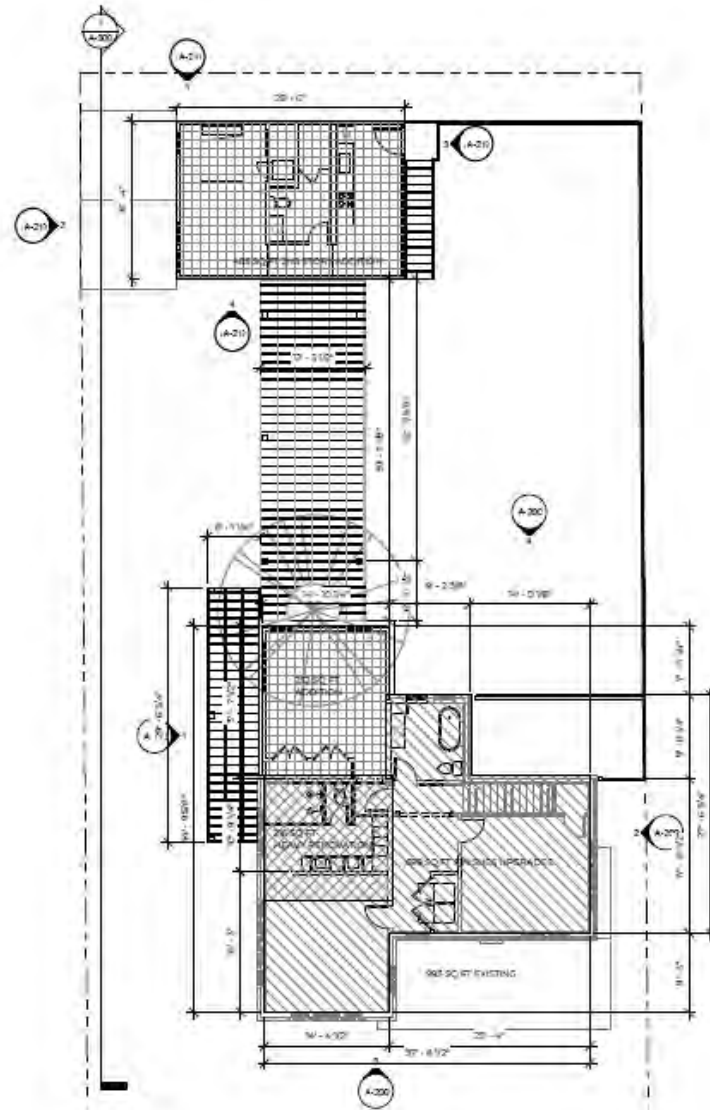


2 SITE PLAN - PROPOSED  
 1/8" = 1'-0"

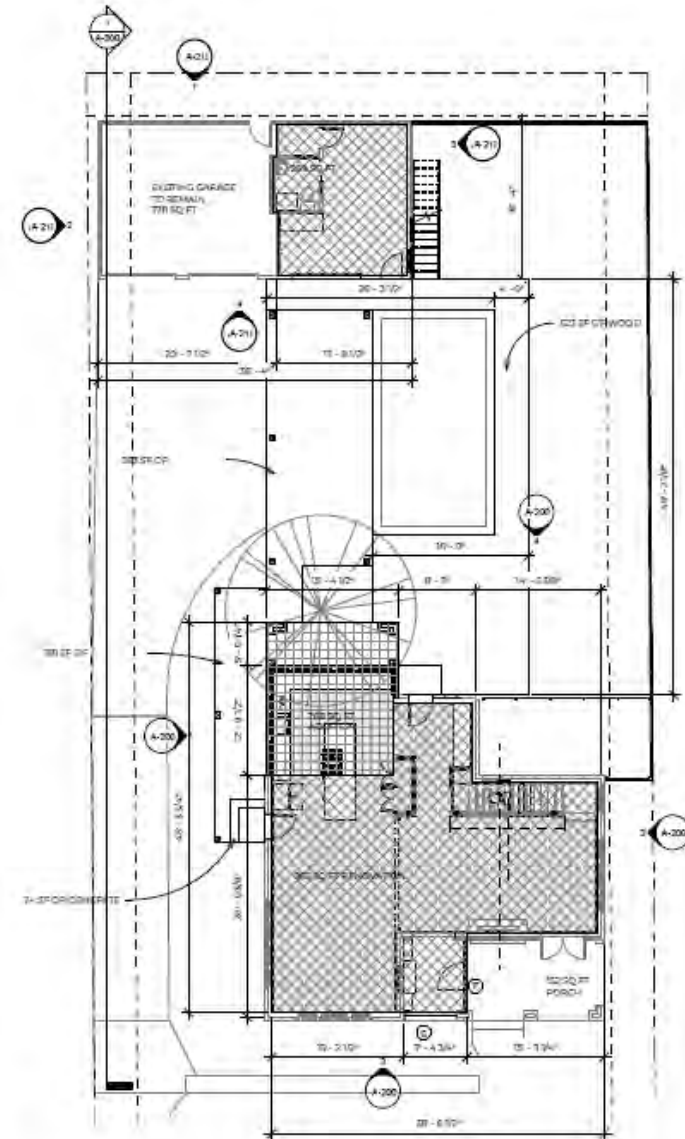


1 SITE PLAN - EXISTING  
 1/8" = 1'-0"

# Floor Plans – First And Second Floor

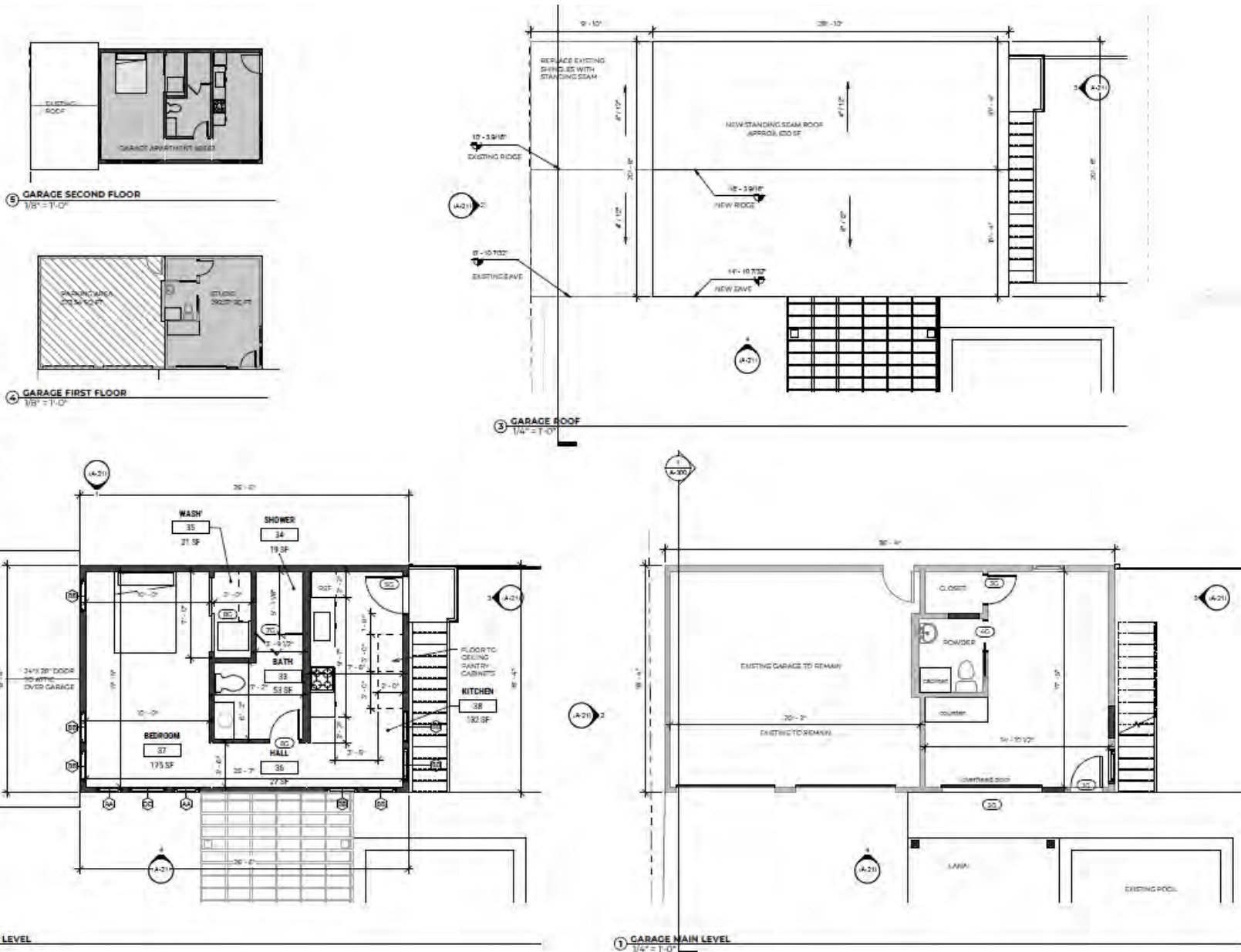


2 OVERALL SECOND FLOOR PLAN  
1/8" = 1'-0"

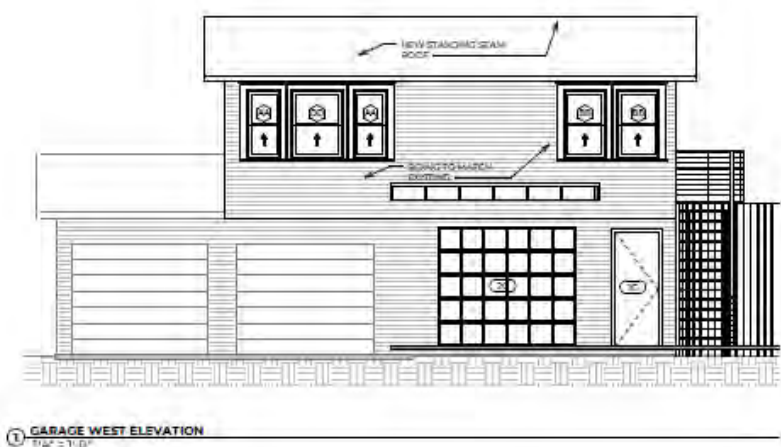
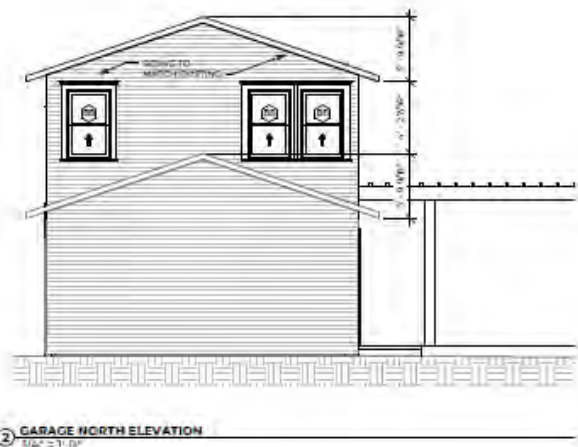
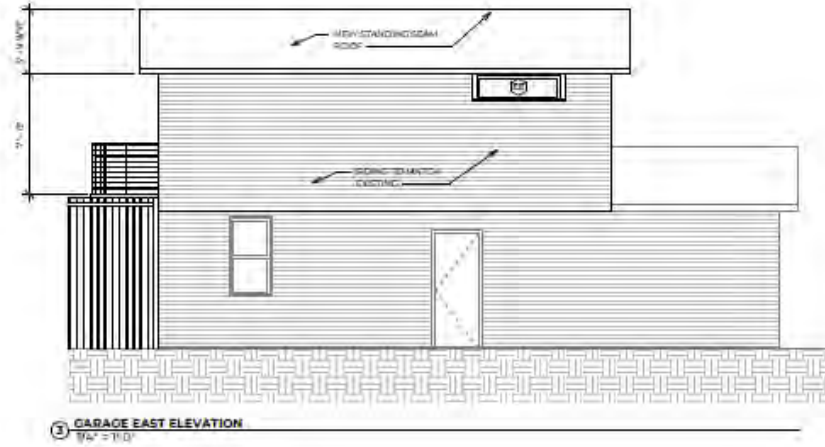
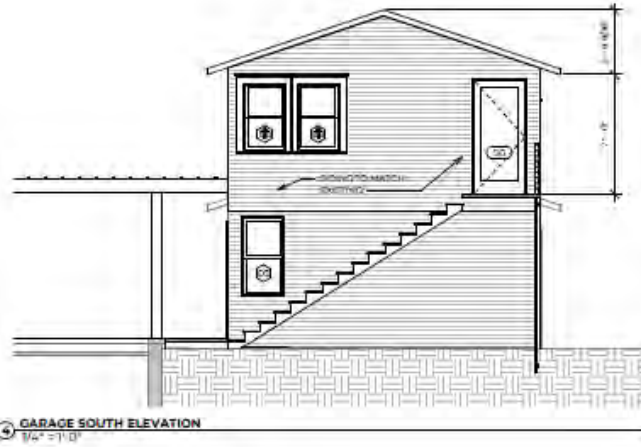


1 OVERALL FIRST FLOOR PLAN  
1/8" = 1'-0"

# Floor Plan Detail – Proposed Accessory Structure



# Elevations – Proposed Accessory Structure



# Elevation & Height Comparison Of Structures



① HEIGHT COMPARISON DIAGRAM  
1/4" = 1'-0"



Panel A

04-19-22

BDA212-020

1218 N. Clinton Ave.

(Support Letters)

**From:** [ellis1203](#) [REDACTED]  
**To:** [Daniel, Pamela](#)  
**Cc:** ["Irene Ellis"; swmarley](#) [REDACTED]  
**Subject:** Support for BDA212-020  
**Date:** Saturday, April 9, 2022 10:56:53 AM

---

External Email!

Dear Pamela,

We are in support of our neighbor's plans to update/add onto the existing structure on their property and do not feel it will negatively impact our property or the neighborhood.

Sincerely,

Leonard & Irene Ellis  
1203 N Winnetka Ave  
Dallas, TX 75208

( [REDACTED]  
[REDACTED]

CAUTION: This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Celeste Escobedo](#)  
**To:** [Daniel, Pamela](#)  
**Subject:** Support for BDA212-020  
**Date:** Sunday, April 3, 2022 1:29:50 PM

---

**External Email!**

Hi Pamela,

I'm writing in support of our neighbor's plans to update/add onto the existing structure on their property. My husband and I are in full support and do not feel it will negatively impact our property or the neighborhood.

Thank you,

Celeste and Christopher Escobedo  
1225 N Winnetka Ave, Dallas 75208

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [REDACTED]  
**To:** [Daniel, Pamela](#)  
**Cc:** [REDACTED]  
**Subject:** Support for BDA212-020  
**Date:** Wednesday, April 6, 2022 12:13:16 PM

---

**External Email!**

Dear Pamela,

We have no objections of our neighbor's plan to add a partial second story to their existing garage structure. We do not believe it will impact our property or the values of the neighborhood.

Best,

Feliz & Kirk Jarvis  
1235 N. Winnetka Ave.  
Dallas, TX 75208

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Gregory Leftwich](#)  
**To:** [Daniel, Pamela](#)  
**Subject:** Support for BDA212-020  
**Date:** Sunday, April 3, 2022 3:40:26 PM

---

External Email!

Dear Pamela -

We are in support of our neighbor's plans to update/add onto the existing structure on their property and do not feel it will negatively impact my property or the neighborhood.

Sincerely,

Greg and Julie Leftwich  
1118 S. Canterbury Ct.

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**From:** [Blake Martensen](#)  
**To:** [Daniel, Pamela](#)  
**Cc:** [REDACTED]  
**Subject:** Support for BDA212-020  
**Date:** Tuesday, April 5, 2022 3:37:30 PM

---

External Email!

Dear Pamela,

I am writing to you in regard to the case number BDA212-020 for the residence at 1218 N. Clinton Avenue. We are in support of our neighbor's plans to update/add onto the existing structure on their property and do not feel it will negatively impact my property or the neighborhood. Our home is located directly behind this residence and we are in complete support of their plans. Please let me know if there is anything else I can do to assist in their process of approval.

Sincerely,  
Blake and Dorsey Martensen  
1219 N. Winnetka Avenue  
Dallas, Texas 75208

CAUTION: This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Mitchell, Ellen](#)  
**To:** [Daniel, Pamela](#)  
**Subject:** BDA212-020  
**Date:** Tuesday, April 5, 2022 8:46:31 AM

---

**External Email!**

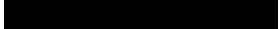
Pamela,

I am writing in support of our neighbor's plans to update/add onto the existing structure on their property (1218 N Clinton Ave). As their next door to the south, I do not feel like the addition will negatively impact my property or the neighborhood.

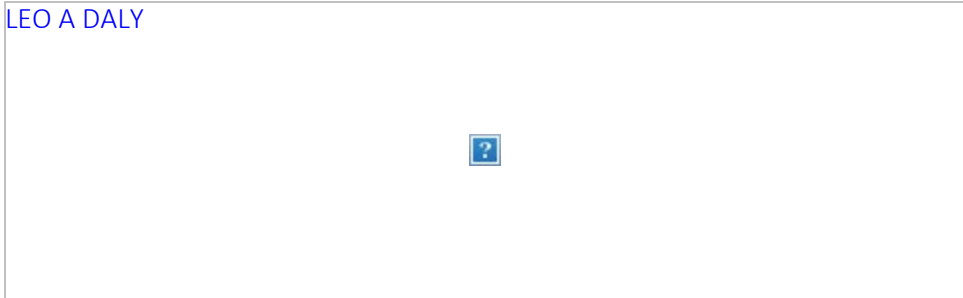
Thanks,  
Ellen Mitchell Kozack  
1214 N Clinton Ave, Dallas TX 75208



**Ellen Mitchell-Kozack**, AIA, LEED BD+C, WELL AP  
Vice President, Chief Sustainability Officer

3232 McKinney Avenue, Suite 800, Dallas, TX 75204-8589  
214.526.1144 **D** 469.697.0764 **M** 214.364.9283  
[leoadaly.com](http://leoadaly.com) 

**PLANNING ARCHITECTURE ENGINEERING INTERIORS**



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**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Brian Shaw](#)  
**To:** [Daniel, Pamela](#)  
**Cc:** [Lauren Scroggins](#)  
**Subject:** Support for BDA212-020  
**Date:** Monday, April 4, 2022 7:36:11 PM

---

**External Email!**

Dear Pamela:

We support our neighbor's plan to update/add onto the existing structure on their property and do not feel it will negatively impact our property or the neighborhood.

Let 'em do it!!!!

Sincerely,

Brian and Lauren Shaw  
1303 W. Canterbury Ct.  
Dallas, TX 75208

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**From:** [Rose Zei](#)  
**To:** [Daniel, Pamela](#)  
**Cc:** [REDACTED]  
**Subject:** Support for BDA212-020  
**Date:** Sunday, April 3, 2022 9:36:13 PM

---

**External Email!**

Dear Pamela,

We are in support of Jessica and Stephen's plans to update/add onto the existing structure on their property and do not feel it will negatively impact our property or the neighborhood. Thank you for considering their request!

Sincerely,

Rose and Billy Zei  
1310 W Canterbury Ct  
Dallas, TX 75208

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**FILE NUMBER:** BDA212-026(PD)

**BUILDING OFFICIAL'S REPORT:** Application of Victor Morales for a special exception to the fence standards regulations and a special exception to the visibility obstruction regulations at 2603 Hondo Avenue. This property is more fully described as Lot 25, in City Block 7/2256, and zoned an MF-2 Multiple Family Subdistrict in Planned Development District No. 193, which limits the height of a fence in the front yard to four feet and requires a 20-foot visibility triangle at an alley and driveway approach. The applicant proposes to construct a fence six-foot-tall fence located within a visibility obstruction triangle which will require special exceptions to the fence regulations and the visibility obstruction regulations, respectively.

**LOCATION:** 2603 Hondo Avenue

**APPLICANT:** Victor Morales

**REQUEST:**

The applicant proposes to maintain a six-foot-tall wrought iron fence with a six-foot-tall sliding gate along the front lot line, within a required visibility obstruction triangle at Hondo Avenue.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when, in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when *in the opinion of the board*, the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

Section 51A-4.602(d)(3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, *in the opinion of the board*, the item will not constitute a traffic hazard.

### **STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the visual obstruction regulations since the basis for this type of appeal is when in the opinion of the board, the item will not constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making.

The Transportation Development Services Senior Engineer has reviewed the request for a special exception to the visual obstructions regulation and does not have objections to the proposed request (**Attachment A**).

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: MF-2 Multiple Family Subdistrict in Planned Development District No. 193  
North: MF-2 Multiple Family Subdistrict in Planned Development District No. 193  
East: MF-2 Multiple Family Subdistrict in Planned Development District No. 193  
South: MF-2 Multiple Family Subdistrict in Planned Development District No. 193  
West: MF-2 Multiple Family Subdistrict in Planned Development District No. 193

#### **Land Use:**

The subject site is developed with a single-family dwelling unit. Surrounding properties are developed with multiple-family structures to the north and south, an undeveloped parcel to the east, and a single-family use to the west.

#### **Zoning/BDA History:**

There have been no related board or zoning cases in the vicinity within the last five years.

### **GENERAL FACTS/STAFF ANALYSIS:**

The applicant proposes to maintain a six-foot-tall wrought iron fence along the front lot line. The fence is proposed to extend at a depth of 30 feet along the side yard setback, within a required visibility obstruction triangle at the private drive approach along Hondo Avenue. The property is zoned and a MF-2 Multiple Family Subdistrict in Planned Development District No. 193 and is developed with a single-family home.

Section 51P-193.126(f)(5) states that front yard privacy fencing in an MF-2 Subdistrict may contain an average height of seven feet and a maximum height of nine feet above the top of the nearest street curb and may be located in the required front yard if: (A) the main building does not exceed 36 feet in height; (B) there are no front street curb cuts, front yard driveways, or front entryways to garages or parking; (C) a minimum setback of 12 feet is provided between the fence and the projected street curb; **and** (D) all portions of the fence exceeding four feet in height are set back at least two feet from the lot line.

Additionally, Section 51A-4.602(d) of the Dallas Development Code states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangles at street intersections and 20-foot visibility triangles at drive approaches and alleys); and between two-and-a-half and eight feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The following information is shown on the submitted site plan:

- The proposed fence is located in the front yard along Hondo Avenue and is approximately six-feet-six-inches from the back of curb line.
- The length of the proposed fence in the front yard along Hondo Avenue is approximately 50 feet perpendicular to the frontage.
- The fence is proposed to be constructed of wrought iron with a 15-foot-wide sliding wrought iron gate.
- The visual obstruction is proposed to encroach 10-feet into the visibility triangle at the private drive approach along Hondo Avenue.

Staff conducted a field visit of the site and surrounding area and noticed no other fences appear to be constructed above the minimum height of four feet within the front yard setback and/or obstruct the required 20-foot visibility triangle at the drive approach.

The applicant has the burden of proof for both, the special exception to the fence regulations and a special exception to construct the fence in a required visibility obstruction triangle, since the basis for these types of appeals are in the opinion of the board:

- Visibility obstructions items are made on the basis of the item(s) not constituting a traffic hazard, and
- Technical opinions provided from the city engineer.

As further noted on the site plan, the proposed fence would obstruct:

- Ten feet into the required 20-foot visibility triangle at the frontage along Hondo Avenue.

The Transportation Development Services Senior Engineer does not have objections to the request for a special exception to construct a fence in a required visibility obstruction triangle (**Attachment A**).

As of April 11, 2022 no letters have been submitted in support of or opposition to this request.

Granting these requests with a condition imposed that the applicant complies with the submitted site plan and elevation would limit the height of the fence and location within the 20-foot visibility triangle at the private drive approach adjacent to Hondo Avenue, as shown on the plans.

However, it should be noted that on April 12, 2022, the Development Services Senior Plans Examiner/Development Code Specialist issued a revised BO Report (**Attachment B**) removing the fence requirement due to the discovery of an exception in Sec.51P-193.126(j) regarding single-family uses in MF-2 subdistricts: (2) Fences in front yards and corner side yards may not exceed six feet-in-height if the fence is a minimum of 50 percent open. Since the applicant is proposing a six-foot-high, wrought iron, open fence, and the property will maintain the single-family use, the special exception for the fence height is not necessary.

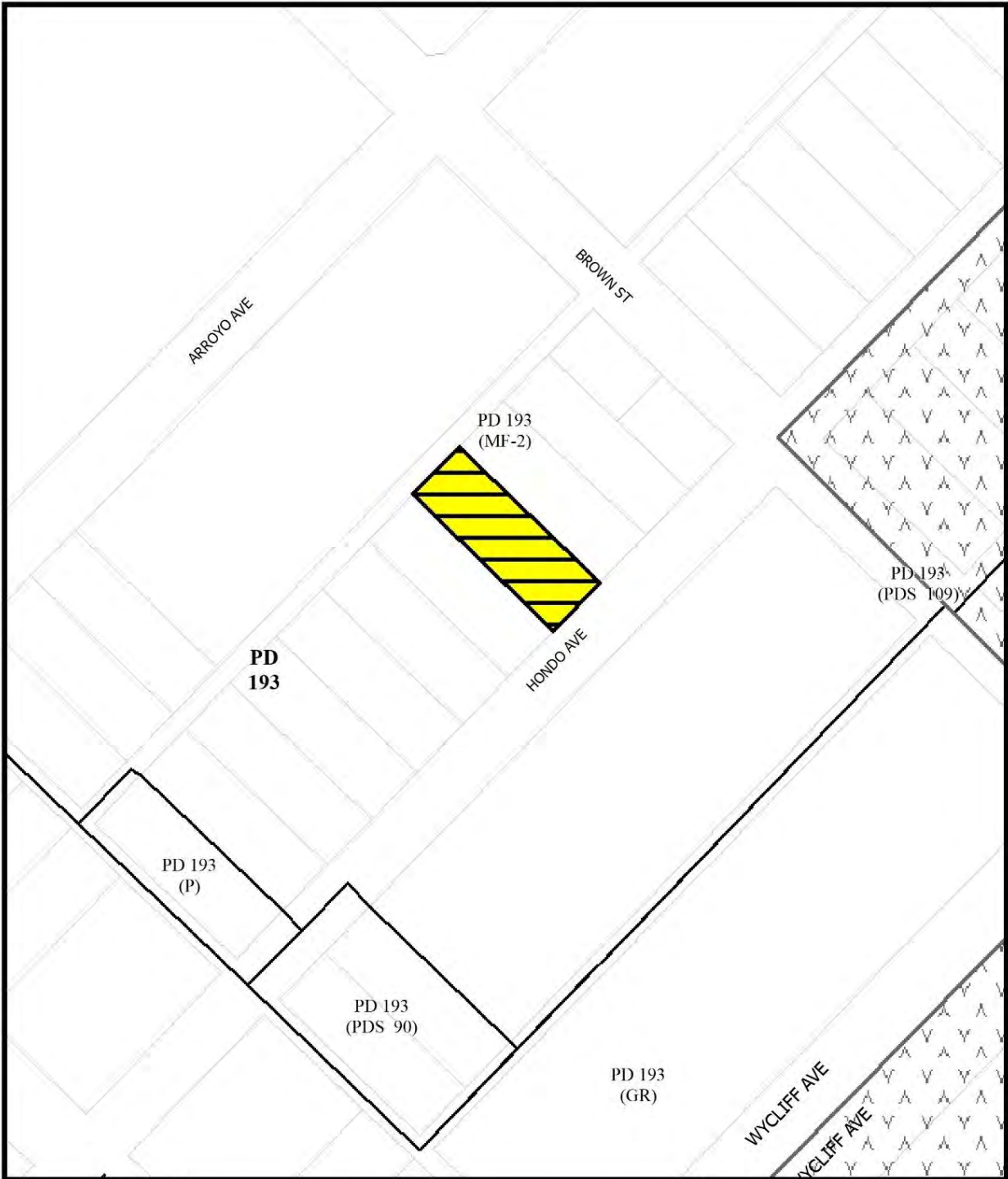
**Timeline:**

- Feb. 22, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 8, 2022: The Board Senior Planner emailed the representative the following information:
- a copy of the application materials including the Building Official’s report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans

Examiner/Development Code Specialist, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

March 31, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet (**Attachment A**).

April 12, 2022: The Development Services Senior Plans Examiner/Development Code Specialist issued a revised BO Report removing the fence requirement due to the discovery of an exception for single-family uses in MF-2 Subdistricts in PD No. 193 (**Attachment B**).

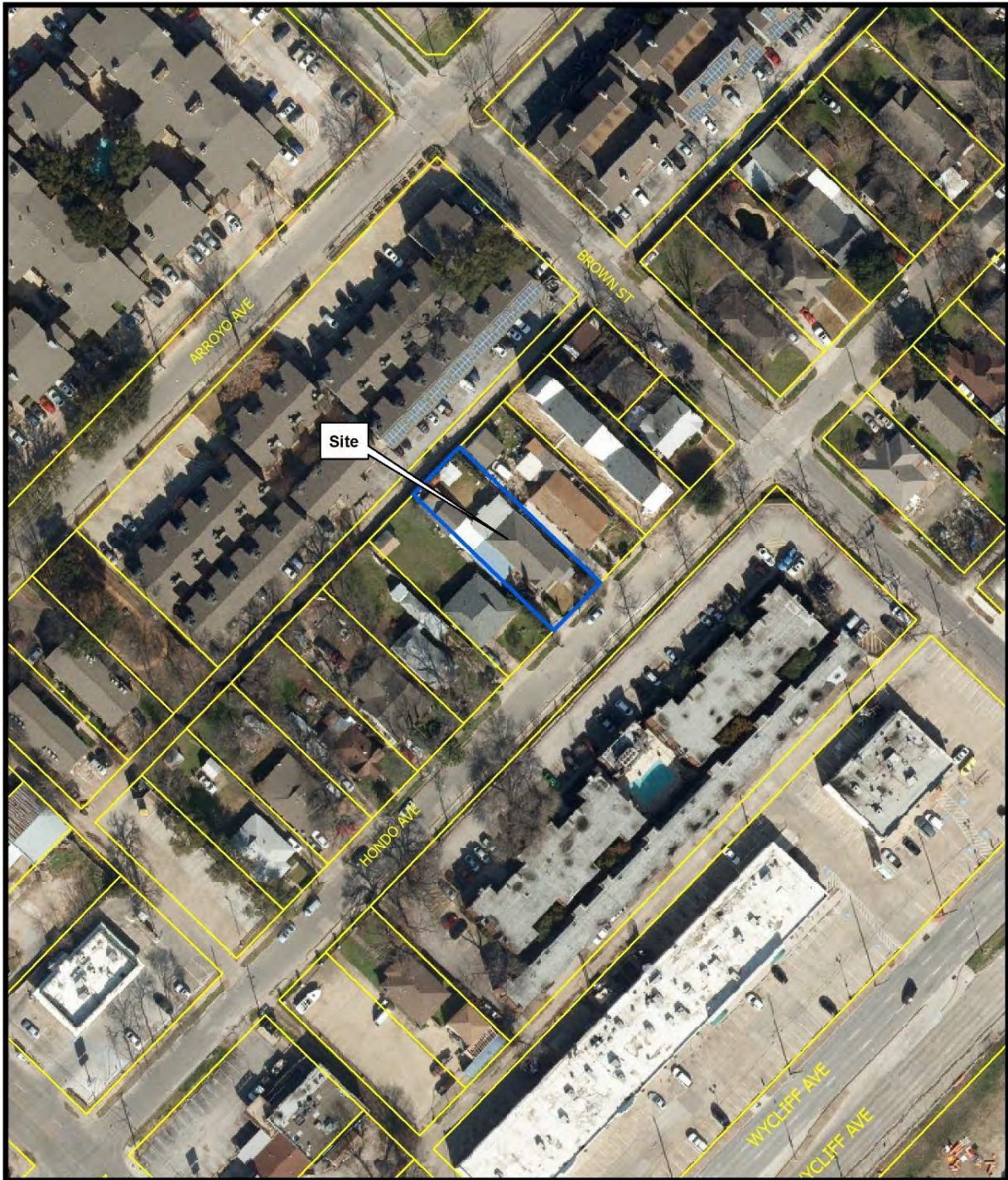


1:1,200

# ZONING MAP

Case no: BDA212-026

Date: 3/9/2022



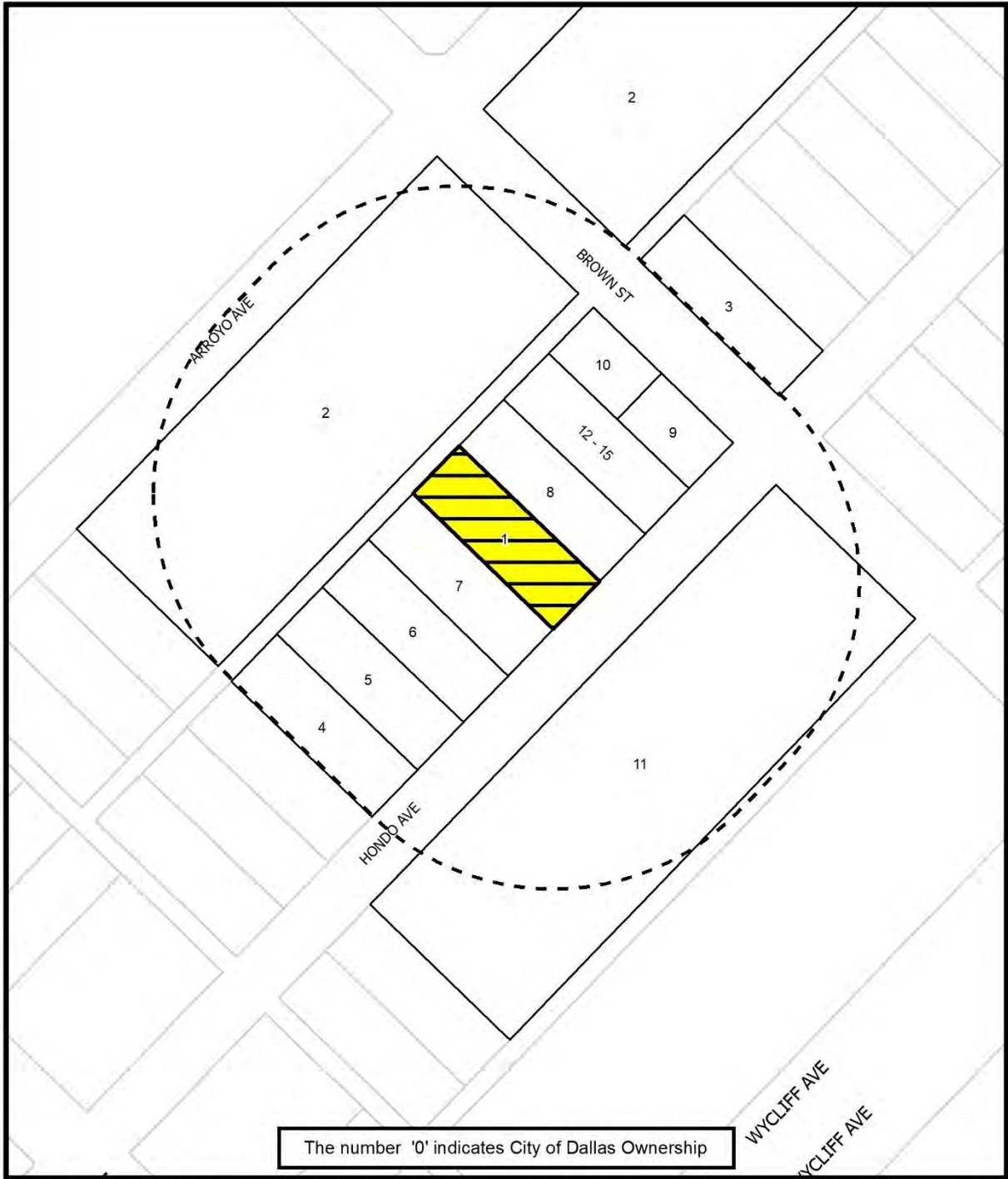
1:1,200

# AERIAL MAP

Case no: BDA212-026

Date: 3/9/2022





The number '0' indicates City of Dallas Ownership



1:1,200

# NOTIFICATION

**200'**

AREA OF NOTIFICATION

**15**

NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA212-026**

Date: **3/9/2022**

03/09/2022

## ***Notification List of Property Owners***

***BDA212-026***

### ***15 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	2603 HONDO AVE	MORALES VICTOR &
2	2702 ARROYO AVE	MAVERICK OAK LAWN LLC
3	2703 HONDO AVE	NGUYEN HAI HO
4	2527 HONDO AVE	LUU DUNG V & LUU CHINH M
5	2531 HONDO AVE	BARRON MARIA GUADALUPE
6	2535 HONDO AVE	MANSON LESLIE H
7	2539 HONDO AVE	HERRADA ABEL & MANUELA
8	2607 HONDO AVE	FRAGA TONY S
9	2615 HONDO AVE	TORREZ RICHARD R JR
10	4443 BROWN ST	CARDENAS ALBERTO MONTEMAYOR
11	2544 HONDO AVE	SL TAYLOR HONDO PROPERTY LLC
12	2611 HONDO AVE	FISTOLERA JOHN &
13	2611 HONDO AVE	KETTERICK AILEEN
14	2611 HONDO AVE	TURK ERIKA ELIZABETH
15	2611 HONDO AVE	MADRIGAL VICTOR



APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 212-026

Data Relative to Subject Property:

Date: 2-2-22

Location address: 2603 Hondo Ave. Zoning District: PD193(MF-2)

Lot No.: 25 Block No.: 7/2256 Acreage: .172 Census Tract: 4.05

Street Frontage (in Feet): 1) 50 2) 3) 4) 5)

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): VICTOR MORALES + ERIKA MORALES

Applicant: Victor Morales Telephone: 214-557-3912

Mailing Address: 2603 Hondo Ave. Dallas TX Zip Code: 75219

E-mail Address: Victor Morales.1128@gmail.com

Represented by: Telephone:

Mailing Address: Zip Code:

E-mail Address:

Affirm that an appeal has been made for a Variance, or Special Exception of Fence Height for 6' fence in front yard and 20x20 visibility triangle at drive way

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

fence is of like material + height, placement as other

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

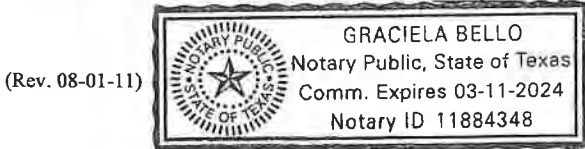
Affidavit

Before me the undersigned on this day personally appeared Victor Morales (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 17 day of JANUARY, 2022



[Signature] Notary Public in and for Dallas County, Texas

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

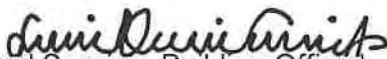
I hereby certify that Victor Morales

did submit a request for a special exception to the fence height regulations, and for a special exception to the visibility obstruction regulations

at 2603 Hondo Avenue

BDA212-026. Application of Victor Morales for a special exception to the fence height regulations, and for a special exception to the visibility obstruction regulations at 2603 HONDO AVE. This property is more fully described as Lot 25, Block 7/2256, and is zoned PD-193 (MF-2), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain a 6 foot high fence in a required front yard, which will require a 2 foot special exception to the fence regulations, and to construct and maintain a single family residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation.

Sincerely,



David Session, Building Official



CITY OF DALLAS

AFFIDAVIT

Appeal number: BDA 212-026

I, ERIKA MORALES, Owner of the subject property  
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 2603 Hondo Ave.  
(Address of property as stated on application)

Authorize: VICTOR MORALES  
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

Specify: Fence Height, 20x20 Visibility triangle At Driveway

ERIKA MORALES  
Print name of property owner or registered agent

[Signature]  
Signature of property owner or registered agent

Date 1/17/22

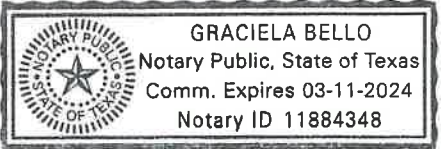
Before me, the undersigned, on this day personally appeared ERIKA MORALES

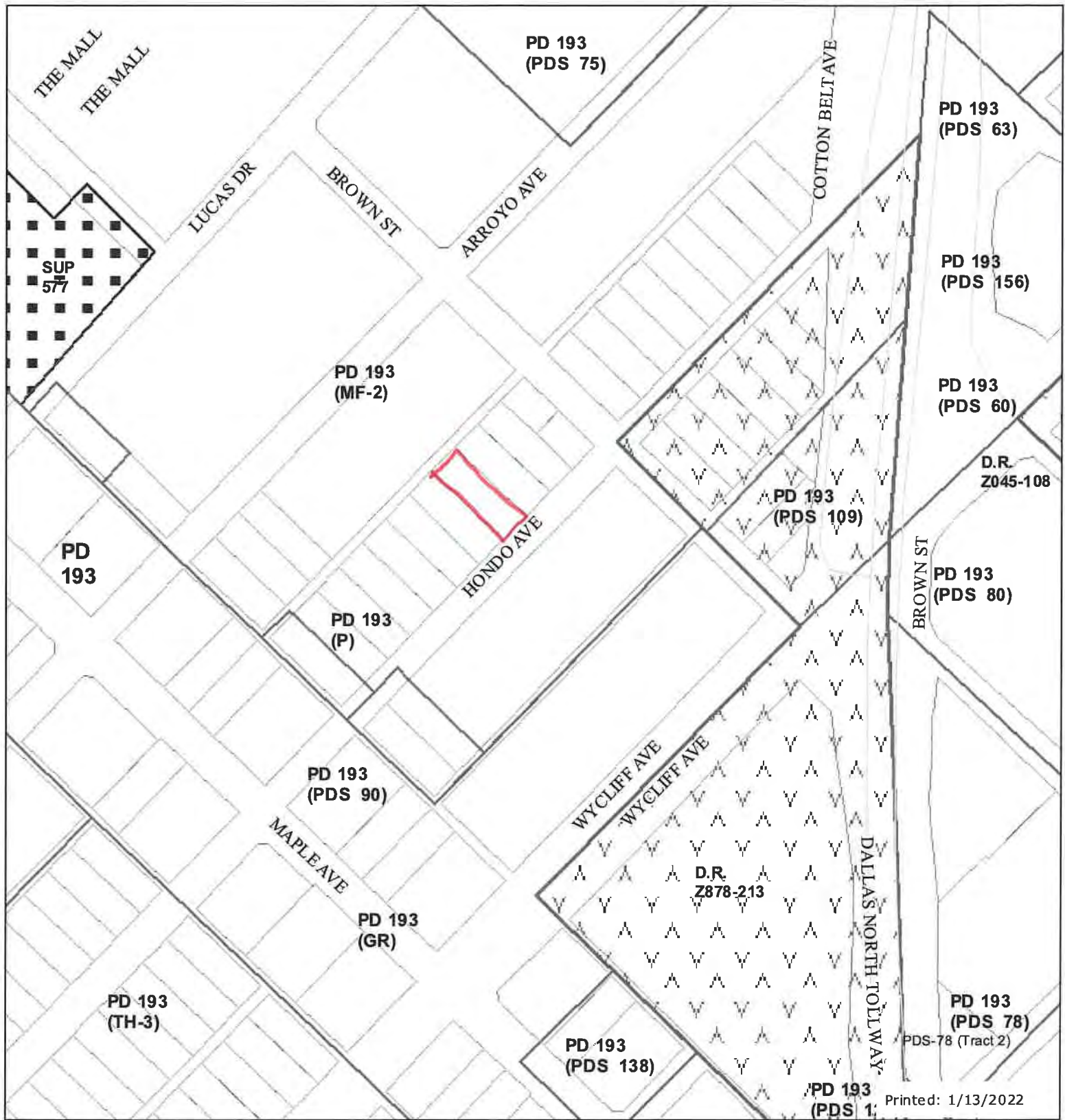
Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 17 day of JANUARY, 2022

Graciela Bello  
Notary Public for Dallas County, Texas

Commission expires on 03-11-2024





### Legend

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | Railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay                |
| Peak's Branch        | SPSP Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. (Texas Government Code § 2051.102)

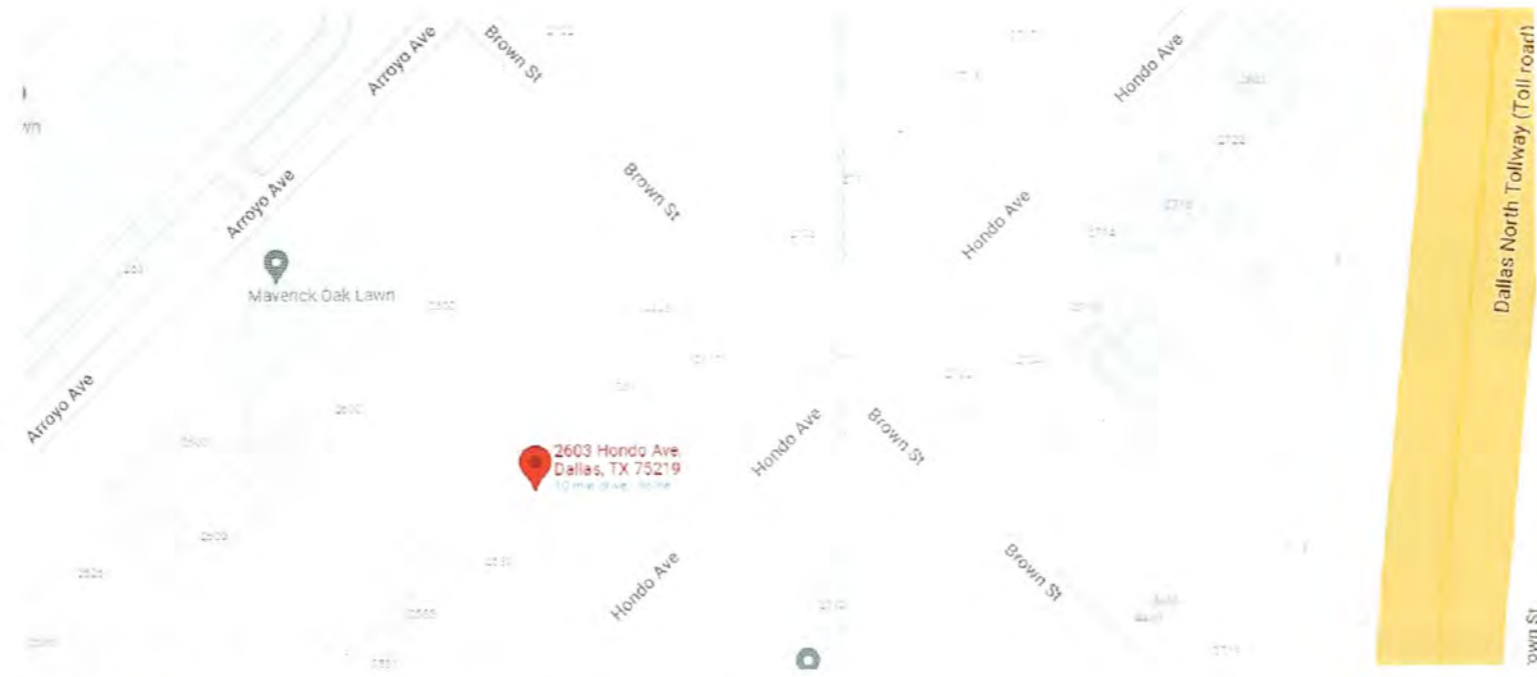






**EXISTING ELEVATION**

SCALE: N.T.S.



**VICINITY MAP**

SCALE: N.T.S.

*9/2-12/6*

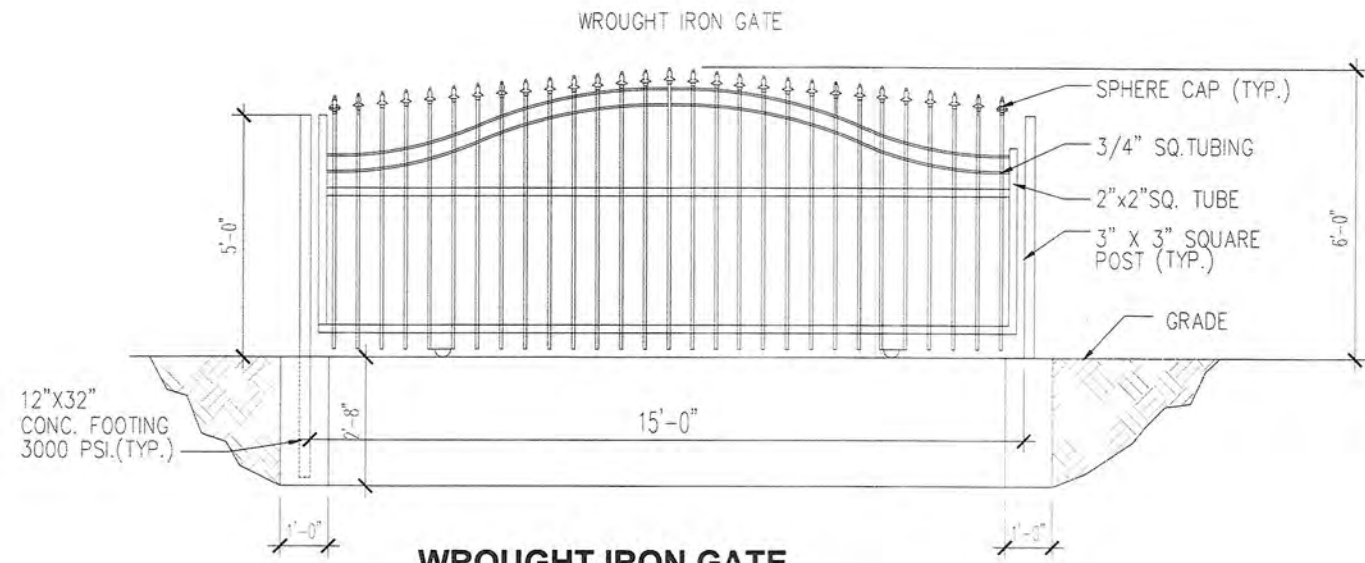
**SAND DESIGN AND CONSTRUCTION PLANNING**  
 214-597-1150  
 WWW.SANDDESIGNS.COM

No.	Date
1	8-20-19

MORALES RESIDENCE  
 2603 HONDO AVENUE  
 LOT 7 / 2256 BLOCK 25  
 CLIFTON PLACE NO.2

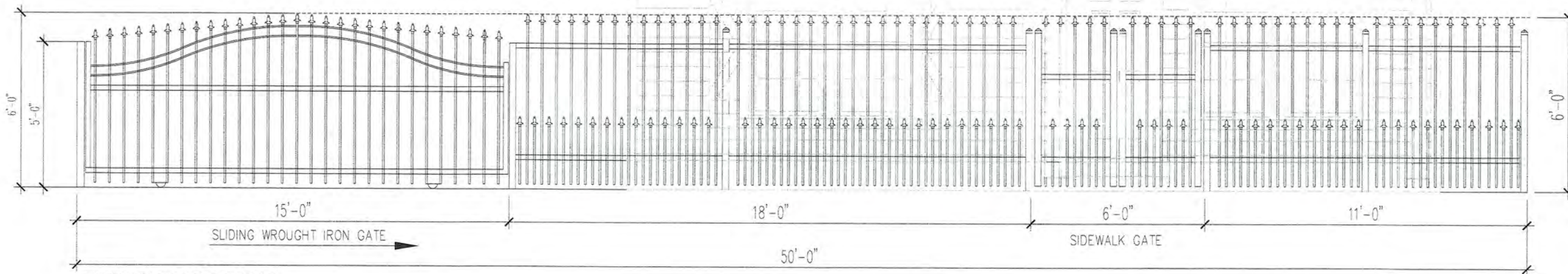
VICINITY MAP	
Project number	A2
Date	12-20-21
Drawn by	JG
Checked by	SG
Scale 1/8" = 4'-0" (11X17) 1/8" = 2'-0" (24X36)	





**WROUGHT IRON GATE**

SCALE:  
 1/2" = 1'-0" (22"X34" SHEET)  
 1/4" = 1'-0" (11"X17" SHEET)



**FENCE ELEVATION**

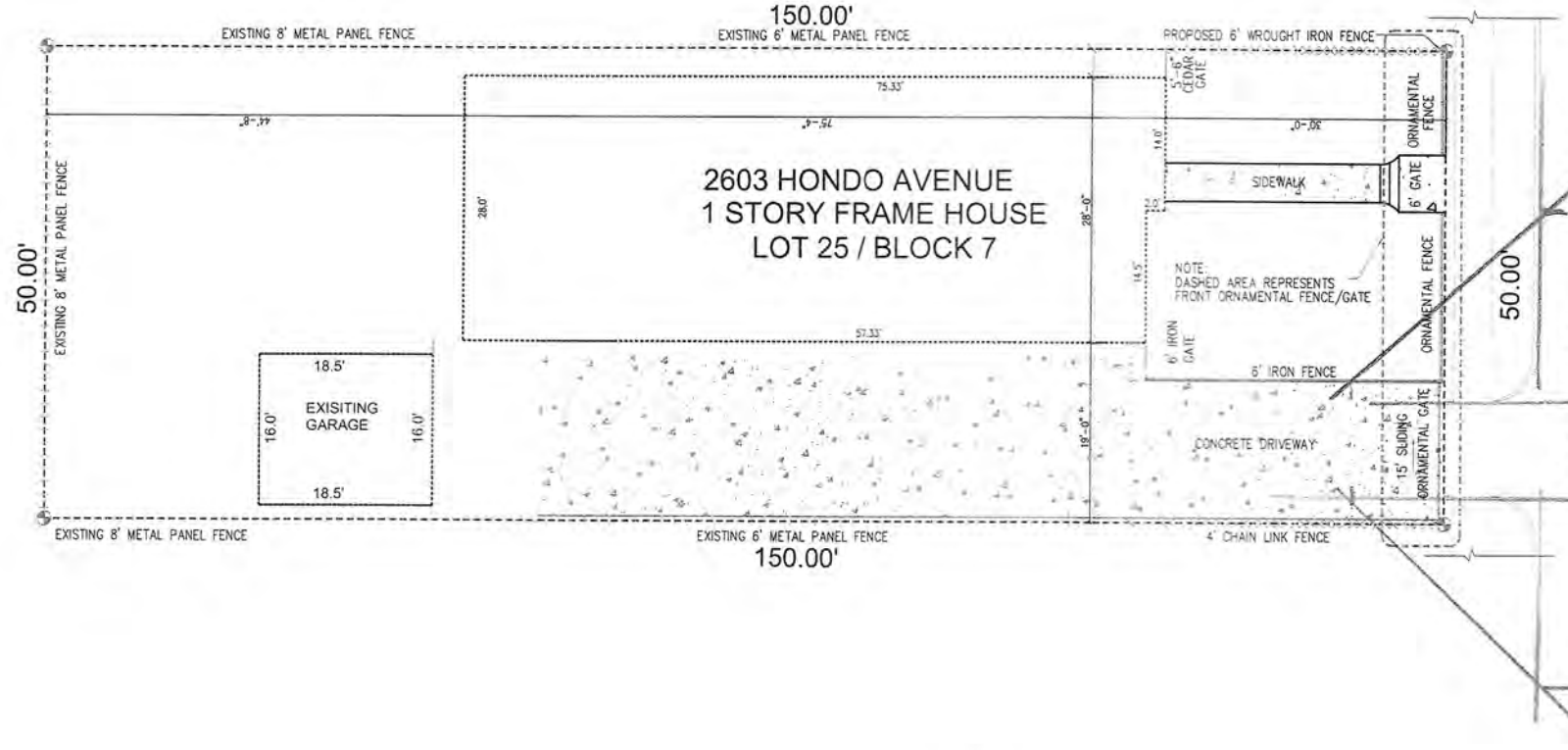
SCALE:  
 1/2" = 1'-0" (22"X34" SHEET)  
 1/4" = 1'-0" (11"X17" SHEET)

*2/2-026*

No.	Date
1	8-20-19

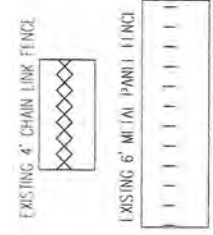
MORALES RESIDENCE  
 2603 HONDO AVENUE  
 LOT 7 / 2256 BLOCK 25  
 CLIFTON PLACE NO.2

FENCE DETAIL		A.1		Scale 1/8" = 4'-0" (11"X17") 1/4" = 2'-0" (24"X36")
Project number	12-20-21	Drawn by	JG	Checked by
Date				SG



**HONDO AVENUE**

**SITE PLAN W/FENCE**  
SCALE: 1" = 20'-0" (11X17 PAPER)



**General Notes:**

1. The purpose of this plan is to show the proposed building footprint as defined by the metes and bounds of the recorded plat.
2. Dimensions, setbacks, easements, plan selection, and any other information shown here in shall be verified at permitting and prior to construction for accuracy and compliance with all applicable codes and ordinances.
3. Builder is solely responsible for ensuring that the footprint is contained within the prepared building pad. The building pad shall be set high enough to allow for adequate drainage.
4. All calculations are approximate. They must be verified prior to permitting, purchasing, and/or construction.

NOTE:  
SITE PLAN IS SHOWN AS EXISTING

SUBDIVISION PLAT CLIFTON PLACE NO.2 Lot: 7 / 2256 Blk: 25 2603 HONDO AVENUE DALLAS, TEXAS Plan No.		PLOT PLAN ENGINEERED FOR 2603 HONDO AVENUE DALLAS, TEXAS			
DATE	12-28-21	DR'N	J.G.	CHK'D	S.G.
			Scale: 1" = 20'-0"	PAGE	1 of 1

210-126

REVIEW COMMENT SHEET  
BOARD OF ADJUSTMENT  
HEARING OF APRIL 19, 2022

Has no objections

Has no objections if certain conditions  
are met (see comments below or attached)

Recommends denial  
(see comments below or attached)

No comments

COMMENTS:

**None**

BDA 212-013

BDA 212-026

BDA 212-027

BDA 212-031

BDA 212-034

***David Nevarez, PE, PTOE, DEV - Engineering***

Name/Title/Department

***3/31/2022***

Date

Please respond to each case and provide comments that justify or elaborate on your response. Dockets distributed to the Board will indicate those who have attended the review team meeting and who have responded in writing with comments.

**MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT**

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

I hereby certify that Victor Morales

did submit a request for a special exception to the visibility obstruction regulations  
at 2603 Hondo Avenue

BDA212-026. Application of Victor Morales for a special exception to the visibility obstruction regulations at 2603 HONDO AVE. This property is more fully described as Lot 25, Block 7/2256, and is zoned PD-193 (MF-2), and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct and maintain a 6 foot high fence in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation.

Sincerely,

  
David Session, Building Official

**FILE NUMBER:** BDA212-027(JM)

**BUILDING OFFICIAL'S REPORT:** Application of Rob Baldwin for a special exception to the fence height regulations at 1822 W. 10<sup>th</sup> Street. This property is more fully described as Lots 10-20 and abandoned alley, Block 29/3447, and is zoned an R-7.5(A) Single Family District, which limits the height of a fence in the front yard to four feet.

**LOCATION:** 1822 W. 10th Street

**APPLICANT:** Rob Baldwin, Baldwin and Associates

**REQUEST:**

The applicant proposes to construct a six-foot six-inch-high fence in a required front yard, which will require a two-foot six-inch special exception to the fence regulations.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when *in the opinion of the board*, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-7.5(A) Single Family District w/SUP No. 2368 for a child-care facility and private school use

North: NS(A) Neighborhood Service District

East: R-7.5(A) Single Family District

South: R-7.5(A) Single Family District

West: Planned Development District No. 996 and R-7.5(A) Single Family District

**Land Use:**

The subject site is being renovated and will maintain the private school use currently authorized under the SUP at the site. Surrounding properties are developed with single-family uses to the north.

### **Zoning/BDA History:**

There have not been any recent related board or zoning cases recorded either on or near the subject site.

### **GENERAL FACTS /STAFF ANALYSIS:**

The subject site is zoned an R-7.5(A) Single Family District, which limits the height of a fence in the front yard to four feet. The applicant proposes to construct a six-foot six-inch-high fence in a required front yard, which will require a two-foot six-inch special exception to the fence regulations. The property is being renovated to maintain a private school use.

The site and elevation plans submitted with the request depict the six-foot-high wrought iron fence with capped brick columns extending an additional six-inches as the following:

- Protruding perpendicular to W. 10<sup>th</sup> Street at the northeastern edge of the building 25 feet to the front property line.
- Travelling east the remaining length of the property and following the property line while maintaining the 45-foot visibility triangle at W. 10<sup>th</sup> Street and S. Waverly Drive.
- Travelling southbound along the S. Waverly Drive property line about 175 feet.
- Turning westward 25 feet through the front yard setback before entering the interior property.
- Entering the front yard setback along S. Brighton Avenue and then turning northbound, perpendicular to W. 10<sup>th</sup> Street at the southwestern edge of the building before terminating.

According to DCAD records, the existing institutional structure contains 4,985 square feet and was constructed in 1975.

Staff conducted a field visit of the site and surrounding area and did not notice other fences that seemed taller than four feet-in-height or solid in nature located in obvious front yards. However, it should be noted that the majority of the proposed fence would front along S. Waverly Drive, meeting the view of a fence taller than four-feet-in-height. No recent case history was identified.

The applicant has the burden of proof in establishing that the two-foot six-inch special exception to the fence height regulation will not adversely affect neighboring properties.

As of April 12, 2022, no letters had been received regarding the request.

If the board were to grant the special exception to the fence height regulations, the fence on the site would be limited to what is depicted in the site and elevation plans.

**Timeline:**

February 20, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.

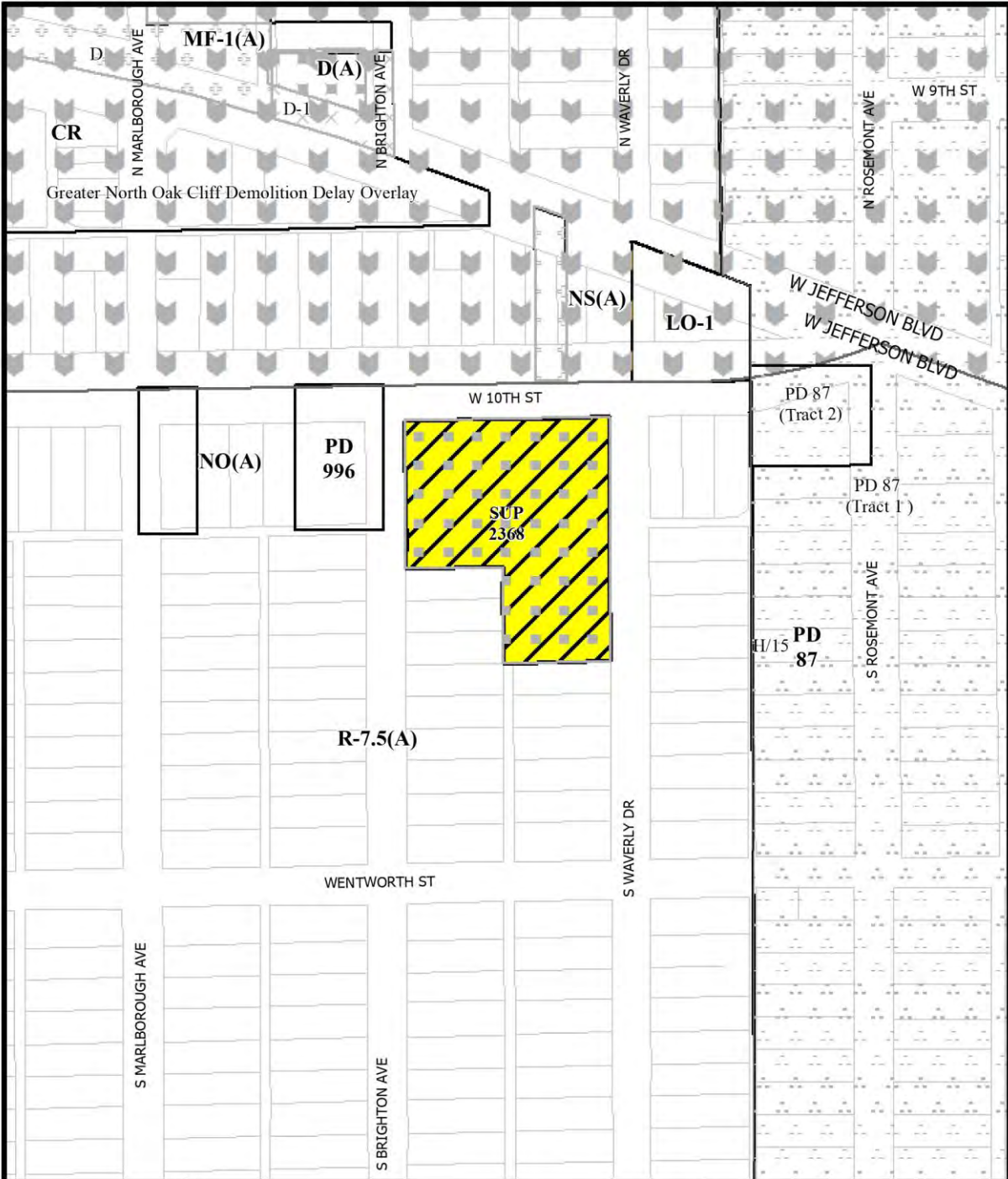
March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 15, 2022: The Board Administrator emailed the applicant the following information:

- a copy of the application materials including the Building Official’s report on the application;
- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board

April 12, 2022: No evidence, review sheets, or letters have been received.



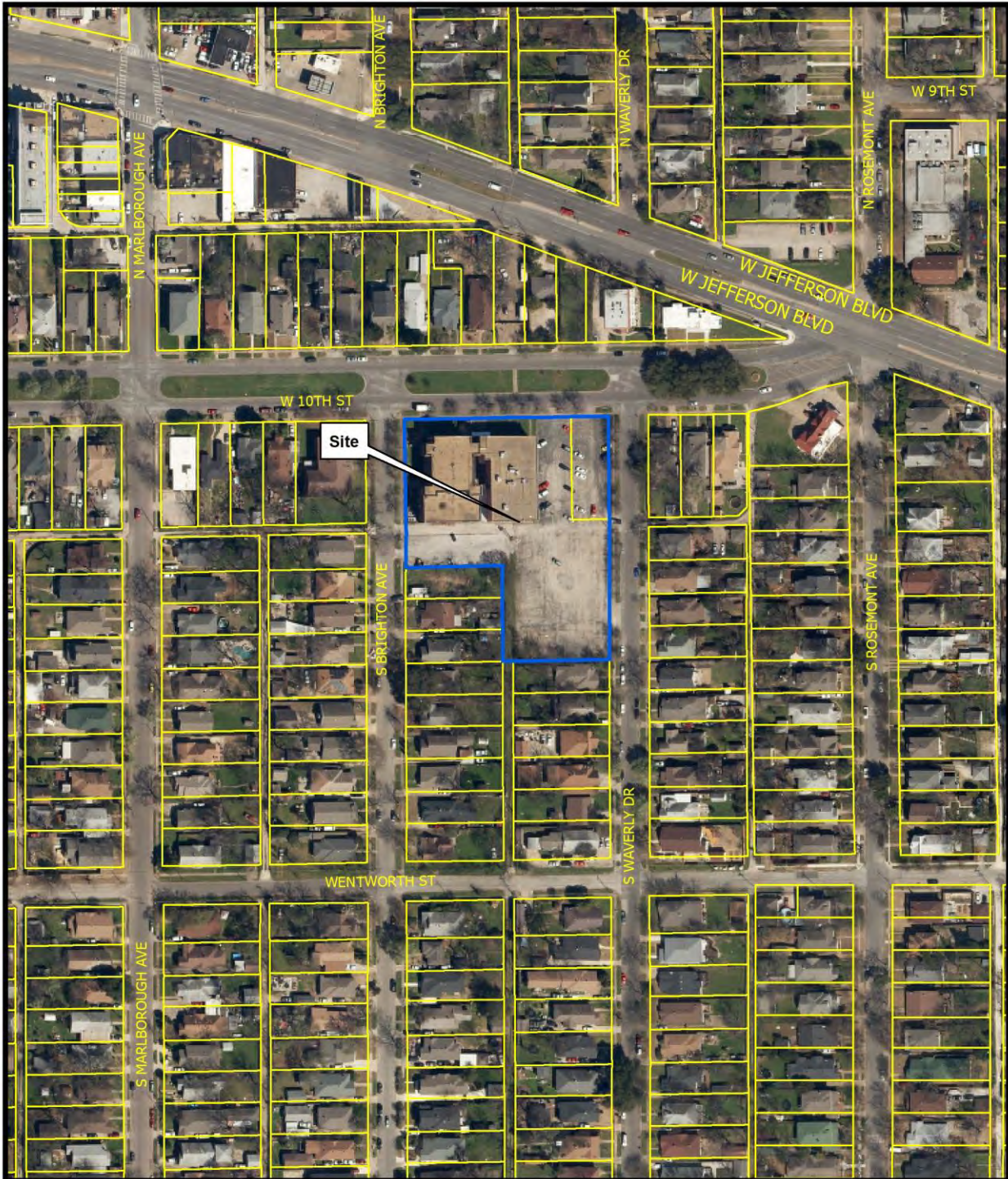
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# ZONING MAP

Case no: BDA212-027

Date: 3/9/2022



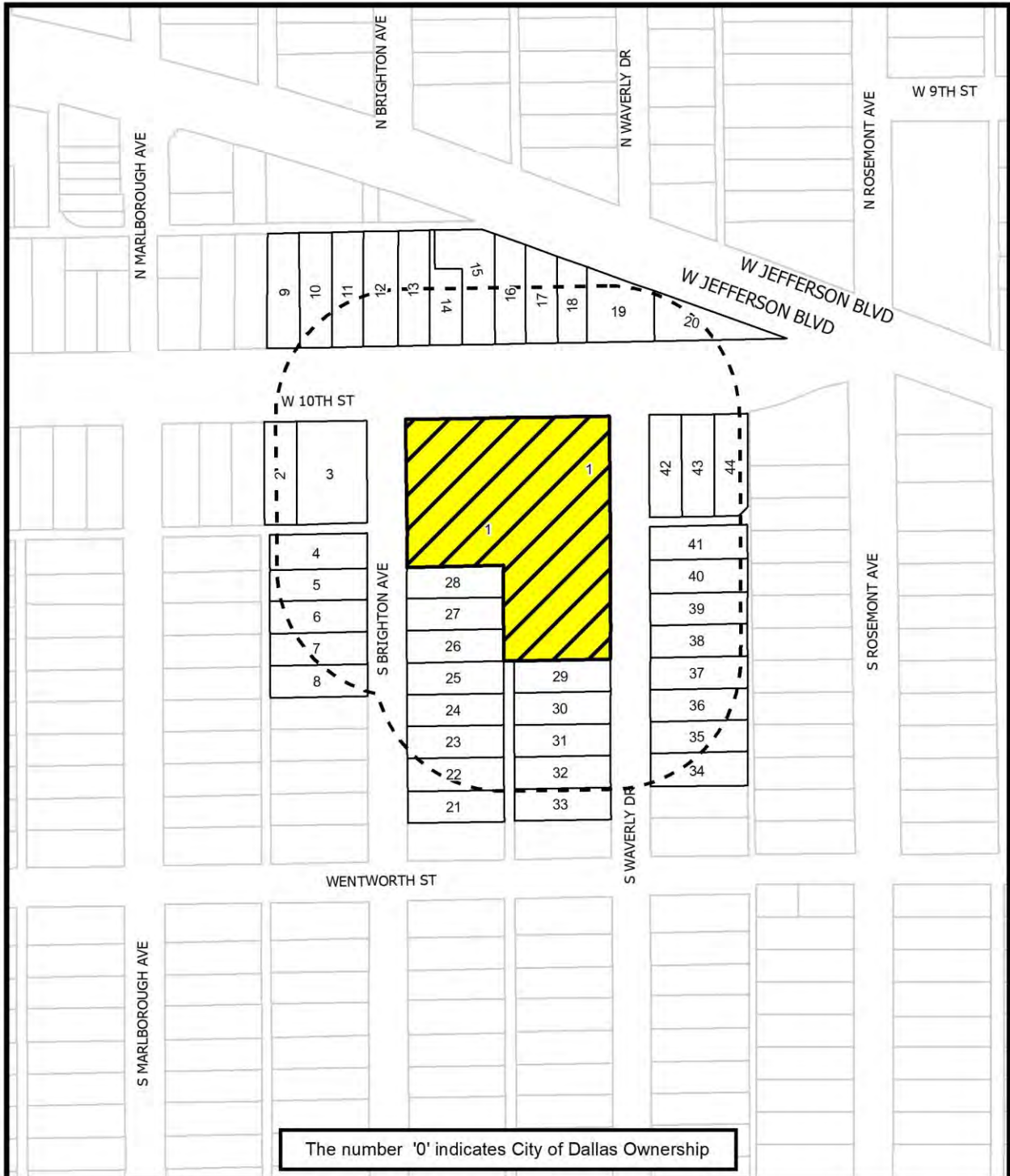


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# AERIAL MAP

Case no: BDA212-027

Date: 3/9/2022



1:2,400

# NOTIFICATION

**200'** AREA OF NOTIFICATION  
**44** NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA212-027**

Date: **3/9/2022**

03/09/2022

## *Notification List of Property Owners*

*BDA212-027*

### *44 Property Owners Notified*

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	1822 W 10TH ST	KESSLER SCHOOL INC THE
2	1910 W 10TH ST	CEDILLO APOLONIO &
3	1900 W 10TH ST	1900 W 10TH STREET LLC
4	115 S BRIGHTON AVE	FRANCIS MICHAEL & THERESA
5	119 S BRIGHTON AVE	GUILLEN MARIA B
6	121 S BRIGHTON AVE	CHAVEZ GUSTAVO
7	125 S BRIGHTON AVE	LEIJA DELORES G
8	201 S BRIGHTON AVE	CARMONA JUAN C
9	1913 W 10TH ST	BENNETT MONICA MICHELLE
10	1909 W 10TH ST	JIMENEZ ARNULFO JR &
11	1903 W 10TH ST	RODRIGUEZ JOSE M & KARA S
12	1827 W 10TH ST	BETANCOURT EVA L
13	1825 W 10TH ST	PALOMO MANUEL LIFE ESTATE
14	1821 W 10TH ST	SARMIENTO NEIMD Z
15	1817 W 10TH ST	MELGOZA JOSE JJ &
16	1815 W 10TH ST	MELGOZA JOSE J JIMENEZ
17	1808 W JEFFERSON BLVD	MELTON JANIE
18	1805 W 10TH ST	VILLARREAL HECTOR D
19	1801 W 10TH ST	SUNSET MANOR LLC
20	1719 W 10TH ST	PROVISION VENTURES LLC
21	216 S BRIGHTON AVE	SANCHEZ GRIMALDO & ROSA M
22	212 S BRIGHTON AVE	SANTOS MARIA JESUS C &
23	208 S BRIGHTON AVE	QUINONEZ RAMON &DORA
24	206 S BRIGHTON AVE	ORNELAS MIGUEL &
25	200 S BRIGHTON AVE	DIAZ MANUEL &
26	128 S BRIGHTON AVE	COLLINS HALEY BROOKE

03/09/2022

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
27	120 S BRIGHTON AVE	SIMMONS MARK ALAN &
28	118 S BRIGHTON AVE	SIMMONS MARK A
29	207 S WAVERLY DR	Taxpayer at
30	211 S WAVERLY DR	MACIAS FERMIN JR
31	215 S WAVERLY DR	MENDEZ FIDENCIO &
32	219 S WAVERLY DR	LORETTO ARNOLD
33	223 S WAVERLY DR	BRACKINS KELLEN L
34	218 S WAVERLY DR	JACK JAMES MARSHALL
35	212 S WAVERLY DR	SNIDOW BARRY G
36	210 S WAVERLY DR	ROMERO MARIA
37	206 S WAVERLY DR	VALLEJOS JOSHUA BRYAN &
38	126 S WAVERLY DR	MARIADELACERDA MONICA
39	122 S WAVERLY DR	BERSHELL CARI
40	118 S WAVERLY DR	WAGERS ROBERT WAYNE &
41	114 S WAVERLY DR	CONRAD JENNIFER A
42	1720 W 10TH ST	HORTON BARBARA SIEMENS
43	1716 W 10TH ST	TREJO GABRIEL &
44	1712 W 10TH ST	DENOVA ERIKA



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 212-027

Date: 2-2-22

Data Relative to Subject Property:

Location address: 1822 W. 10th St Zoning District: R-7.5(A)/ SUP 2368

Lot No.: 10-20 Block No.: <sup>29/</sup>~~28~~/3447 Acreage: 2.18 acres Census Tract: 52.00

Street Frontage (in Feet): 1) 228 ft 2) 312 ft 3) 378 ft 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): The Kessler School

Applicant: Rob Baldwin, Baldwin Associates Telephone: 214-824-7949

Mailing Address: 3904 Elm Street Suite B Dallas TX Zip Code: 75226

E-mail Address: rob@baldwinplanning.com

Represented by: Rob Baldwin, Baldwin Associates Telephone: 214-824-7949

Mailing Address: 3904 Elm Street Suite B Dallas TX Zip Code: 75226

E-mail Address: rob@baldwinplanning.com

Affirm that an appeal has been made for a Variance , or Special Exception , of 2'6" to the fence height regulations to allow a 6'6" fence

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:  
The proposed fencing will define the yard and recreation areas for the Kessler School. It is necessary in order to provide safety for students playing and recreating and the proposed fences are reasonable for this residential setting and will not negatively affect neighboring properties.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

Before me the undersigned on this day personally appeared Robert Baldwin  
(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature]  
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 27 day of January, 2022



Michele Stoy  
Notary Public in and for Dallas County, Texas

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

I hereby certify that Rob Baldwin

did submit a request for a special exception to the fence height regulations  
at 1822 W 10Th Street

BDA212-027. Application of Rob Baldwin for a special exception to the fence height regulations at 1822 W 10TH ST. This property is more fully described as Lots 10-20 and Abnd Alley, Block 29/3447, and is zoned R-7.5(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot 6 inch high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence regulations.

Sincerely,

  
David Session, Building Official



CITY OF DALLAS

AFFIDAVIT

Appeal number: BDA 212-027

I, The Kessler School Inc., Owner of the subject property  
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 1822 W. 10th Street  
(Address of property as stated on application)

Authorize: Rob Baldwin, Baldwin Associates  
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

Specify: Fence

Cooper Koch Print name of property owner or registered agent      Cooper Koch Signature of property owner or registered agent

Date 1-21-22

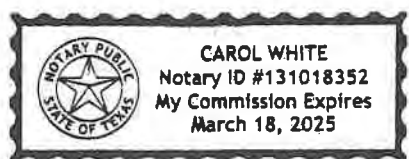
Before me, the undersigned, on this day personally appeared Cooper Koch

Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 21 day of January, 2022

Carol White  
Notary Public for Dallas County, Texas

Commission expires on 3/18/25





Printed: 1/24/2022

**Legend**

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay                |
| Peak's Branch        | SPSD Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)





CITY OF DALLAS

ORD. NO. \_\_\_\_\_

ADDITION \_\_\_\_\_

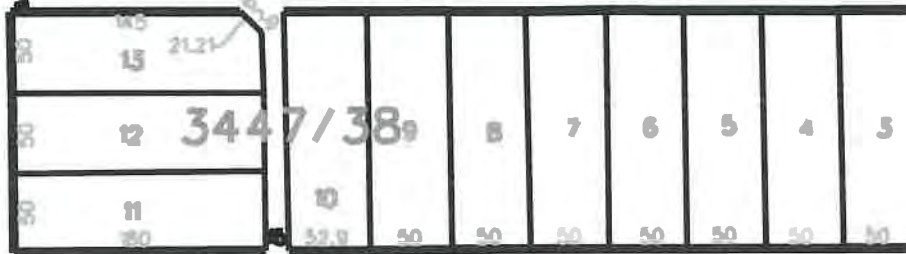
ABST. **1465**

SCALE **100** F

R. 28/3447 LOT 17-A  
ET HIGH SCHOOL ANNEX

41  
3298

1700 ST. B



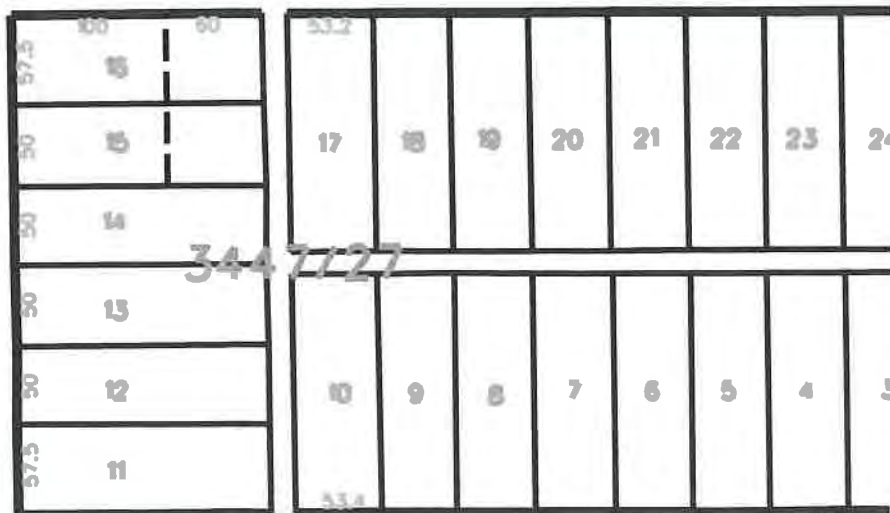
8 100 WAVERLY x 200

1800



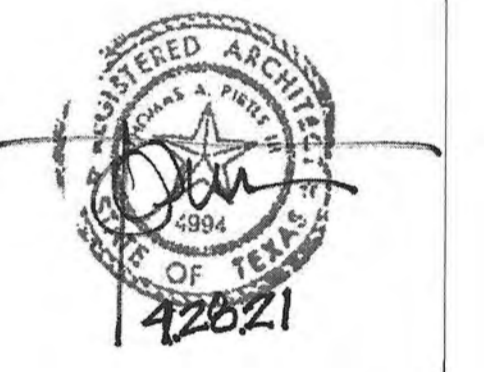
8 100 BRIGHTON x 200

1800



8 100 BRIGHTON x 200

**THE KESSLER SCHOOL**  
 1822 WEST 10TH STREET  
 DALLAS, TEXAS



NO.	DATE	ISSUES AND REVISIONS
	2022.01.24	FOR SUP

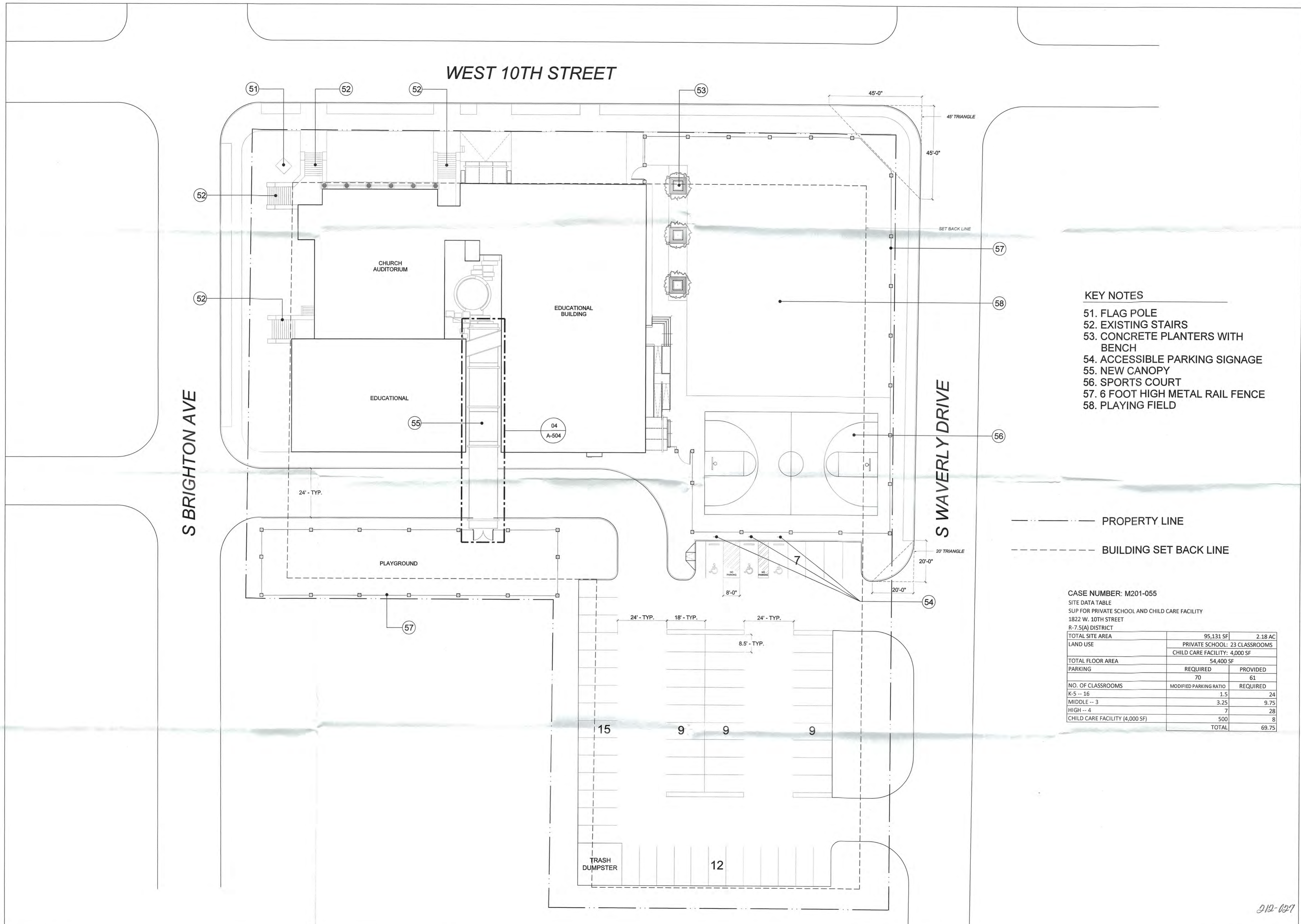
SCALE AS NOTED @ ARCH D

PROJECT NUMBER 2004  
 PROJECT NAME THE KESSLER SCHOOL

DESCRIPTION -  
 SITE PLAN

SHEET NUMBER  
 A-100

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING HEREIN CONSTITUTE ORIGINAL AND UNPUBLISHED WORK OF THE ARCHITECT AND MAY NOT BE DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN PERMISSION.



- KEY NOTES**
51. FLAG POLE
  52. EXISTING STAIRS
  53. CONCRETE PLANTERS WITH BENCH
  54. ACCESSIBLE PARKING SIGNAGE
  55. NEW CANOPY
  56. SPORTS COURT
  57. 6 FOOT HIGH METAL RAIL FENCE
  58. PLAYING FIELD

--- PROPERTY LINE  
 - - - BUILDING SET BACK LINE

CASE NUMBER: M201-055  
 SITE DATA TABLE  
 SUP FOR PRIVATE SCHOOL AND CHILD CARE FACILITY  
 1822 W. 10TH STREET  
 R-7.5(A) DISTRICT

LAND USE	95,131 SF	2.18 AC
PRIVATE SCHOOL: 23 CLASSROOMS		
CHILD CARE FACILITY: 4,000 SF		
<b>TOTAL FLOOR AREA</b>	<b>54,400 SF</b>	
PARKING	REQUIRED	PROVIDED
	70	61
NO. OF CLASSROOMS	MODIFIED PARKING RATIO	REQUIRED
K-5 -- 16	1.5	24
MIDDLE -- 3	3.25	9.75
HIGH -- 4	7	28
CHILD CARE FACILITY (4,000 SF)	500	8
	TOTAL	69.75

2/12-027

**THE KESSLER SCHOOL**  
 1822 WEST 10TH STREET  
 DALLAS,  
 TEXAS



NO.	DATE	ISSUES AND REVISIONS
	2022.01.24	FOR SUP

NO. DATE ISSUES AND REVISIONS

2022.01.24 FOR SUP

SCALE AS NOTED @ ARCH D

PROJECT NUMBER 2004

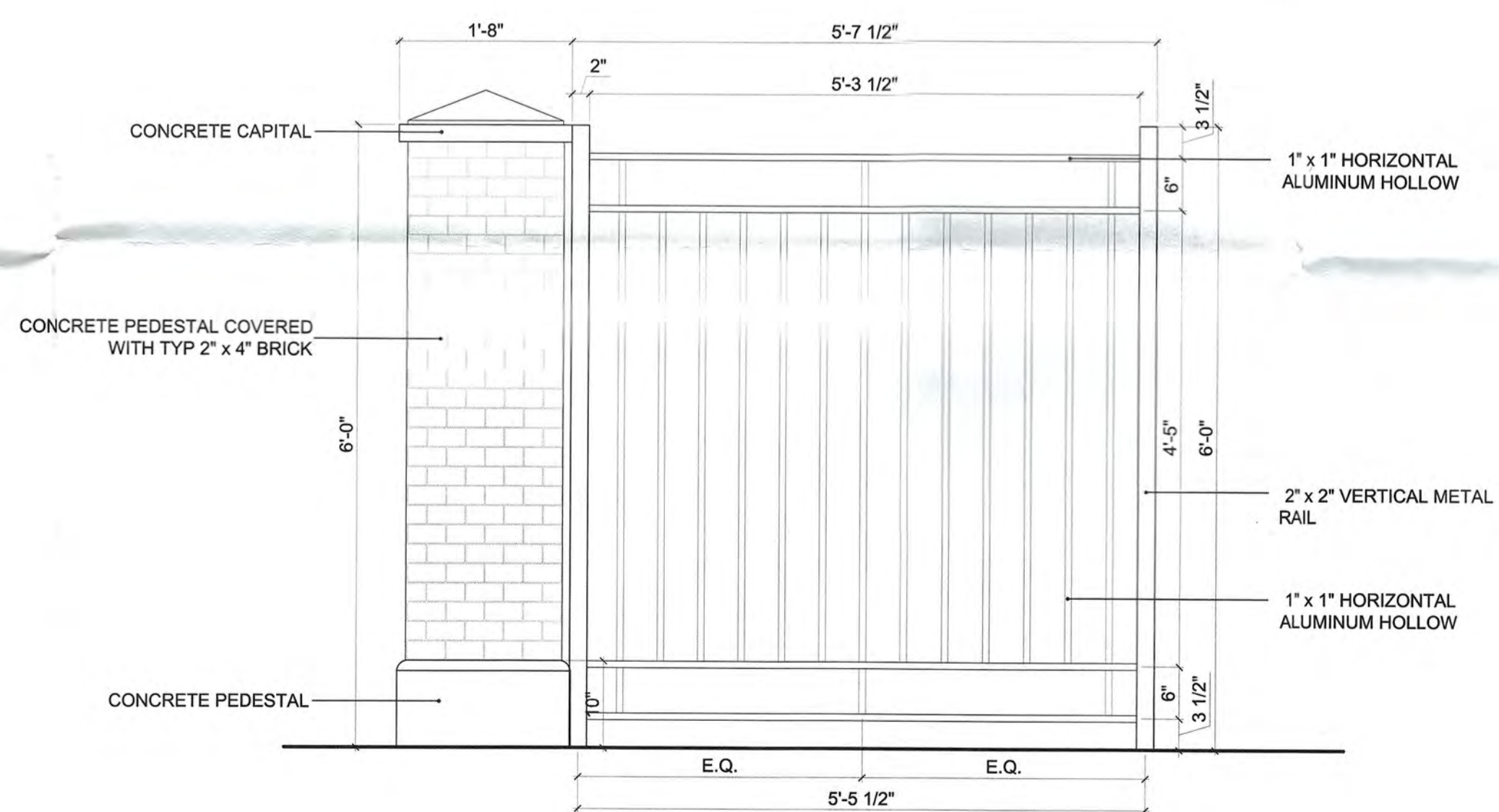
PROJECT NAME THE KESSLER SCHOOL

DESCRIPTION  
 EXTERIOR ELEVATIONS &  
 DETAILS  
 CLOCK TOWER, FENCE &  
 RAILING DETAILS

SHEET NUMBER

**A-505**

ALL DRAWINGS AND WRITTEN MATERIAL APPEARING  
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 WORK OF THE ARCHITECT AND MAY NOT BE  
 DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN  
 PERMISSION.



02 FENCE ELEVATION

SCALE: 3/4"=1'-0"



01 METAL FENCE WITH BRICK COLUMNS REFERENCE

SCALE: N.T.S.

**FILE NUMBER:** BDA212-031(JM)

**BUILDING OFFICIAL'S REPORT:** Application of German G. Sierra for a variance to the parking regulations at 1805 S. Edgefield Avenue. This property is more fully described as Lots 14,15,16, and Pt of Lots 17,18, Block 2/4742, and is zoned a CR Community Retail District, which requires parking to be provided.

**LOCATION:** 1805 S. Edgefield Avenue

**APPLICANT:** German G. Sierra

**REQUESTS:** The applicant proposes to maintain a nonresidential structure for a restaurant without drive-in or drive-through service use, and provide three of the required 18 parking spaces, which will require a 15-space variance (83.33 percent reduction) to the parking regulations.

**STANDARD FOR A VARIANCE:**

Section 51(A)-3.102(d)(10) of the Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, lot coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, **off-street parking** or off-street loading, or landscape regulations provided that the variance is:

- (A) not contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

**State Law/HB 1475 effective 9-1-21**

- the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- (a) 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 (Submission of Rolls to Taxing Units), Tax Code;
- (b) 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 is authorized to physically occur;
- (c) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (d) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (e) the municipality consider the structure to be a nonconforming structure.

**STAFF RECOMMENDATION: ENGINEER OPINION**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The Transportation Development Services Senior Engineer reviewed the submitted evidence (**Attachment A**) and found no objection to the variance request (**Attachment B**).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CR Community Retail District  
North: R-7.5(A) Single Family District  
East: R-7.5(A) Single Family District  
South: CR Community Retail District  
West: R-7.5(A) Single Family District

**Land Use:**

The subject site is being redeveloped with a restaurant without drive-in or drive-through service use (coffee shop). All surrounding properties are developed with single-family uses.

**Zoning/BDA History:**

1. Z178-142: an authorized hearing to determine proper zoning on this site and adjacent CR District properties in Elmwood. No action taken.

## **GENERAL FACTS/STAFF ANALYSIS**

The subject site is zoned CR Community Retail District, where the typical lot size varies significantly. Per DCAD records, the property is 6,680 square feet in size with a 1,235-square-foot structure erected in 1948, and a 400-square-foot detached accessory structure. The property is located at the southwest corner of Tennessee Avenue and South Edgefield Avenue. The applicant is seeking to maintain these structures to house a coffee shop. The coffee shop is considered a restaurant use and requires parking at a ratio of one space per 100 square feet of floor area.

According to the site plan submitted with the request, the detached accessory structure contains 446 square feet. Combined with the main structure of 1,235 square feet, the total restaurant area is considered 1,681 square feet and requires a minimum of 17 parking spaces. The applicant states that due to the residential configuration and size of the lot, the property cannot be used in a manner commensurate to other properties with the same CR District zoning (**Attachment A**), some found within the same Elmwood area.

The applicant's evidence includes supportive passages from a pending neighborhood plan WOCAP the West Oak Cliff Area Plan, as well.

Ultimately, the Transportation Development Services Senior Engineer reviewed the submitted evidence and found no objection to the variance request (**Attachment B**).

The applicant has the burden of proof in establishing the following:

- That granting the variance to the parking regulations will not be contrary to the public interest when owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
- The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same CR zoning classification.
- The variance would not be granted to relieve a self-created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same CR zoning classification.

The board may also consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

- (f) 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 (Submission of Rolls to Taxing Units), Tax Code;
- (g) 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 is authorized to physically occur;
- (h) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- (i) compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- (j) the municipality consider the structure to be a nonconforming structure.

As of April 12, 2022, staff had received four letters of support and none in opposition.

If the board were to grant the variance request and impose the submitted site plan as a condition, the proposed parking would be limited to what is shown on this document. No additional relief is provided with this request.

### **TIMELINE:**

- February 2, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- March 15, 2022: The Board Administrator emailed the applicant the following information:
- a copy of the application materials including the Building Official’s report on the application;
  - an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - the criteria/standard that the board will use in their decision to approve or deny the request; and
  - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public

hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board

March 21 & 30,

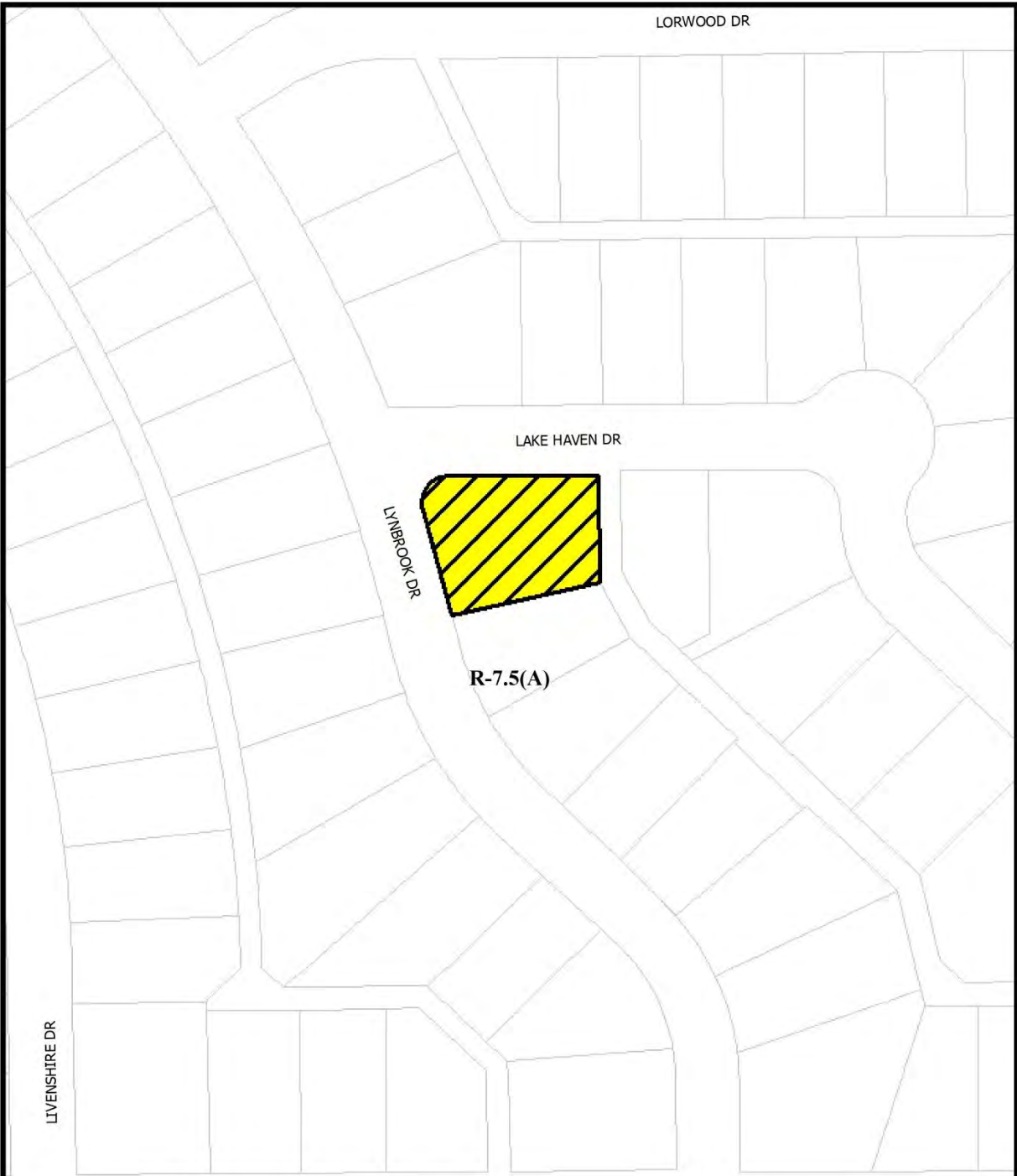
2022:

The applicant submitted additional evidence for consideration (**Attachment A**).

March 31, 2022:

The Transportation Development Services Senior Engineer submitted a comment sheet (**Attachment B**).



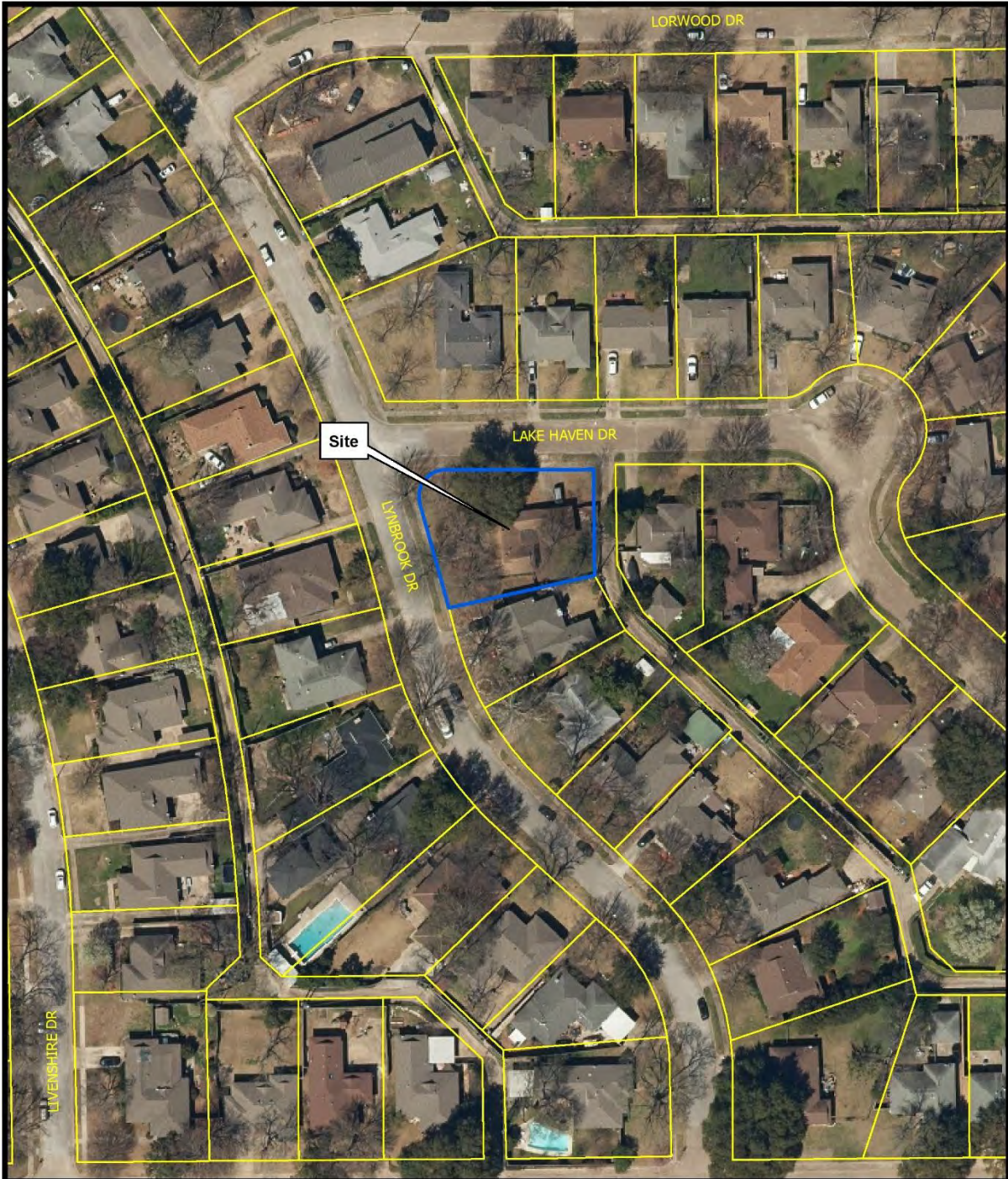


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# ZONING MAP

Case no: BDA212-008

Date: 1/5/2022

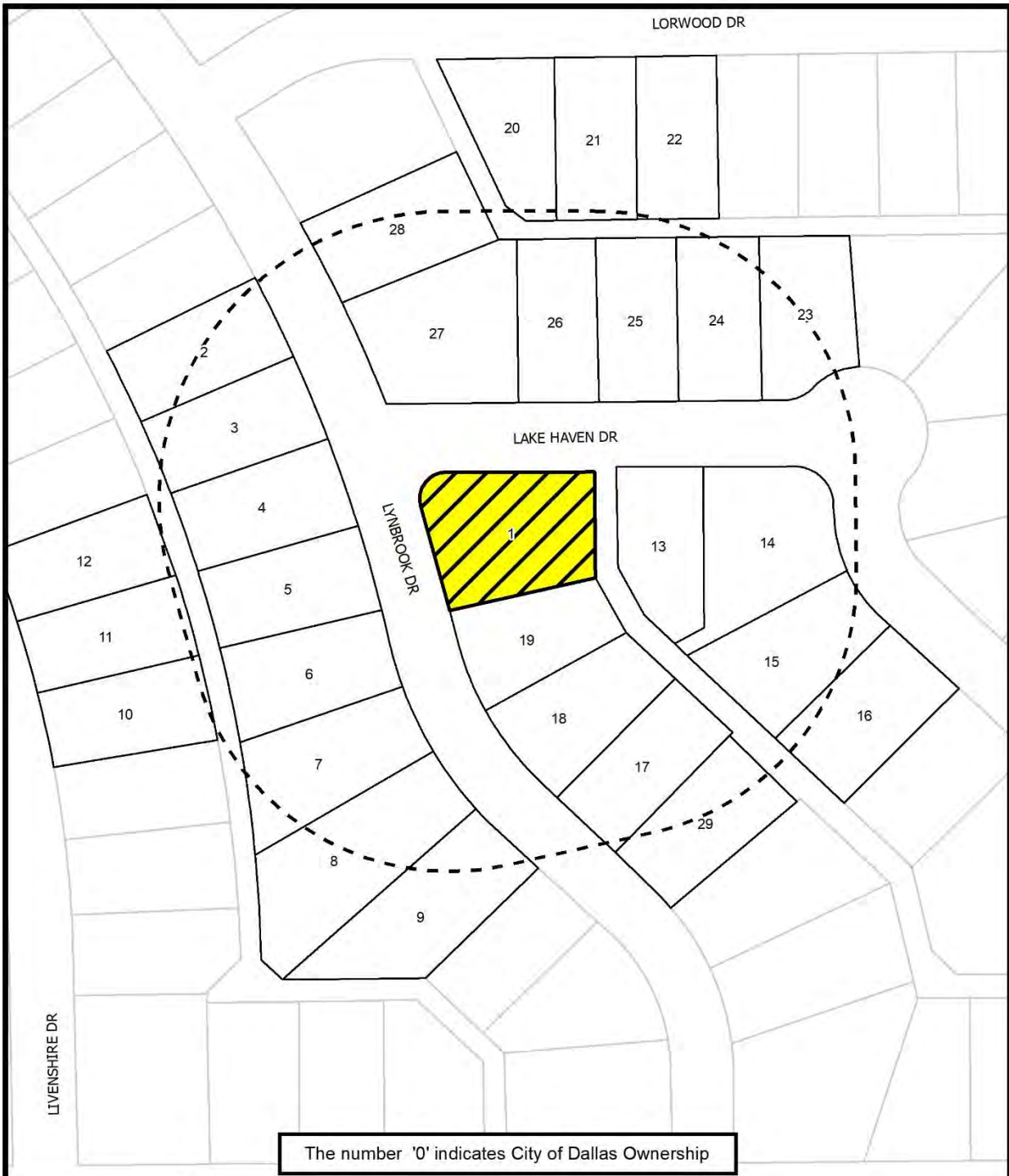


1:1,200

# AERIAL MAP

Case no: BDA212-008

Date: 1/5/2022



1:1,200

# NOTIFICATION

**200'** AREA OF NOTIFICATION  
**29** NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA212-008**

Date: **1/5/2022**

01/04/2022

## ***Notification List of Property Owners***

***BDA212-008***

### ***29 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	9140 LYNBROOK DR	UMBERGER DUSTIN & MADISON
2	9207 LYNBROOK DR	BALDOCK HAYDEN M & MEGAN A
3	9203 LYNBROOK DR	MADRALA BOGUSLAW T
4	9145 LYNBROOK DR	DURAN IRMA ANGELICA
5	9141 LYNBROOK DR	MCCAULEY BRIAN
6	9137 LYNBROOK DR	BECK JANE LESLIE
7	9133 LYNBROOK DR	BERRY KYLE A & NICOLE K
8	9129 LYNBROOK DR	HARRINGTON SETH
9	9125 LYNBROOK DR	WOODARD STEVEN KYLE &
10	9126 LIVENSHERE DR	CASILLAS FAMILY LIMITED
11	9130 LIVENSHERE DR	HALKA THOMAS & BONNIE
12	9136 LIVENSHERE DR	THOMPSON ANDREW MICHAEL &
13	10616 LAKE HAVEN DR	MCKNIGHT LEWIS
14	10622 LAKE HAVEN DR	SHERMAN JASON R & DANA B
15	10644 LAKE HAVEN DR	LEATHERWOOD LINDA LEE
16	10648 LAKE HAVEN DR	CHAPMAN TRAVIS ALAN
17	9124 LYNBROOK DR	KOREVAAR ROBIN R D
18	9128 LYNBROOK DR	SHORT PORPERTY GROUP LLC
19	9134 LYNBROOK DR	BRISCH TAYLOR RYAN &
20	10620 LORWOOD DR	LANCASTER JEREME D & LINDSAY A
21	10626 LORWOOD DR	SAVAGE BARBARA JANE
22	10630 LORWOOD DR	SANDERS TINA M
23	10627 LAKE HAVEN DR	THIEM CLAUDIA
24	10621 LAKE HAVEN DR	WAHLQUIST RAYMOND W
25	10617 LAKE HAVEN DR	BAIN BRIAN & HAILEY
26	10611 LAKE HAVEN DR	WAGGONER JAMES R

01/04/2022

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
27	10607 LAKE HAVEN DR	MORRIS JAMES C EST OF
28	9210 LYNBROOK DR	PERKINS KATHRYN E
29	9118 LYNBROOK DR	HANNAH JOHN DAVID & CAROLYN



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 212-031

Data Relative to Subject Property:

Date: 12/9/21 2-10-22 col

Location address: 1805 S. Edgefield Ave Dallas TX 75224 Zoning District: CR

Lot No.: 14, 15, 16 Block No.: 2/4742 Acreage: 0.160 Census Tract: 63.02

Pl. Lt: 17, 18

Street Frontage (in Feet): 1) 92 2) 97.7 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): German Gregorio Sierra, Jr and Jael Abigail Sierra

Applicant: German G. Sierra Telephone: (323) 377-4353

Mailing Address: 1635 Champagne Dr Dallas TX Zip Code: 75224

E-mail Address: gsierra@graphcoffee.com

Represented by: self Telephone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Affirm that an appeal has been made for a Variance , or Special Exception , of 15 Parking spaces reduction

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason: see attached document

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

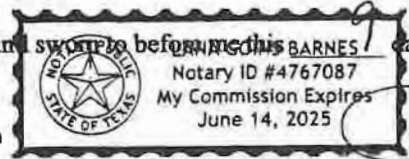
Affidavit

Before me the undersigned on this day personally appeared German G. Sierra  
(Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature]  
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 9 day of December, 2021



(Rev. 08-01-11)

[Signature]  
Notary Public in and for Dallas County, Texas

MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks

Chairman

**Building Official's Report**

I hereby certify that German G Sierra

did submit a request for a variance to the parking regulations  
at 1805 S. Edgefield Avenue

BDA212-031. Application of German G Sierra for a variance to the parking regulations at 1805 S EDGEFIELD AVE. This property is more fully described as Lots 14,15,16, and Pt of Lots 17,18, Block 2/4742, and is zoned CR, which requires parking to be provided. The applicant proposes to maintain a nonresidential structure for a restaurant without drive-in or drive-through service use, and provide 3 of the required 18 parking spaces, which will require a 15 space variance (83.33% reduction) to the parking regulation.

Sincerely,

  
David Session, Building Official



AFFIDAVIT

Appeal number: BDA 212-031

I, Jael Abigail Sierra, Owner of the subject property  
(Owner of "Grantee" of property as it appears on the Warranty Deed)

at: 1805 S Edgefield Ave Dallas TX 75224  
(Address of property as stated on application)

Authorize: German Gregorio Sierra  
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

Specify: 15 parking space reduction variance

Jael Abigail Sierra  
Print name of property owner or registered agent

[Signature]  
Signature of property owner or registered agent

Date 2/8/22

Before me, the undersigned, on this day personally appeared Jael Abigail Sierra

Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

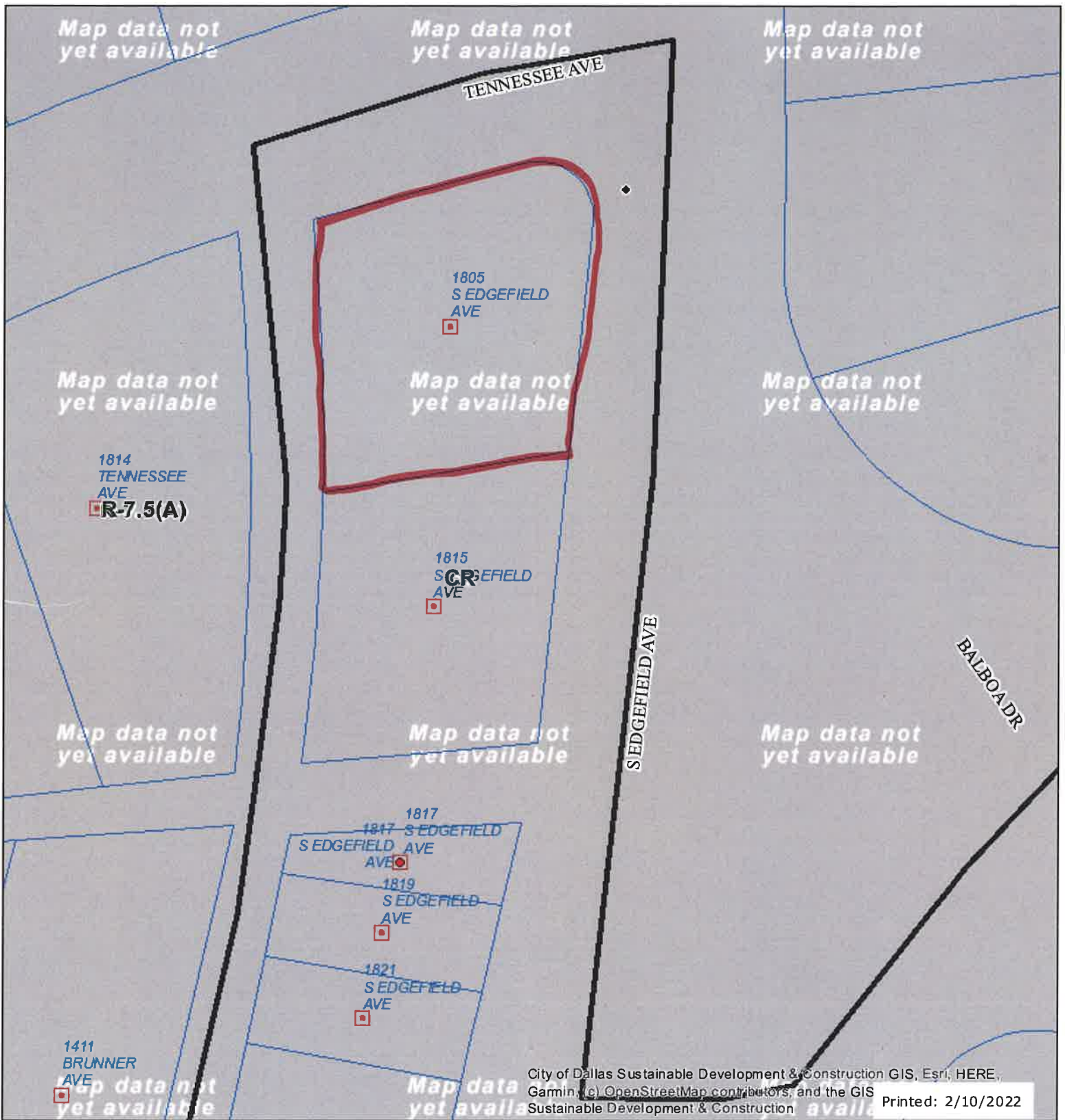
Subscribed and sworn to before me this 8 day of February, 2022

[Signature]  
Notary Public for Dallas County, Texas

Commission expires on 06-14-2025







City of Dallas Sustainable Development & Construction GIS, Esri, HERE, Garmin, © OpenStreetMap contributors, and the GIS User Community  
 Sustainable Development & Construction  
 Printed: 2/10/2022

### Legend

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | Railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO Overlay                |
| Peak's Branch        | SPSD Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

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ADDITION ELMWOOD

ABST. 775

SCALE

1700



1800

4742/2

(BURNER)

LEVUE)

Wednesday, December 8, 2021

## 1805 S EDGEFIELD AVE

---

### **PARKING VARIANCE EXPLANATION**

Due to the reason that the property was originally constructed for use as a Single Family Dwelling, there is not enough land within the property limits to provide 18 parking spaces as calculated based on total square footage requirements.

After thorough review and design, the property has the capability of providing a total of three (3) parking spaces with reasonable maneuverability, which includes one space designated for handicap. While this number of parking spaces might seem limited, there is also street parking available along the property lines on Tennessee Ave, even though it's understood this cannot be included to fulfill the parking requirement since it falls outside the property limits.

As noted on the Site Plan submitted, the CR zoning commences on the corner of the subject property. There are several other locally-owned businesses along this small commercial district that are comparable to the subject property, and/or larger than the subject property, that also provide limited parking spaces. This is likely because this commercial district is adjacent to residential properties and the lot sizes simply do not offer the amount of land needed for parking.

Because the subject property is within the established Elmwood neighborhood in Oak Cliff, we look forward to primarily serving the local neighborhood. In speaking with many of the neighbors, they have expressed their excitement of having a local coffee house they can walk to from their own homes, without the need to drive to and/or park at the subject property.

We also hope the approval of this Parking Variance will encourage the desired walkability for the Elmwood neighborhood, as well as reengage city officials to move forward with revitalization and rezoning efforts already presented and proposed since 2019 by Bob Stimson and Chad West (see attached Exhibit: "Rezoning & complete streets: Elmwood edition")

Thank you in advance for your consideration of this parking variance request.



---

German Sierra (Applicant/Owner)

PROJECT INFORMATION	
ZONING	CR
LEGAL DESCRIPTION	ELMWOOD LOTS 14-15-16 & PT 17 & 18-90X92X
CLIMATE ZONE	ZONE 3A (MOIST)
HOUSE DESCRIPTION	EXISTING GENERAL MERCHANDISE BUILDING ONE STORY DETACHED GARAGE

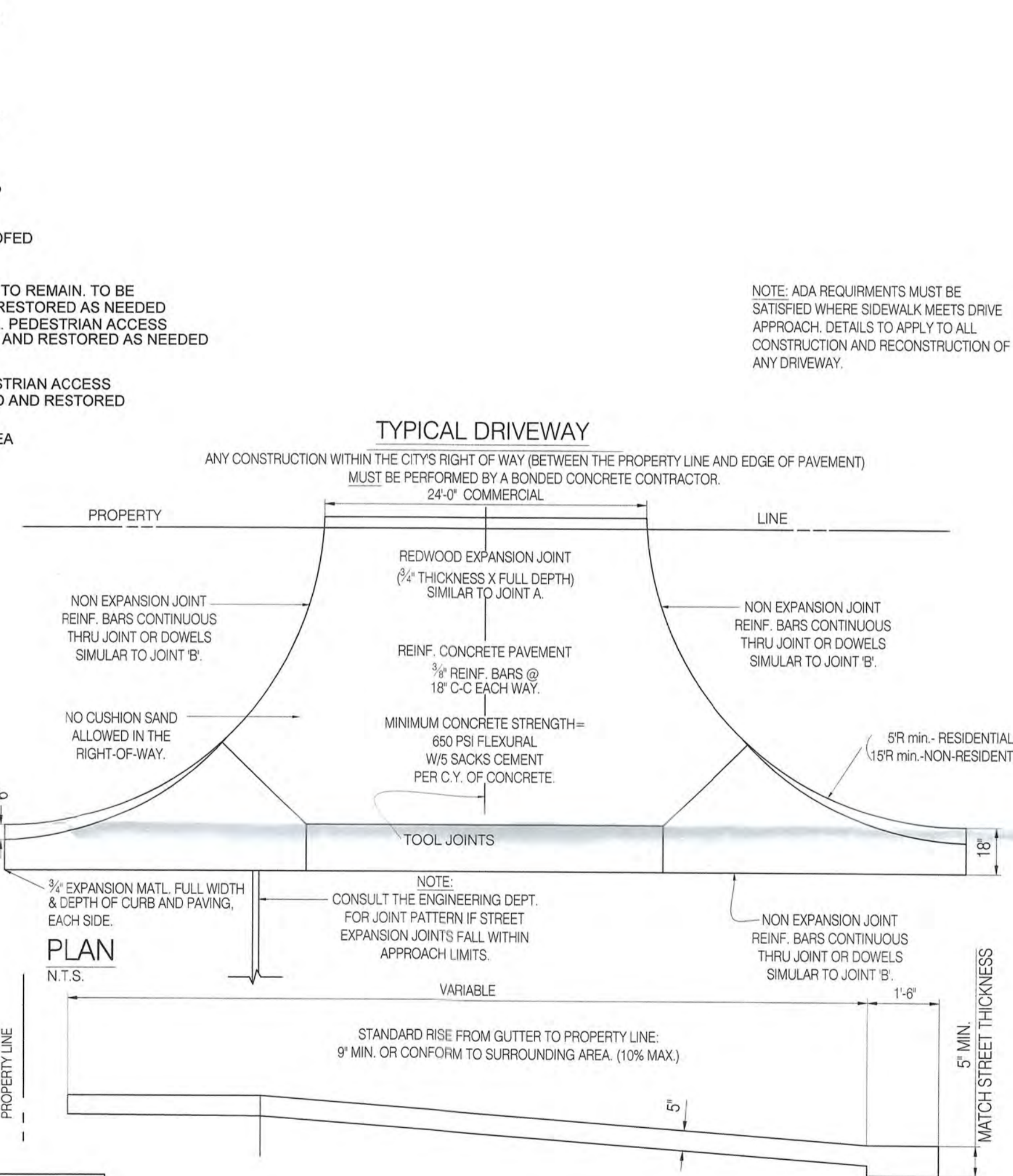
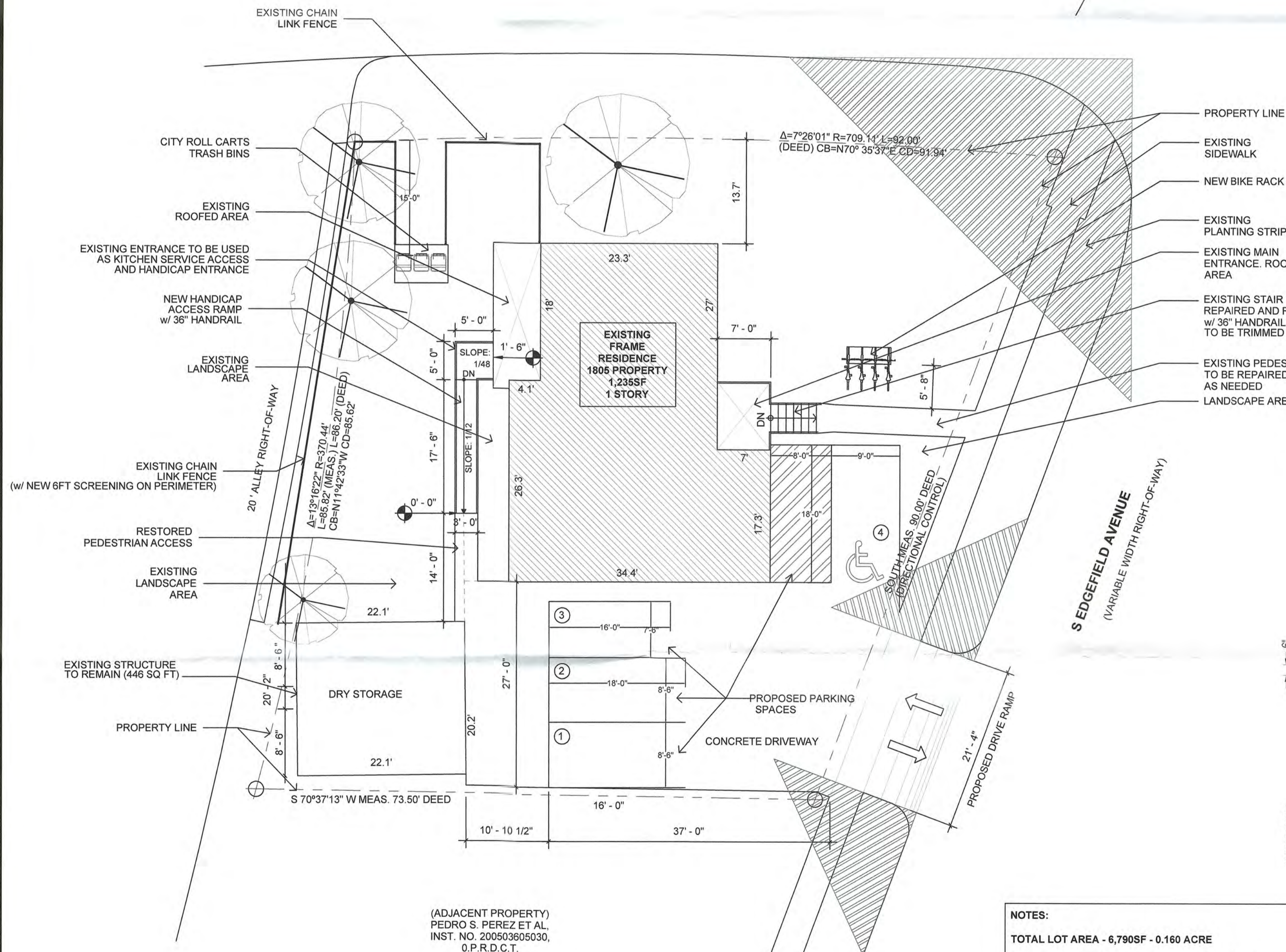
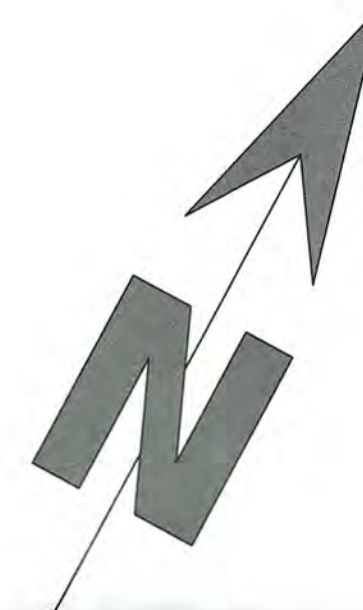
PROJECT AREA CALCULATIONS	
<b>EX. LIVING AREA (AC)</b>	<b>TOTAL LIVING AREA (AC)</b>
FIRST FLOOR 1,235.00 S.F.	1,235.00 S.F.
	TOTAL UNDER ROOF 1,681.00 S.F.
	FOOTPRINT 1,681.00 S.F.
<b>NON-CONDITIONED AREA</b>	<b>LOT USAGE</b>
GARAGE 446.00 S.F.	LOT SIZE 6,790.00 S.F.
	NON ROOF AREA 5,109.00 S.F.
	% OF LOT 24.75%

PARKING ANALYSIS				
SPACES	8'6" X 18'0"	7'6" X 16'0"	9'0" X 18'0"	8'0" X 22'0"
REGULAR	2	1		
COMPACT-CAR			1	
HANDICAP				0
OFF STREET PARKING	1 SPACE PER 200 SQ. FT. FOR TOP-60 RESTAURANT TOTAL 1,681 / 200 SF = 8.41 SPACES			
PARKING REQ.	8			
PARKING PROV.	6			
2 BICYCLE SPACES = 1 CAR SPACE				



**2** VICINITY MAP  
C2.00 FOR REFERENCE ONLY

TENNESSEE AVENUE  
(50' RIGHT OF WAY)



- NOTES:**
- TOTAL LOT AREA - 6,790SF - 0.160 ACRE
  - TOTAL EXISTING MAIN BUILDING AREA - 1,235SF
  - TOTAL STORAGE (EXISTING GARAGE) AREA - 446SF
  - 1. ALL PAVEMENT SURFACES TO BE SEALED AND RESTORED. STRIPING TO BE PROVIDED AS NEEDED.
  - 2. ALL LANDSCAPE TO BE RESTORED.
  - 3. BUILDING EXTERIOR TO BE REPAIRED AND RESTORED AS NEEDED. NO ADDITIONAL EXTERIOR CONSTRUCTION HAS BEEN ANTICIPATED.
  - 4. ALL INFORMATION PROVIDED IS BASED ON MUNICIPALITY, GIS AND OWNER RECORDS.

**3** DRIVE APPROACH DETAIL  
C2.00 SCALE: N.T.S.

**1** SITE PLAN  
C2.00 1" = 10' - 0"

SEAL

**CONSTRUCTION CONCEPTS INC.**  
"Planning and Designing a Better Tomorrow"  
317 E. JEFFERSON BLVD.  
DALLAS, TX. 75203  
TEL. (214) 946-4300  
FAX. (214) 948-9544

REVISIONS	
SENT DATE	APPROVED DATE
12/14/2021	
12/15/2021	

ADDRESS  
1805 S EDGFIELD AVE  
DALLAS, TEXAS  
75224

DATE  
**02/09/2022**

DRAWN BY  
**ASM-IB**

CHECKED BY  
**ER**

DESCRIPTION  
EXISTING  
GENERAL MERCHANDISE BUILDING  
ONE STORY - DETACHED GARAGE

SCALE  
**1" = 10' - 0"**

SHEET TITLE  
**SITE PLAN**

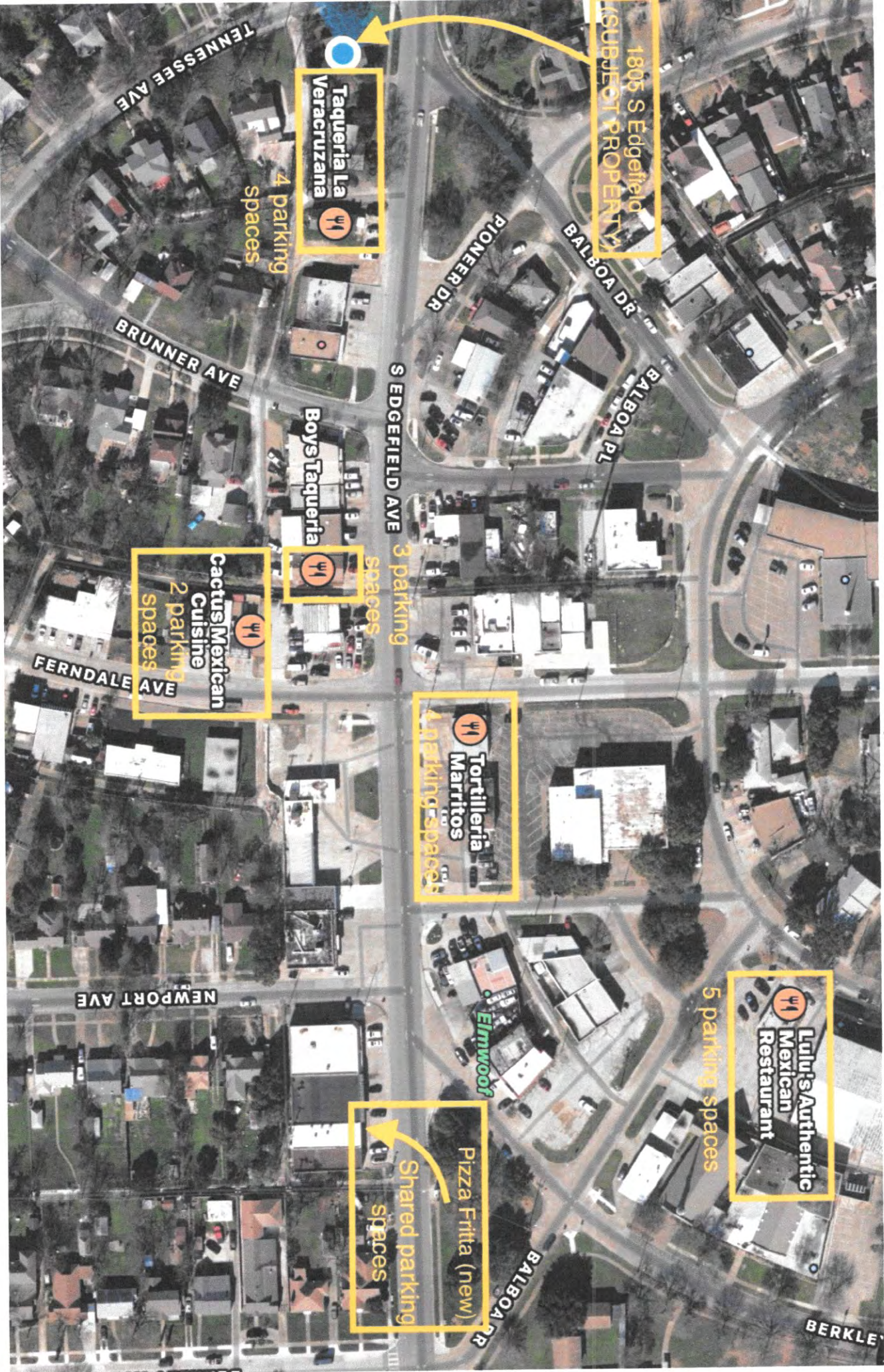
SHEET #  
**C2.00**

FILE NAME  
**C2.00\_SITE\_PLAN**

212-031

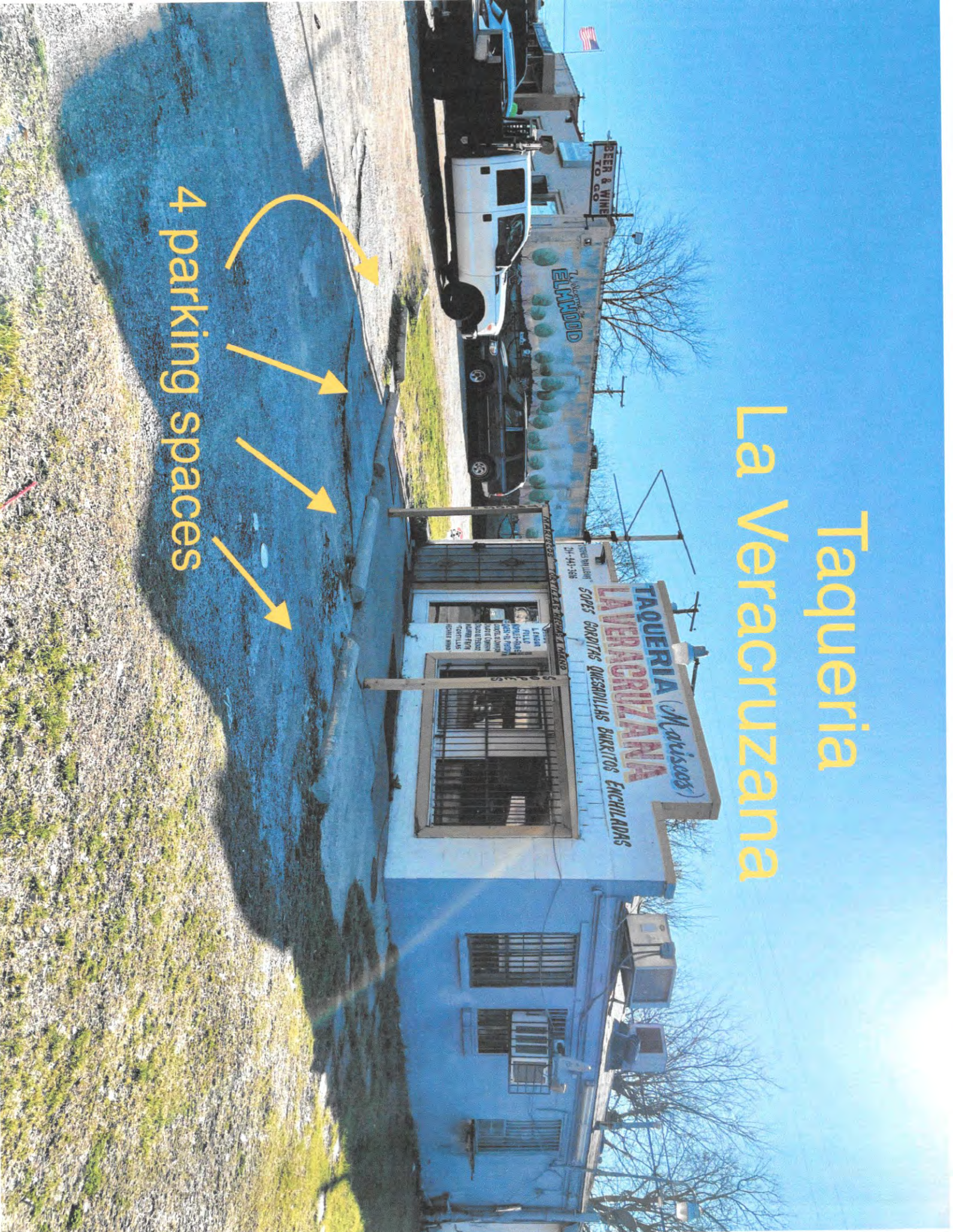
**PARKING COMPS WITH  
NEARBY RESTAURANTS/FOOD  
ESTABLISHMENTS**

# PARKING COMPS WITH NEARBY RESTAURANTS



# Taqueria La Veracruzana

4 parking spaces



# Boy's Taqueria Dba: Morales Restaurant

3 parking spaces







Cactus Mexican Cuisine  
2 parking spaces

# Tortilleria Marritos (Recently changed to "La Milpa")

4 parking spaces





Lulu's Authentic Mexican  
Restaurant  
5 parking spaces

Pizza Fritta (New)  
Shared parking with  
5 other retail locations



**WEST OAK CLIFF AREA  
PLANING (“WOCAP”)  
COMPREHENSIVE CITY DRAFT  
PLAN**

**(EXCERPTS REFERRING TO  
DOWNTOWN ELMWOOD  
SPECIFICALLY)**



# WEST OAK CLIFF AREA PLAN

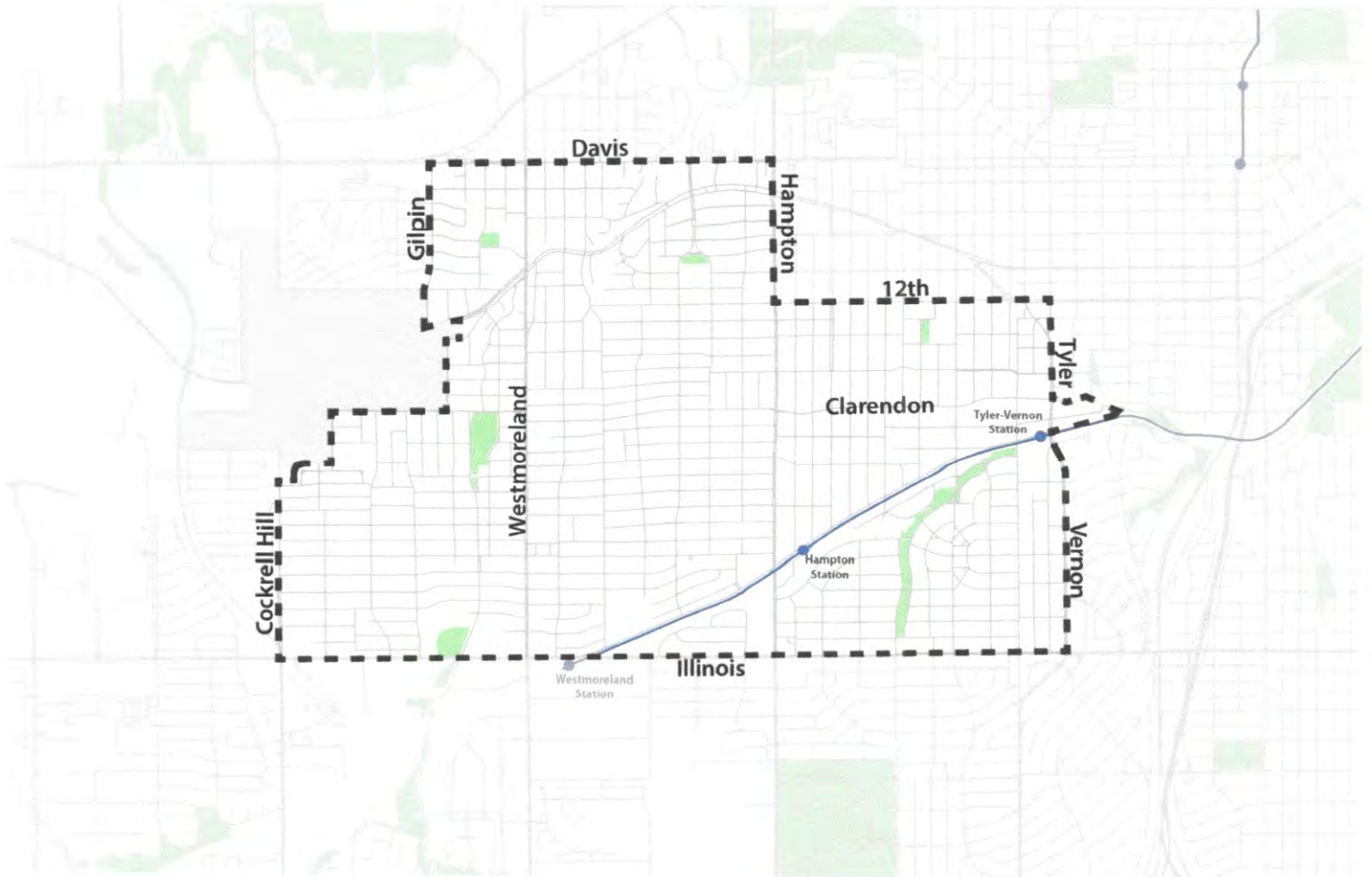
DRAFT PLAN  
MARCH 9, 2022



City of Dallas

**P+UD** PLANNING +  
URBAN DESIGN

Urban Design | Strategic Planning & Policy | Neighborhood Vitality



## West Oak Cliff Area Plan

The West Oak Cliff Area Planning initiative began in 2020 by City Councilmember Chad West and the Planning and Urban Design Department. This area of Oak Cliff has numerous areas that are upcoming authorized hearing locations for rezoning. Additionally, this area also contains three DART light-rail stations with potential opportunities for transit-oriented development nearby. This planning effort will work to help create a land use and land development vision for this area.



## IMPLEMENTATION



### Land Use and Development

#### Preserve and protect existing single-family neighborhoods

Single-family neighborhoods are at the heart of what makes West Oak Cliff a special community. Maintaining the current zoning in these neighborhoods will help to preserve their historic charm and reinforce the cultural identity of this area.

#### Promote transit-oriented development opportunities near high-quality transit

Prioritizing opportunities for mixed-income, mixed-use development near the DART light-rail stations and high-frequency bus will help enhance access to jobs, good, and service, improve safety, and help ensure great affordability for residents.

#### Create walkable, neighborhood-scale mixed-use centers

Through strategic urban design enhancements along with zoning changes in specific areas, many of the small commercial nodes in West Oak Cliff can find new life, allowing new jobs, retail, and cultural opportunities to thrive.

#### Preserve historic buildings and character through neighborhood-sensitive design

Although some new development is necessary for all areas of the city, it is important that significant existing historic structures are retained to preserve Oak Cliff culture, while new development is designed to be compatible in scale and character with surrounding single-family neighborhoods.



### Inclusive Community Development and Quality of Life

#### Ensure neighborhood affordability through strategic policies and programs

Critical to preserving neighborhood character and protecting existing residents is implementing strategic policies and zoning tools for new affordable housing, along with education and assistance for existing homeowners.

#### Support local, minority, immigrant, and women-owned small businesses.

One of the defining elements of Oak Cliff is its local, grassroots, and human-oriented businesses. Economic development incentives and tools should help support small business owners get started as well as remain in place over time.

#### Promote local arts and culture through initiatives and dedicated physical space

Numerous tools can allow Oak Cliff culture to continue to flourish, including public events for visual and musical arts, utilizing public right-of-way to showcase artists, the creation of artist studios, or the creation of a local cultural center.

#### Enhance safety through improved design of buildings and public realm

Comments on public safety were common comment during public engagement. Although the area plan cannot specifically address policing, it is critical that streets and buildings be designed using CPTED principles to reduce opportunities for crime.



### Transportation and Infrastructure

#### Prioritize new sidewalks and sidewalk repair to improve accessibility

There are numerous streets in West Oak Cliff with sidewalks in either disrepair or non-existent entirely. Using the Dallas Sidewalk Master Plan as a guide, sidewalk construction and repair should be prioritized, focusing first on areas near transit, schools, and destinations.

#### Utilize design improvements within the public right-of-way to enhance placemaking and safety

There are numerous commercial areas where public realm enhancements such as wider sidewalks, reconfigured intersections, public art, street trees, and furniture would create people-oriented spaces while also enhancing pedestrian safety.

#### Construct new multimodal improvements and bike lanes throughout West Oak Cliff

Currently there are no bike lanes and very few trails in the area. Prioritizing multimodal movement on specific streets will help increase neighborhood mobility, safety, and enable easier access to destinations such as DART.

#### Evaluate traffic calming through street design enhancements

Some residential streets in West Oak Cliff are wide, encouraging fast vehicular traffic while reducing safety for residents, particularly children. Improvements such as street trees, curb extensions, and crosswalks can help to mitigate these current conditions.



### Parks and Open Space

#### Create opportunities for smaller parks, plazas, and parklets in existing neighborhood nodes

Excess city right-of-way and small, vacant spaces between existing buildings can be repurposed to create small open spaces for passive and active recreation, including plazas, dog parks and playgrounds.

#### Public school sites should be utilized as opportunities for public greenspace

Building off work from the Texas Trees Foundation's Cool School Program, the area's eleven public schools can provide small-scale opportunities for shade, recreation, and interaction with nature.

#### Create new and enhance existing green linkages, utilizing city streets and right-of-way whenever possible

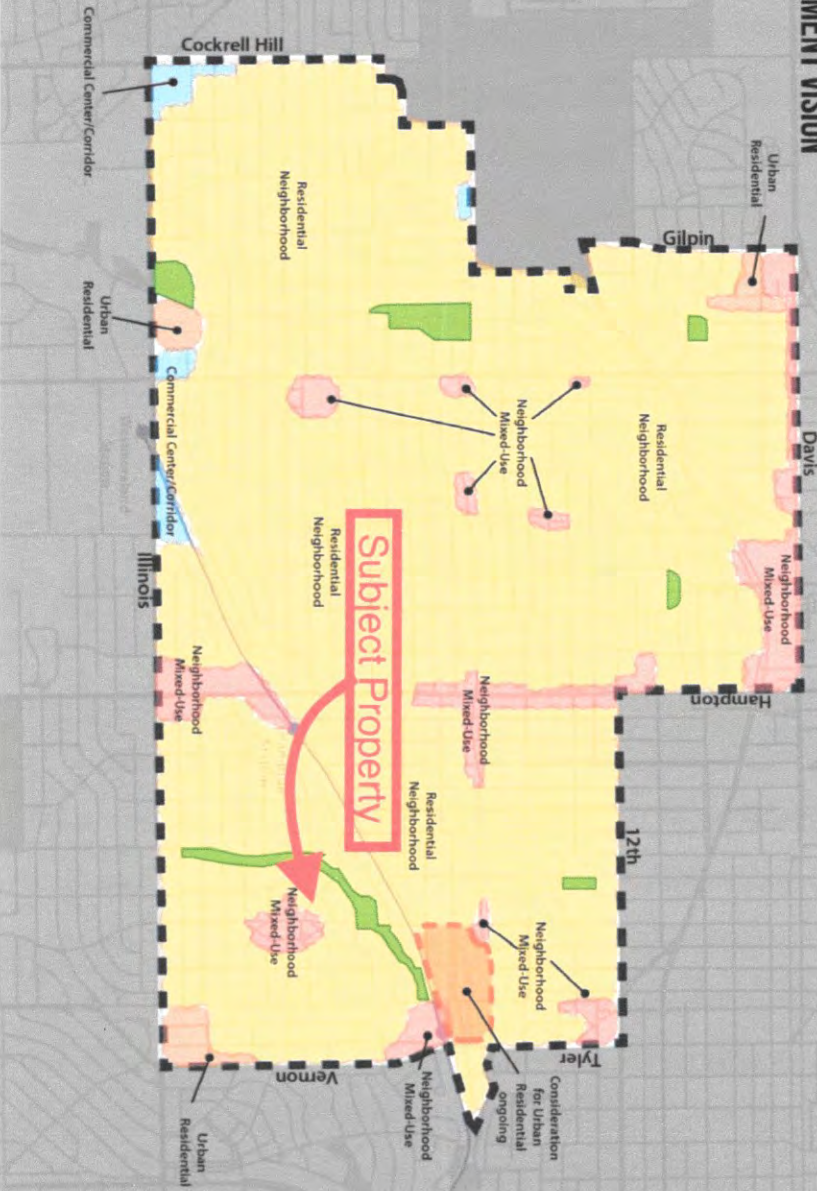
Greenways along existing creeks and riparian areas can help connect existing open spaces, transit stations, and public schools, while also reconnecting ecosystems, helping to better enhance the area's ecological health and habitat.

#### Improve and enhance existing parks and greenspaces

West Oak Cliff has numerous parks that are heavily utilized and loved by residents, but all are in need of upgrades and improvements in order to improve livability and quality of life for residents.



## DEVELOPMENT VISION







## PLANNING GOALS

-  Protect existing single-family neighborhoods
-  Preserve natural areas and expand public parks and trails
-  Preserve historic buildings by encouraging renovation and reuse
-  Improve transportation access through better street design and suitable development around DART light rail stations
-  Encourage businesses that are compatible with surrounding neighborhoods
-  Retain current residents and attract new residents by encouraging new and affordable housing choices
-  Create walkable neighborhood centers that provide a variety of work, cultural, shopping and living opportunities

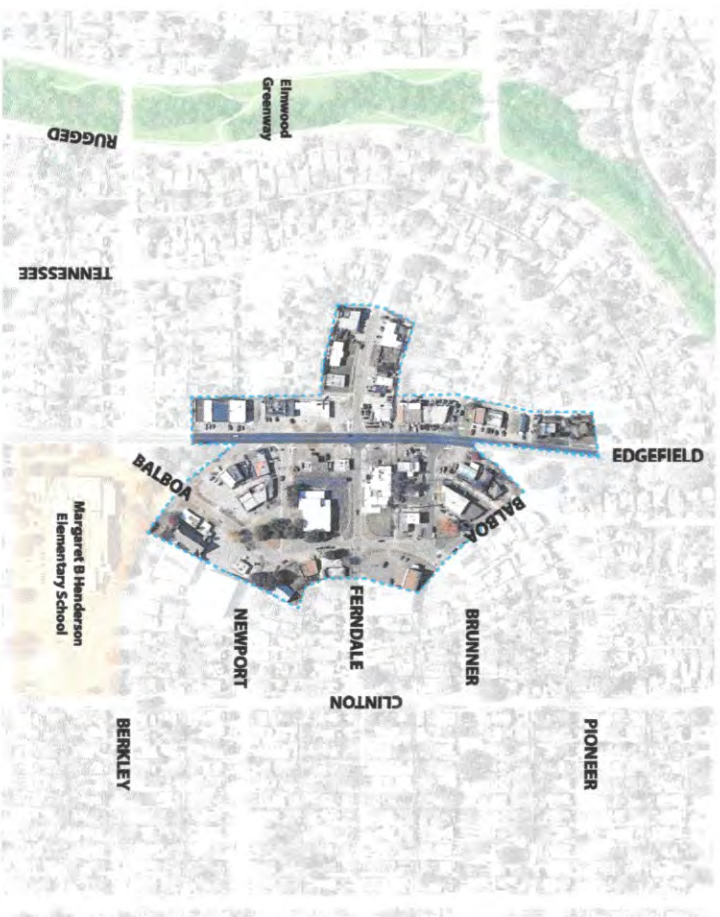
## VALUES

-  Equitable
-  Safe and Healthy
-  Economically Resilient
-  Enriching
-  Welcoming

## PLAN FRAMEWORK

-  Land Use and Development
-  Transportation and Infrastructure
-  Inclusive Community Development and Quality of Life
-  Parks and Open Space

## DOWNTOWN ELMWOOD



### Area Context and Existing Conditions

Downtown Elmwood is a roughly 15 acre commercial node in the heart of the Elmwood neighborhood, centered along Edgely Avenue. This area currently has numerous small retail and personal service uses, including convenience stores, barber shops, auto repair shops, and small restaurants. In total, Downtown Elmwood is home to over two dozen small, locally-owned businesses. Additionally, the area is also home to several key community assets, including the Elmwood Dog Park, Margaret B Henderson Elementary School, the Elmwood El Buen Samaritano United Methodist Church, and the Ferndale Baptist Church. The area also lies two blocks east of the Elmwood Greenway and roughly one-half mile to the Tyler-Vernon DART Station.

Although Downtown Elmwood is home to numerous successful businesses, the area is in need of infrastructure improvements. Edgely Avenue is a wide, yet low-traffic two-lane street lacking sidewalks in many locations and with numerous curb cuts and driveways that make pedestrian travel difficult. The additional streets in the area, including Ferndale, Brunner, Berkeley, and Newport, are narrow and low-traffic, but also lack basic pedestrian amenities. The area has a unique street grid, with Edgely and Ferndale meeting perpendicularly, but with most other streets intersecting at odd angles, creating dangerous pedestrian conditions and awkward and potential unsafe traffic movements. While the current design creates hazard, it provides for future redesign opportunities.



*Downtown Elmwood is home to numerous small businesses and community gathering places, including Elmwood Dog Park, Ferndale Baptist Church, Elmwood Community Garden, Margaret B. Henderson Elementary School, and the Oak Cliff Masonic Center.*

The well-connected street grid layout in this area has the foundation to be a walkable, connected neighborhood center if the severe infrastructure issues can be improved. It is also worth noting that some existing commercial uses such as auto repair shops and large parking lots also contribute to the generally poor pedestrian experience in this area and reinforce this neighborhood node as an underperforming heart of the district.

Today, Downtown Elmwood is entirely zoned CR (Community/Retail). Community Retail zoning allows for community-serving retail, personal service, and office uses that are compatible with residential communities, but does not permit residential uses. Additionally, CR zoning allows for structures up to 54'

(or four stories) in height, but structures are subject to residential-proximity-slope requirements over 26' in height. Due to the close proximity of surrounding single-family neighborhoods and lot size, most of Downtown Elmwood would be unable to achieve the full height permitted by the zoning.

The community provided excellent feedback as to existing infrastructure and land use concerns they have in this area, as well as the types of changes and improvements they would like to see in the future. The feedback collected from the community is the basis for the recommendations for future land use changes and infrastructure improvements highlighted on the next several pages.



*Future land uses should include neighborhood-scale mixed-uses that promote a walkable, neighborhood node.*

### Future Land Uses

As its name implies, Downtown Elmwood is already functioning as a neighborhood node for the Elmwood neighborhood. That said, due to infrastructure issues and current zoning, the area is limited in its ability to function as a vibrant neighborhood center. Through engagement, the neighborhood expressed a strong desire for the area to retain its “neighborhood feel,” including many small-scale local businesses. The current CH zoning is limiting the ability to provide for a more diverse mixture of land-uses. As was expressed by the community, there is a desire for this area to be a vibrant node many hours of the day. Allowing for additional residential land uses such as townhomes,

small multifamily structures, and live-work spaces will help to increase the residential population of the area and can help to provide some new housing types that do not currently exist in the areas. This will help create new, more affordable housing options for residents to live and allow for a more diverse group of incomes and family types to inhabit the area. These additional residents will aid in making retail more viable as well.

Additionally, many lots in Downtown Elmwood are small, narrow in width and/or depth. While this scale gives the area its current charm, it also makes infill development challenging due to existing setback

requirements. Compounding these issues, existing parking requirements mean that existing or new structures have to dedicate large amounts of land to parking unless they already have existing delta-credits for parking. Reconsidering the existing parking requirements and ratios for the area while also considering alternative parking strategies such as allowing on-street parking to count towards requirements and/or creating shared parking options will help to alleviate these problems. This should help make new uses more viable in existing structures while also making new infill development on vacant land easier for developers.

An additional hindrance to new development is that the current zoning does not allow for alcohol sales in close proximity to the elementary school and churches in Downtown Elmwood. Although the neighborhood does not desire bars for the area, there is a strong desire for restaurants, yet most restaurants will be reluctant to enter a market where they are unable to sell any alcohol. In order to attract new businesses, amending the zoning to allow alcohol sales for restaurants closer to the school should be considered through a Special Use Permit.

The last major change that should be considered to the existing zoning is to prohibit automotive-centric uses, including drive-thru restaurants, drive-thru banks, car washes, gas stations, and auto repair shops in order to facilitate the type of walkable mixed-use development desired by the community. Downtown Elmwood is

defined by its many auto-repair shops. While those uses would be grandfathered in, new auto-repair uses or gas stations would only further detract from creating a walkable node.

When considering potential future changes to the zoning, it is important to consider the potential scale and context of any new development. Since the area is surrounded on all sides by single-family residential, no new development should be taller than three stories in height. Additionally, development directly adjacent to single-family homes should still use residential proximity slope as a guide to minimize its impact on nearby neighbors. Most critical to future zoning changes is to require the types of urban design enhancements to new buildings that generate active, pedestrian-friendly ground-floors, including wide sidewalks and transparent ground-levels with outdoor dining spaces, patios, and stoops. With these desires in mind, a form-based zoning district is optimal for the area, allowing for the type of building placement and pedestrian amenities highlighted by the community while also allowing for a greater mixture of uses in the area.



*The Elmwood Neighborhood Association has already expressed the desire to implement some tactical improvements to the public realm in Downtown Elmwood to create a more pedestrian-friendly neighborhood center.*



**DOWNTOWN ELMWOOD:  
CONCEPTUAL VISION 1**

**Street Closures**  
Downtown Elmwood has many intersecting streets, creating numerous points of conflict for pedestrians. Selectively closing one or two excess streets to be converted into greenspace could allow for new open space and recreation opportunities.

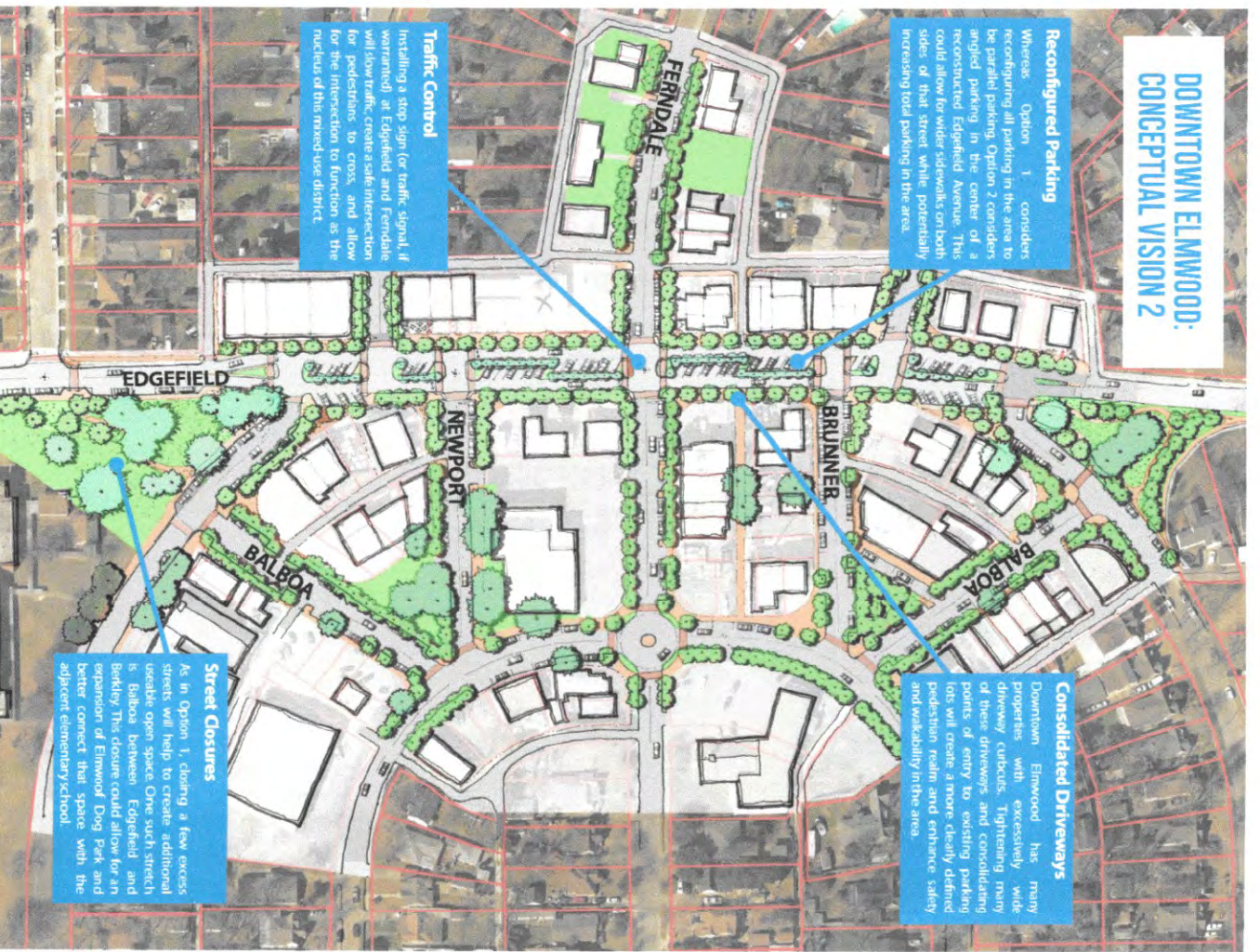
**In-fill Mixed-Use Development**  
New mixed-use development on currently vacant or under-utilized properties will help to improve the pedestrian experience by creating more sources of activity while also helping to provide additional retail and residential options in the area.

**Pocket Park**  
The Downtown Elmwood area has no public open space. By transforming excess city right-of-way into a small plaza or park, the neighborhood center can have a public gathering place, and the commercial district can have a place of refuge. The park can also reinforce placemaking and local cultural and arts opportunities.

**Enhanced Pedestrian Space**  
Today, Edgefield is a wide right-of-way with minimal sidewalks and pedestrian space. With a new cross-section, the street can provide ample on-street parking while also allowing for 15' wide sidewalks. This will require some 90-degree private business parking to be reallocated as parallel spaces scattered throughout the district. By creating dedicated on-street parking on many of the streets, the area can retain the same number of spaces that exist today.

**Reconfigured Intersections**  
Many intersections in Downtown Elmwood currently meet at skewed angles. Straightening these intersections will create new found pedestrian space that can be used for plaza, landscaping, or public art and create a safer, more pedestrian-friendly environment.

**DOWNTOWN ELMWOOD:  
CONCEPTUAL VISION 2**



**Reconfigured Parking**  
Whereas Option 1 considers reconfiguring all parking in the area to be parallel parking, Option 2 considers angled parking in the center of a reconstructed Edgefield Avenue. This could allow for wider sidewalks on both sides of that street while potentially increasing total parking in the area.

**Traffic Control**  
Installing a stop sign (or traffic signal, if warranted) at Edgefield and Ferndale will slow traffic, create a safe intersection for pedestrians to cross, and allow for the intersection to function as the nucleus of the mixed-use district.

**Consolidated Driveways**  
Downtown Elmwood has many properties with excessively wide driveway curbs. Tightening many of these driveways and consolidating points of entry to existing parking lots will create a more clearly defined pedestrian realm and enhance safety and walkability in the area.

**Street Closures**  
As in Option 1, closing a few excess streets will help to create additional usable open space. One such stretch is Balboa between Edgefield and Barkley. This closure could allow for an expansion of Elmwood Dog Park and better connect that space with the adjacent elementary school.



*Creating enhanced public realm improvements will reinforce Downtown Elmwood as a walkable node. Some of these enhancements might include activating excess city right-of-way, redesigning intersections to be safer for pedestrian, and improved sidewalks.*

### Infrastructure Needs

Presently, there are many locations throughout Downtown Elmwood where the public realm infrastructure is lacking. Besides simply repairing existing sidewalks and constructing new sidewalks on blocks where sidewalks are lacking, larger traffic calming and public realm design measures are needed to deliver the type of walkable environment desired by the community.

One of the most common complaints about Downtown Elmwood related to high traffic speeds. As such, future improvements should include a traffic control device at the intersection of Fendale and

The public realm should also be enhanced through street trees, benches, pedestrian lighting, and public art.

As a part of future street and intersection reconstruction, excess city right-of-way should be considered as opportunities for new public open spaces and plazas. Two different design concepts are shown on Pages 78 and 79 highlighting some of

the possibilities that exist for reimagining the public realm in Downtown Elmwood. These were derived by using the Elmwood Neighborhood Association's past ideas and combining those with other feedback received from the community through engagement. Although these are highly conceptual, they each provide elements that should be considered for future capital improvements in the area.

## RECOMMENDATIONS

### Land Use and Development

- Consider amending the existing CR zoning to allow for mixed-use development. New zoning should consider a form-based district that will result in a walkable urban form such as activated facades and wide sidewalks while also ensuring appropriate setbacks and proximity slopes to adjacent single-family uses. Development should be limited to the existing height limit of 54' (as allowed in CR zoning). Permitted residential uses should include small multifamily developments (12 units or smaller) and townhomes.
- Consider amending the existing CR zoning to permit restaurants to sell alcohol near schools and churches (by special use permit) to enable easier establishment of restaurant uses.
- As a way to ensure affordability of future multifamily development, explore inclusion of the mixed-income density bonus to allow for additional density with the provision for setting aside affordable units.
- Consider amending the existing CR zoning to prohibit automotive-centric uses, including drive-thru restaurants, drive-thru banks, car washes, gas stations, and auto repair shops in order to facilitate the type of walkable, mixed-use development desired by the community.
- In conjunction with citywide parking code reform, consider parking code reductions for new structures, greater parking reductions for legacy commercial structures, and shared parking use agreements with surrounding properties and permitting adjacent on-street parking to count towards parking requirements to enable easier redevelopment of historic commercial buildings.

### Transportation and Infrastructure

- Explore public realm, street, and intersection redesign of Edgefield, Fendale, Balboa, Brunner, Newport, Bertley, Pioneer Drive in Downtown Elmwood to improve pedestrian safety, fix unsafe vehicular movements, improve property access, and create community green space opportunities
- Create a Safe Routes to School plan for Margaret B Henderson identifying improvements that will help make it easier and more comfortable for students to walk and bicycle to school. Once plans have been completed, the City of Dallas Department of Transportation should seek funding for implementation through external grants, such as the federal Transportation Alternatives program.
- Explore opportunities to provide a new traffic signal or traffic control devices along Edgefield in Downtown Elmwood to help calm traffic speeds and enhance the pedestrian nature of these roadways.

### Parks and Open Space

- Taking advantage of excess city right-of-way and adjacent private property, work to create a series of small public plazas and parks in Downtown Elmwood.





## TRANSPORTATION AND INFRASTRUCTURE

Like many areas of the city, West Oak Cliff has numerous infrastructure issues that make multimodal transportation, accessing transit, and simply walking difficult. Additionally, there are many geographies within West Oak Cliff that have the potential to be successful commercial corridors but currently lack adequate pedestrian infrastructure, subsequently hindering their potential. Throughout the community engagement process, residents and stakeholders expressed a desire for the City to make investments in streets and public rights-of-way in order to allow for alternative ways of traveling in the area. Although improving existing and constructing new sidewalks was often the most desired outcome, there was also a great deal of emphasis on calming traffic on both residential and arterial streets, creating pedestrian-friendly environments in many commercial areas, and investing in bike lanes and multimodal facilities to make mobility in the area easier for all.



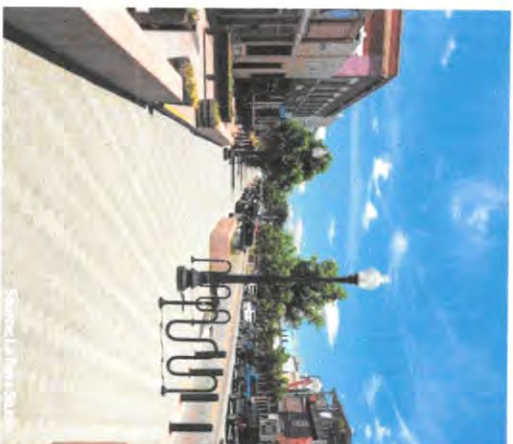
Residents expressed a desire for safe, protected bike facilities to better connect areas of West Oak Cliff.

Source: <https://bikely.com>

### Construct new multimodal improvements and bike lanes

Currently, there are no dedicated bike lanes in West Oak Cliff, although several streets have been marked as shared-lane streets (or “sharrows”). Additionally, the only off-street facility designed to accommodate cycling is the Elmwood Greenway, a 1.5-mile multipurpose trail recently expanded to link it to the Tyler-Vernon DART Station. Not surprisingly, there were many comments from the public concerning the desire to invest in dedicated bike lanes, with 45% of surveyed residents expressing a desire for new bike lanes in the area. Luckily, there are some planned investments for bike lanes in West Oak Cliff, including on Vernon Avenue and Davis Street. While these new investments are a step in the right direction, additional investments are needed.

Through online and in-person mapping exercises, many additional streets and areas were identified as opportunities for bike lanes and trails. Creating a connected network of trails and bike lanes will improve quality of life by making getting around via alternative modes such as cycling and scooters easier and safer. The map on Page 56 highlights all of the streets identified by the community as optimal for multimodal connectivity, helping to link parks, schools, and commercial areas to peoples’ homes.



Reconstruction of sidewalks and the public realm in some of the commercial areas of West Oak Cliff will help to create a sense of place. Improve pedestrian safety, and enhance access to surrounding businesses.



### Utilize design improvements to enhance placemaking and safety

Scattered throughout West Oak Cliff are numerous commercial corridors and retail centers of various sizes. Many of these have their roots as neighborhood nodes around old streetcar stops when the area was constructed as a streetcar suburb. Due to this development history, most of these areas have attributes that could enable them to once again be pedestrian-oriented spaces. Unfortunately, today most have poor infrastructure conditions which detract from their walkability and viability.

In these areas, many of which are also identified as Focus Areas discussed in Chapter IV, there are various types of infrastructure improvements that could contribute to creating environments that are more conducive to pedestrian mobility. Additionally, these improvements could also be opportunities to use the public right-of-way to provide desired elements such as parklets, public art, opportunities for parking, and neighborhood storytelling that can reinforce and enhance the culture and history of the area. In order to help these areas thrive while also promoting pedestrian safety, the various improvements can be grouped into two

main buckets: projects that will require substantial reconstruction of the public realm, and smaller, pedestrian-safety oriented projects.

Due to the cost associated with major public realm reconstruction projects and urban design enhancement projects, the West Oak Cliff Area Planning taskforce prioritized the most important areas for future capital improvements, including Downtown Elmwood, Hampton/Clarendon, and Pierce/Catherine. These improvements could include full street-reconstruction, street cross-section changes, traffic pattern changes, and new pedestrian amenities. Improvements in these areas will be synergistic with proposed land use and zoning changes in those areas, all helping to generate more pedestrian-friendly neighborhood mixed-use districts. The other bucket of projects related to pedestrian enhancements in existing areas will be smaller, less expensive projects, such as ADA enhancements, pedestrian signalization, pedestrian refuge islands, improved lighting, and safe Routes to School programs, which will all enhance pedestrian safety throughout West Oak Cliff.

# BDA212-031\_ATTACHMENT\_B

REVIEW COMMENT SHEET  
BOARD OF ADJUSTMENT  
HEARING OF APRIL 19, 2022

Has no objections

Has no objections if certain conditions  
are met (see comments below or attached)

Recommends denial  
(see comments below or attached)

No comments

BDA 212-013

BDA 212-026

BDA 212-027

BDA 212-031

BDA 212-034

COMMENTS:

**None**

***David Nevarez, PE, PTOE, DEV - Engineering***

Name/Title/Department

***3/31/2022***

Date

Please respond to each case and provide comments that justify or elaborate on your response. Dockets distributed to the Board will indicate those who have attended the review team meeting and who have responded in writing with comments.

# **LETTERS OF SUPPORT**



From: Whitney Marsh [mailto:whitney.marsh@burnett@gmail.com]  
Subject: Letter of Support  
Date: Mar 30, 2022 at 6:56:35 AM  
To: Germán Sierra [mailto:german.sierra@burnett.com]

**March 30, 2022**

**RE: BDA212—031**

**Subject Property: 1805 S Edgefield Ave. Dallas**

**Dear Members of the Board:**

The purpose of this letter is to inform you of the Elmwood Neighborhood Associations abounding support for Germán Sierra, owner of Graph Coffee, LLC, who plans to bring a local neighborhood coffee house to our Downtown Elmwood neighborhood.

It is our understanding that the City of Dallas has requested a total of 18 parking spaces in order to meet the parking requirement for a restaurant and/or food establishment. While we understand the importance of parking for this particular use, many businesses in the area have long thrived for years (some even decades), with an average of just 3-5 parking spaces; also thanks in large part to the amount of street parking readily available. As a result, Elmwood has been able to maintain its neighborhood charm, while still supporting its small commercial district.

The Elmwood neighborhood is filled with a diverse style of architecture; including Tudor cottages, craftsman bungalows and a variety of ranch style homes built anywhere between the 20's and 60's. Germán's property was originally built in 1948 as a Single Family Residence, but also benefits from being zoned as CR - Community Retail. While Germán has recently renovated the property, we're extra appreciative that the renovations have stayed true to the look and feel of the neighborhood, while adding a splash of modern flair. Also, this renovation took a dilapidated property in the center of Oak Cliff and turned it into an interesting focal point for our neighborhood.

Here in Elmwood, we constantly find ways to encourage more walkability within the neighborhood. Many of us work from home or in a coworking environment. Elmwood hosts 1500 homes all within walking distance of Graph Coffee. We welcome a coffee shop we can walk to. In the occasion that walking isn't an option the street parking options are plentiful. An authorized hearing will be held for Downtown Elmwood in the very near future and we plan on implementing parallel street parking so issues like this won't be a problem in the very near future. In speaking with German, he has confirmed there will also be bike racks, which will complement the proposed new bike lanes found in the current West Oak Cliff Area Planning ("WOCAP") draft proposals led by Mayor Pro Tem Chad West and other City Officials.

As a resident of Elmwood, a small business owner in Downtown Elmwood and the Elmwood Neighborhood Association's president, I very much support Germán and his business. We believe supporting Graph coffee is a way to support our neighborhood and Oak Cliff as a whole. We hope this letter can aid him with obtaining your full approval of his request.

Thank You Kindly,  
Whitney Marsh  
Elmwood Neighborhood Association President

From: Travis conger [REDACTED]  
Subject: Fw: CASE# BDA212-031 - Graph Coffee Parking Variance  
Date: Mar 30, 2022 at 11:04:41 AM  
To: gsierra [REDACTED]  
Cc: larissaarin [REDACTED]

Hey German,

Below is what was sent to "[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)", forwarding for your records,

Good luck!!

---

From: Travis conger  
Sent: Wednesday, March 30, 2022 10:41 AM  
To: [jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com) <[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)>  
Cc: [larissaarin \[REDACTED\]](mailto:larissaarin [REDACTED])  
Subject: CASE# BDA212-031 - Graph Coffee Parking Variance

Good Morning Ms. Munoz,

I am writing to you in support of granting a parking variance that reduces the required parking spaces for Graph Coffee at 1805 S Edgefield Ave **Case#BDA212-031**,

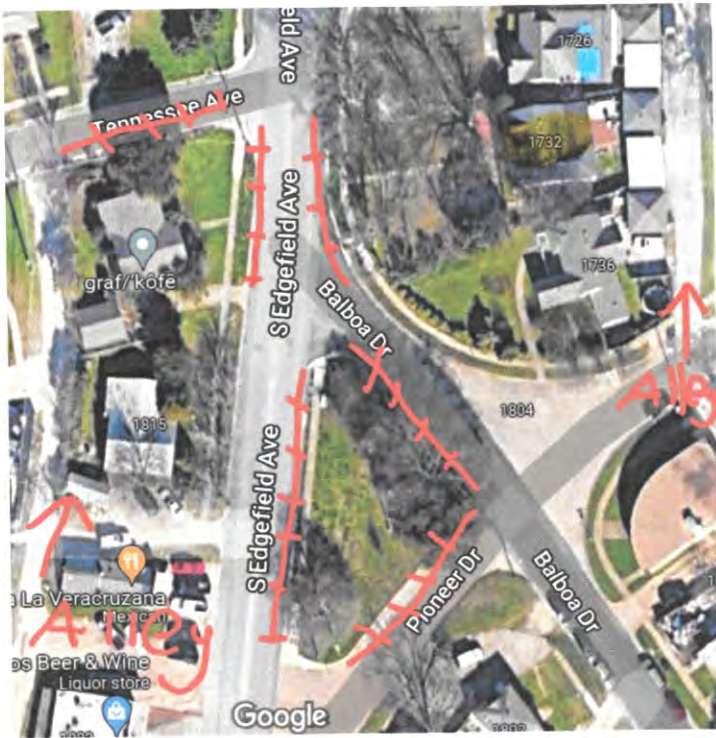
We are the neighbors that live directly across the street (1732 S Edgefield). We have been able to see German & Whitney do incredible work on the dilapidated house restoring what was once a falling building into a stunning coffee shop that the whole neighborhood is eagerly anticipating it's opening. I understand that due to the laws written over 50 years ago the city is requiring this house to have a significant amount of parking which makes no sense and conflicts with the current direction, aspirations, and investments of this neighborhood.

First, I would like to point out alternative transportation options that will be used. Graph coffee is located .1 miles away from a brand new trail along elmwood creek that connects the dart station at Tyler (less than .5 miles from Graph, and is a Rail and bus line hub) all the way to Kiest park. There is an expected extension of an on street bike lane as well along Edgefield which will stretch south to Illinois and continue north in the direction of bishop arts. This allows the entire neighborhood within multiple miles radius to walk or bike when visiting the coffee shop, as well as dart rail and bus connections for folks further away.

**secondly, I do not mind if cars park along Edgefield in front of my house in order to patron a daytime business. In fact I believe this will assist traffic calming on the street which is sorely needed and act as barrier to trash blowing in my yard from downtown elmwood and block stray bullets that seem to be fired off frequently in this area (I kid . . . mostly). It is worth noting having cars in front of my house patronizing a local business makes the area safer as there are more eyes and general awareness which acts as a deterrent for mal behavior.**

**It's important to note that the block the coffee shop is on as well as my residential block both have alleyways where residents park behind their house and the alley is wide enough to accommodate parallel parking as well, meaning each house can fit around 4 cars behind their house alone. For this reason I only ever see work vehicles park on the street as is.**

**The current street design also allows for significant parking spaces right by the coffee shop. As my very scientific illustration below points out, there is space for almost 30 street parking spots just along the coffee shops property, my property and across the street by a large traffic island with no residents/ businesses and is rarely used for parking now.**



Hopefully I have established that there will be no harm to the area and only benefit if a parking variance reducing the amount of parking (maximum reduction preferred) is granted. But I still want to point out the harm if it is not.

Creating a huge parking lot across the street from me where many cars are pulling in and out of will create a traffic and pedestrian hazard right in front of my house. cars slowing down to turn in, and pulling out of a parking lot is bound to cause harm to traffic flow, potentially cause accidents, and in the worst case makes pedestrian access to the business difficult or dangerous. you only have to look a few buildings south on the street to see how cramming vehicles onto a property creates a pedestrian hazard and turns what should be a sidewalk into multiple blocks of a driveway. This is specifically what this neighborhood is trying to reverse and build a better pedestrian neighborhood focused community. Forcing parking on the coffee shop will directly go against this neighborhoods vision. If you look at the West oak cliff area plan (still pending, currently a first draft) It is looking to ban car centric and drive throughs in this area. besides the harm to the community I am greatly concerned about the additional burden of expense that German and Whitney


**will incur that is completely unnecessary and outdated. They have worked so hard to transform a house that easily could have been demo, but their investment and tireless labor have turned the property around (looks even better then the pic with recently installed patio railing)**



**I am gravely concerned that a burdensome parking requirement is a further strain on this business which has worked through the pandemic and done so much already for the community even before opening. If the costs of a burdensome parking requirement ended up forcing closure of the business before they began It would be the most nauseating thing to witness for this community but unfortunately would be very Dallas as usual (lived in the metro for 20+ years). Please let's turn this around and start helping businesses and communities thrive and require the absolute minimum parking for this business.**

**If you made it this far, Thank you so much for the time and consideration given,**

**Travis Conger  
Larissa Morehead  
1732 S Edgefield**

**From:** West, Chad chad.west@dallascityhall.com   
**Subject:** Re: Elmwood Coffee Shop - Permitting Delays  
**Date:** February 10, 2022 at 5:57 AM  
**To:** Germán Sierra gsierra@graphcoffee.com  
**Cc:** Whitney Marsh whitneyburnett@gmail.com

Thank you, and let me know if you continue to experience problems. I look forward to meeting you and supporting your business when you open

Sent from my iPhone

On Feb 9, 2022, at 9:52 PM, Germán Sierra <[gsierra@graphcoffee.com](mailto:gsierra@graphcoffee.com)> wrote:

External Email!

Thanks for the info, Chad. I'm moving forward with the BDA process and hopefully we'll be able to get that approved without any issues... fingers crossed.

Really exciting about the pending zoning case for Elmwood. I can assure you one of the reasons why I took a chance on Elmwood was because of the potential for that to pull through.

Again, appreciate your time and looping in additional contacts to this conversation.

Thanks,  
Germán

On Feb 9, 2022, at 1:53 PM, West, Chad <[chad.west@dallascityhall.com](mailto:chad.west@dallascityhall.com)> wrote:

German,

Good afternoon, and congratulations on your upcoming business!

I am not aware of a mechanism for reducing the parking requirement other than the Board of Adjustment for downtown Elmwood. There is an authorized hearing/zoning case that has been pending for downtown Elmwood for around three years now – when that matter is finally heard, neighbors will have an opportunity to weigh in on the option of reducing parking requirements for small businesses, in order to encourage new businesses and walkability.

I am looping in Andreea Udrea from Development Services and the City Attorney, Chris Caso, to correct me if I am missing other opportunities for a possible parking reduction.



**Chad West**  
Mayor Pro Tem  
City of Dallas |

[www.dallascityhall.com](http://www.dallascityhall.com)

Mayor and City Council, District 1  
1500 Marilla St, Room 5FN  
Dallas, TX 75201

O: 214-670-0776

[chad.west@dallascityhall.com](mailto:chad.west@dallascityhall.com)



**\*\*OPEN RECORDS NOTICE:** This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.\*\*

**From:** Germán Sierra <[gsierra@graphcoffee.com](mailto:gsierra@graphcoffee.com)>

**Sent:** Wednesday, February 9, 2022 1:19 PM

**To:** West, Chad <[chad.west@dallascityhall.com](mailto:chad.west@dallascityhall.com)>

**Subject:** Elmwood Coffee Shop - Permitting Delays

External Email!

Hi Chad,

I'm Germán, owner of Graph Coffee and I'm trying to open my first brick & mortar in downtown Elmwood. I spoke to Whitney Marsh yesterday and she mentioned she spoke to you about some of the delays and hurdles I've been dealing with.

The biggest issue is the 18 parking space requirement, and the hurdles I need to go through to file an appeal with the Board of Adjustments. I was just told yesterday the next case hearing I can be entered for won't be until April.

As you can imagine, these delays and additional expenses are detrimental. I completely understand and am willing to cooperate with the protocols put in place... but any help, if any, that you can provide will be a huge lift.

**From:** [Munoz, Jennifer](#)  
**To:** [Jackson, Latonia](#)  
**Subject:** FW: BDA212-031  
**Date:** Thursday, April 7, 2022 12:57:57 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Sincerely,



**Jennifer Muñoz**

*Chief Planner/Board Administrator*

*Planning Manager (Interim)*

**City of Dallas** | [www.dallascityhall.com](http://www.dallascityhall.com)

Planning and Urban Design

1500 Marilla Street, 5BN

Dallas, TX 75201

O: 214-670-4208

**Working Remotely, please call:**

**Google Voice: 972-926-3691**

[jennifer.munoz@dallascityhall.com](mailto:jennifer.munoz@dallascityhall.com)



*\*\*OPEN RECORDS NOTICE: This email and responses may be subject to the Texas Open Records Act and may be disclosed to the public upon request. Please respond accordingly.\*\**

How am I doing? Please contact my supervisor at [andreea.udrea@dallascityhall.com](mailto:andreea.udrea@dallascityhall.com).

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**From:** Crystal Gutierrez <[REDACTED]>  
**Sent:** Thursday, March 31, 2022 3:34 PM  
**To:** Munoz, Jennifer <jennifer.munoz@dallascityhall.com>  
**Subject:** BDA212-031

**External Email!**

Dear Ms. Muñoz,

I'm writing this letter today to fully support a parking reduction for German Sierra's business located at 1805 S Edgefield Ave in the Elmwood Neighborhood.

As a neighbor and future employee, the proximity of my job being so close to home will benefit me very much, I could walk to work if I wanted to. But having the 18 parking spaces will only take up an unnecessary amount of space. Not only will it present a conflict to German, but to the entire Elmwood neighborhood as well. Most customers are neighbors who like me, will walk or take their bike to Graph Coffee and probably won't even be using those spaces. Also I have a concern for German who has worked very hard and has already been delaying his opening date for months now. This will add a huge and unnecessary expense to him.

I understand that parking is inevitable and the City of Dallas requires a business this big to meet the



requirement of a restaurant/food establishment but I ask for the City to reconsider and to support a small business.

Crystal Gutierrez  
762 S Manus Dr  
Dallas TX 75224  
Sent from my iPad

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Munoz, Jennifer](#)  
**To:** [Jackson, Latonia](#)  
**Subject:** Fw: Parking reduction  
**Date:** Thursday, April 7, 2022 4:36:38 PM

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**From:** Weston Stewart [REDACTED]  
**Sent:** Thursday, April 7, 2022 4:32 PM  
**To:** Munoz, Jennifer <jennifer.munoz@dallascityhall.com>  
**Subject:** Parking reduction

**External Email!**

I'm writing this letter to respectfully request a parking reduction for German Sierra's business located at 1805 S Edgefield Ave in the Elmwood Neighborhood.

I have three generations of family who hail from the oak cliff area. My great grandmother in fact owned her own business in oak cliff not far from where the coffee shop is. My brother went to school at Greiner elementary school located on Edgefield.

Simply put, as someone with a strong love and good will for the history of this neighborhood, I don't want to turn part of this historical neighborhood into an 18 space parking lot. Our goal is just to bring world class speciality coffee to Oak cliff with authentic Dallas hospitality. We only want to do it with the oak cliff charm attached.

Thanks for considering this email. I know the coffee establishment will create jobs for local people like myself and will bring people together.

**CAUTION:** This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**From:** [Abraham Ortega](#)  
**To:** [Munoz, Jennifer](#)  
**Subject:** Graph Coffee - BDA212-031  
**Date:** Thursday, April 7, 2022 10:19:47 PM

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External Email!

Dear Members of the Board,

I am writing this email to appeal the parking permit that was denied to German Sierra owner of Graph Coffee at the property located in 1805 S Edgefield Dallas TX. A local coffee business in the Elmwood neighborhood is just what this neighborhood is missing. Watching the coffee shop be rehabbed to a beautiful building and even participating, I have witnessed the hard work that was put in to it. It would be a waste if the reasoning behind not granting permission is because of the lack of parking. Most business in the Edgefield street do not meet the current requirement for 18 parking spaces. A small community coffee shop where people can walk too and has more than enough parking from the street to does not need to have 18 parking spots. We ask that you please grant permission for the parking permit not just so the residents of the Elmwood neighborhood can benefit from Graph Coffee but so can all of Dallas.

Thank you,  
Abraham Ortega - Owner  
Ortex Inspections

CAUTION: This email originated from outside of the organization. Please, do not click links or open attachments unless you recognize the sender and know the content is safe.

**FILE NUMBER:** BDA212-034(PD)

**BUILDING OFFICIAL'S REPORT:** Application of Rob Baldwin of Baldwin Associates for **1)** a special exception to the fence height regulations of four feet is made to construct and maintain a seven-foot-high fence; **2)** a special exception is made to the fence standards regulations to construct and maintain a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet front the front lot line; and, **3)** a special exception are made to the visual obstruction regulations to construct and maintain portions of a seven-foot-high solid masonry, limestone, or stone gate in a required 20-foot visibility triangle along Sunnybrook Lane. This property is more fully described as a Lot 9A in City Block 13-A/5586 and zoned an R-1ac(A) Single Family District, which limits the height of a fence in a required front yard to four feet, prohibits a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than five feet from the front lot line, and requires a 20-foot visibility triangle at the drive approach onto Sunnybrook Lane. The applicant proposes to maintain a single-family dwelling with a residential fence height of seven feet in a required front yard setback with fence panels having less than 50 percent open surface area located less than five feet from the front lot line, with portions of the solid wood fence in the required 20-foot visibility triangle at the drive approach onto Sunnybrook Lane, which will require four special exceptions.

**LOCATION:** 9207 Sunnybrook Lane

**APPLICANT:** Rob Baldwin of Baldwin Associates

**REQUEST:**

The property is currently developed with an approximately 9,067-square-foot two-story single-family dwelling with an attached garage, an approximately 1,471-square-foot accessory structure (detached quarters), and an in-ground pool.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE STANDARDS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the fence standards when, *in the opinion of the board*, the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

Section 51A-4.602(d)(3) of the Dallas Development Code states that the board shall grant a special exception to the requirements of the visual obstruction regulations when, *in the opinion of the board*, the item will not constitute a traffic hazard.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence standards since the basis for this type of appeal is when in the opinion of the board, the special exception will not adversely affect neighboring property nor constitute a traffic hazard. However, staff does provide a technical opinion to assist in the board's decision-making.

The Transportation Senior Engineer has no objections to the proposed requests to encroach into the required 20-foot visibility triangles at the drive approach into the property from Sunnybrook Lane (**Attachment A**).

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac(A) (Single Family District)  
North: R-1ac(A) (Single Family District)  
East: R-1ac(A) (Single Family District)  
South: R-1ac(A) (Single Family District)  
West: R-1ac(A) (Single Family District)

**Land Use:**

The subject site and all surrounding properties are developed with single-family uses.

**Zoning/BDA History:** There have been seven board cases in the general vicinity within the last five years.

1. BDA201-069: On August 17, 2021, Panel A, Board of Adjustment granted a request for a special exception to the fence height regulations at 4906 Park Lane.
2. BDA190-117: On January 19, 2021, Panel A, Board of Adjustment granted a request for a special exception to the fence height regulations at 4923 Deloache Avenue.
3. BDA190-109: On November 16, 2021, Panel C, Board of Adjustment granted a request for a special exception to the fence height regulations at 4416 Manning Lane.

4. BDA190-074: On August 18, 2020, Panel A, Board of Adjustment granted a request for a special exception to the fence height regulations at 4211 Brookview Drive.
5. BDA189-063: On May 22, 2019, Panel B, Board of Adjustment granted a request for a special exception to the fence standards regulations at 9727 Audubon Place.
6. BDA189-019: On March 18, 2019, Panel C, Board of Adjustment granted requests a special exception to the fence height regulations, a special exception to the fence standards regulations, and a special exception to the fence standards regulation at 5014 Lakehill Court.
7. BDA178-142: On December 10, 2018, Panel C, Board of Adjustment granted a request for a special exception to the fence standards regulations at 5020 Park Lane.

#### **GENERAL FACTS/STAFF ANALYSIS:**

The property is currently developed with an approximately 9,067-square-foot two-story single-family dwelling with an attached garage, an approximately 1,471-square-foot accessory structure (detached quarters), and an in-ground pool. The applicant proposes to construct a seven-foot-high fence in a required front yard with fence panels having less than 50 percent open surface area located less than five feet front the front lot line with portions of the proposed seven-foot-high solid masonry, limestone, or stone gate in a required 20-foot visibility triangle along Sunnybrook Lane.

The requests for special exceptions to the fence standards regulations related to height, opacity, and the visual obstruction focus on constructing and maintaining:

- a seven-foot-high solid masonry fence located in a front yard setback;
- as close as the property line along Sunnybrook Lane; and,
- with one electric stone gate in a 20-foot visibility triangle at the drive approach onto Sunnybrook Lane.

The subject site is zoned an R-1ac(A) Single Family District and requires a minimum front yard setback of 40 feet.

Section 51A-4.602(a)(2) of the Dallas Development Code states that in all residential districts except multifamily districts, a fence may not exceed four feet above grade when located in the required front yard. As noted, the proposed fence would be within the required 40-foot front yard setbacks.

Additionally, Section 51A-4.602(a)(3) of the Dallas Development Code states that in single family districts, a fence panel with a surface area that is less than 50 percent open may not be located less than five feet from the front lot line.

Finally, Section 51A-4.602(d) of the Dallas Development Code states that a person shall not erect, place, or maintain a structure, berm, plant life, or any other item on a lot if the item is:

- in a visibility triangle as defined in the Code (45-foot visibility triangle at the drive approaches and alleys on properties zoned single family); and
- between two-and-a-half and eight-feet-in-height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).

The following information is shown on the submitted site plan and elevation:

- The proposed fence and gate are located at the lot line along Sunnybrook Lane and located on the property lot line.
- Along Sunnybrook Lane the fence is proposed at a width of approximately 213.46 feet.
- The fence is proposed to be constructed of solid masonry limestone while a light-colored stone is proposed to be constructed for the gate.

As of April 11, 2022, staff has received no letters in support of or in opposition to the request.

The applicant has the burden of proof in establishing that the special exceptions to the fence standards related to the height, openness, and visual obstruction regulations will not adversely affect neighboring property nor constitute a traffic hazard.

Granting the special exceptions to the fence standards related to the height would require the proposal exceeding four feet-in-height in the front yard setback with fence panels having less than 50 percent openness and located along Sunnybrook Lane within a visibility triangle to be maintained in the locations, heights and materials as shown on the site plan and elevation.

**Timeline:**

February 11, 2022: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents that have been included as part of this case report.

March 3, 2022: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.

March 8, 2022: The Board Senior Planner emailed the representative the following information:

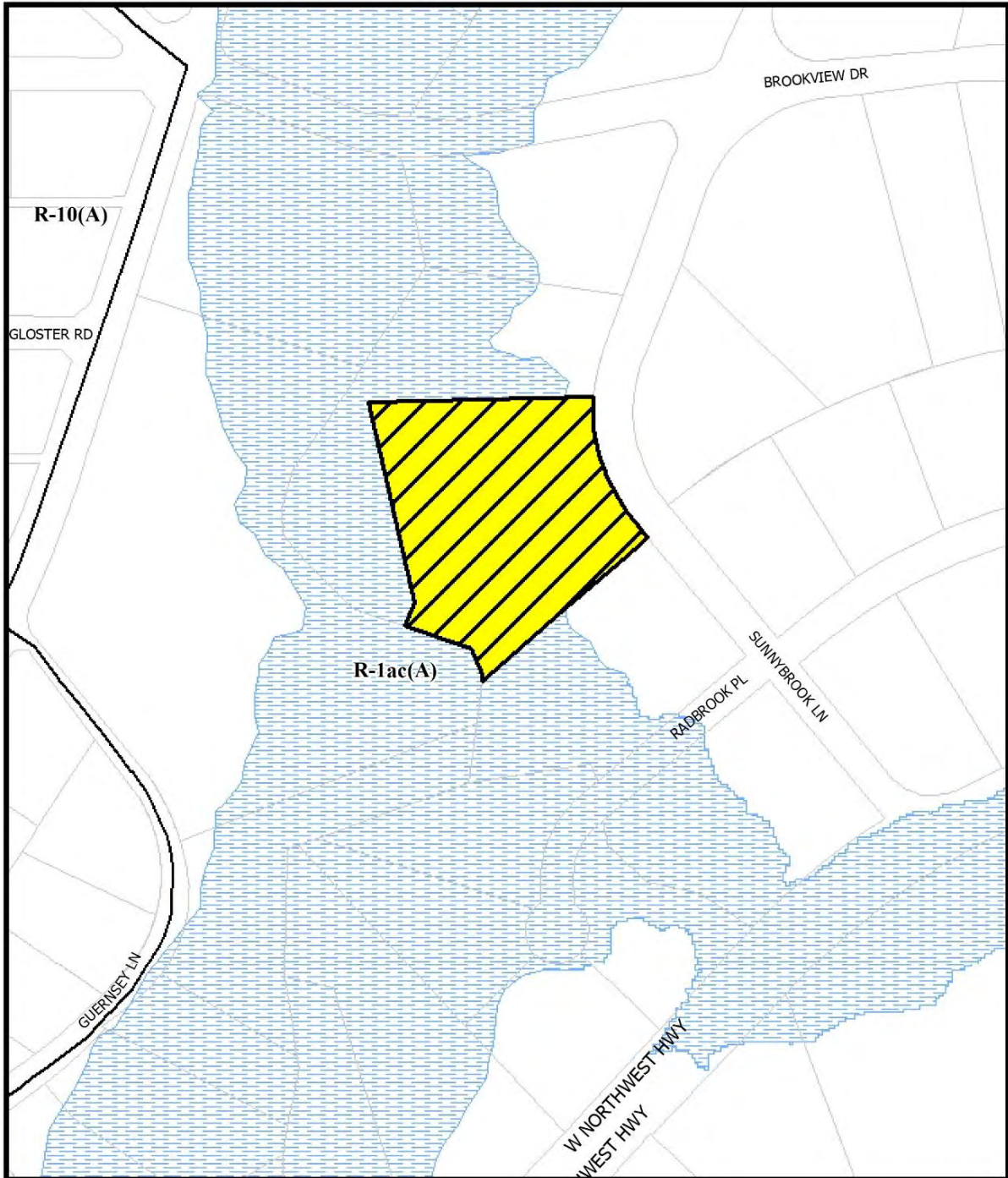
- a copy of the application materials including the Building Official’s report on the application;

- an attachment that provided the public hearing date and panel that will consider the application; the March 30<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the April 8<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”

March 31, 2022: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the April public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner/Board Administrator, the Development Services Chief Arborist, the Development Services Senior Plans Examiner, and Development Services Chief Planner, the Transportation Development Services Senior Engineer, the Board Senior Planner, and the Assistant City Attorney to the Board.

March 31, 2022: The Transportation Development Services Senior Engineer submitted a review comment sheet (**Attachment A**).



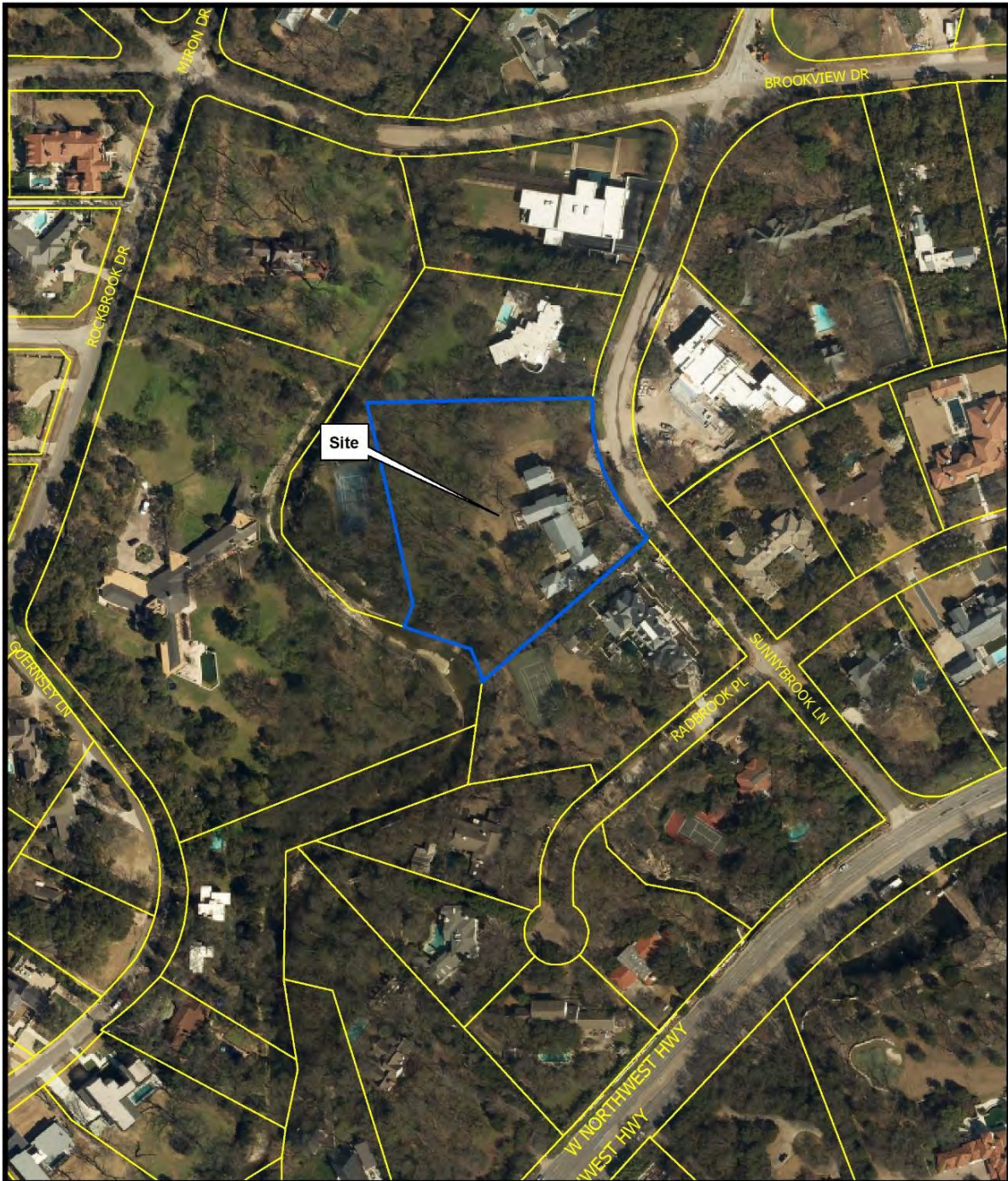


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# ZONING MAP

Case no: BDA212-034

Date: 3/9/2022

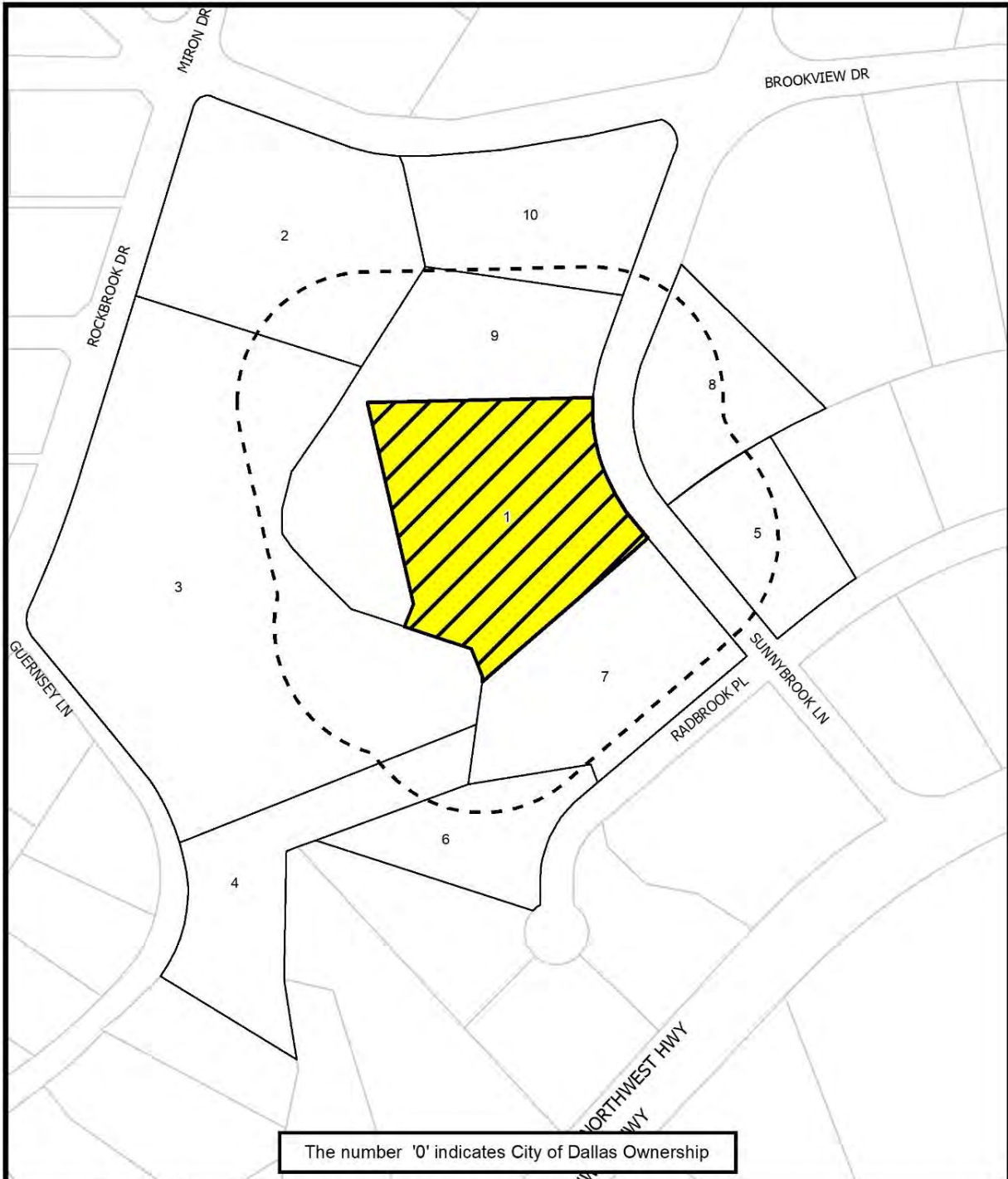


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# AERIAL MAP

Case no: BDA212-034

Date: 3/9/2022



1:2,400

# NOTIFICATION

**200'** AREA OF NOTIFICATION  
**10** NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA212-034**  
 Date: **3/9/2022**

03/09/2022

## ***Notification List of Property Owners***

***BDA212-034***

### ***10 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	9207 SUNNY BROOK LN	MIROVISTSKI DMITRI &
2	4600 BROOKVIEW DR	BOND JAMES HERBERT ET AL
3	9400 ROCKBROOK DR	BISHOP ELYSIANN
4	9316 GUERNSEY LN	VOGELSON JAY M
5	5007 RADBROOK PL	MORASH JASON & JENNIFER
6	4915 RADBROOK PL	DUTTON DIANA C &
7	9203 SUNNYBROOK LN	DENNING REVOCABLE TRUST
8	9220 SUNNY BROOK LN	GONZALEZ CARLOS
9	9221 SUNNY BROOK LN	JAYASEELAN NIRMAL S &
10	9239 SUNNY BROOK LN	FIFIELD WILLIAM O &



City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 212-034

Data Relative to Subject Property:

Date: 2-11-22

Location address: 9207 Sunny Brook Ln Zoning District: R-1AC(A)

Lot No.: 9A Block No.: 13-A/5586 Acreage: 2.8 acres Census Tract: 206.00

Street Frontage (in Feet): 1) 213 ft 2) \_\_\_\_\_ 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Dmitri Mirovitski and Olga Troitskaya

Applicant: Rob Baldwin, Baldwin Associates Telephone: 214-824-7949

Mailing Address: 3904 Elm Street Suite B Dallas TX Zip Code: 75226

E-mail Address: rob@baldwinplanning.com

Represented by: Rob Baldwin, Baldwin Associates Telephone: 214-824-7949

Mailing Address: 3904 Elm Street Suite B Dallas TX Zip Code: 75226

E-mail Address: rob@baldwinplanning.com

Affirm that an appeal has been made for a Variance \_\_, or Special Exception X, of 3' to the fence height regulations to allow a 7' fence with solid panels within 5' of the front property line, and a special exception to the visibility triangle obstruction regulations.

Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason: The proposed fencing and gates will be similar in height and appearance to other fences along Sunny Brook Drive; the approval of this Special Exception is reasonable and will not negatively affect neighboring properties.

Note to Applicant: If the appeal requested in this application is granted by the Board of Adjustment, a permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Affidavit

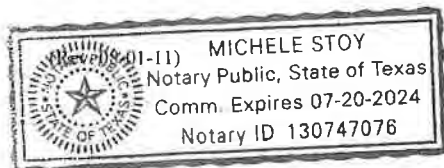
Before me the undersigned on this day personally appeared Robert Baldwin (Affiant/Applicant's name printed)

who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Respectfully submitted: [Signature] (Affiant/Applicant's signature)

Subscribed and sworn to before me this 7 day of February, 2022

Michele Stoy Notary Public in and for Dallas County, Texas



MEMORANDUM OF  
ACTION TAKEN BY THE  
BOARD OF ADJUSTMENT

Date of Hearing \_\_\_\_\_

Appeal was--Granted OR Denied

Remarks \_\_\_\_\_

Chairman

**Building Official's Report**

I hereby certify that Rob Baldwin

did submit a request for a special exception to the fence height regulations, and for a special exception to the fence standards regulations

, and for a special exception to the visibility obstruction regulations

at 9207 Sunnybrook Lane

BDA212-034. Application of Rob Baldwin for a special exception to the fence height regulations, and for a special exception to the fence standards regulations, and for a special exception to the visibility obstruction regulations at 9207 SUNNYBROOK LN. This property is more fully described as Lot 9A, Block 13-A/5586, and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet and requires a 20 foot visibility triangle at driveway approaches and requires a fence panel with a surface area that is less than 50 percent open may not be located less than 5 feet from the front lot line. The applicant proposes to construct a 7 foot high fence in a required front yard, which will require a 3 foot special exception to the fence regulations, and to construct a fence in a required front yard with a fence panel having less than 50 percent open surface area located less than 5 feet from the front lot line, which will require a special exception to the fence regulations, and to construct a single family residential fence structure in a required visibility obstruction triangle, which will require a special exception to the visibility obstruction regulation.

Sincerely,

  
David Session, Building Official



CITY OF DALLAS

AFFIDAVIT

Appeal number: BDA 212-034

I, Dmitri Mirovitski, Owner of the subject property  
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 9207 Sunny Brook Lane  
(Address of property as stated on application)

Authorize: Rob Baldwin, Baldwin Associates  
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

Specify: Fence

Dmitri Mirovitski  
Print name of property owner or registered agent

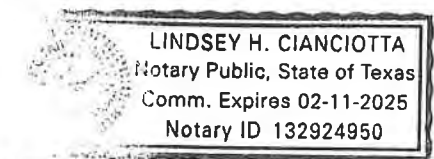
*Dmitri Mirovitski*  
Signature of property owner or registered agent

Date 1/18/22

Before me, the undersigned, on this day personally appeared Dmitri Mirovitski

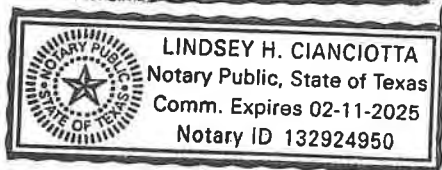
Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 18<sup>th</sup> day of January, 2022



*L. Cianciotta*  
Notary Public for Dallas County, Texas

Commission expires on 02-11-2025





AFFIDAVIT

Appeal number: BDA 212-034

I, Olga Troitskaya, Owner of the subject property  
(Owner or "Grantee" of property as it appears on the Warranty Deed)

at: 9207 Sunny Brook Lane  
(Address of property as stated on application)

Authorize: Rob Baldwin, Baldwin Associates  
(Applicant's name as stated on application)

To pursue an appeal to the City of Dallas Zoning Board of Adjustment for the following request(s)

- Variance (specify below)
- Special Exception (specify below)
- Other Appeal (specify below)

Specify: Fence

Olga Troitskaya  
Print name of property owner or registered agent

[Signature]  
Signature of property owner or registered agent

Date 1/18/22

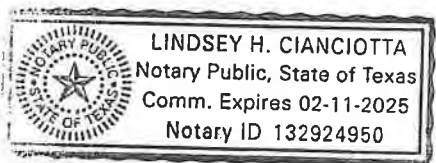
Before me, the undersigned, on this day personally appeared Olga Troitskaya

Who on his/her oath certifies that the above statements are true and correct to his/her best knowledge.

Subscribed and sworn to before me this 18<sup>th</sup> day of January, 2022

[Signature]  
Notary Public for Dallas County, Texas

Commission expires on 02-11-2025







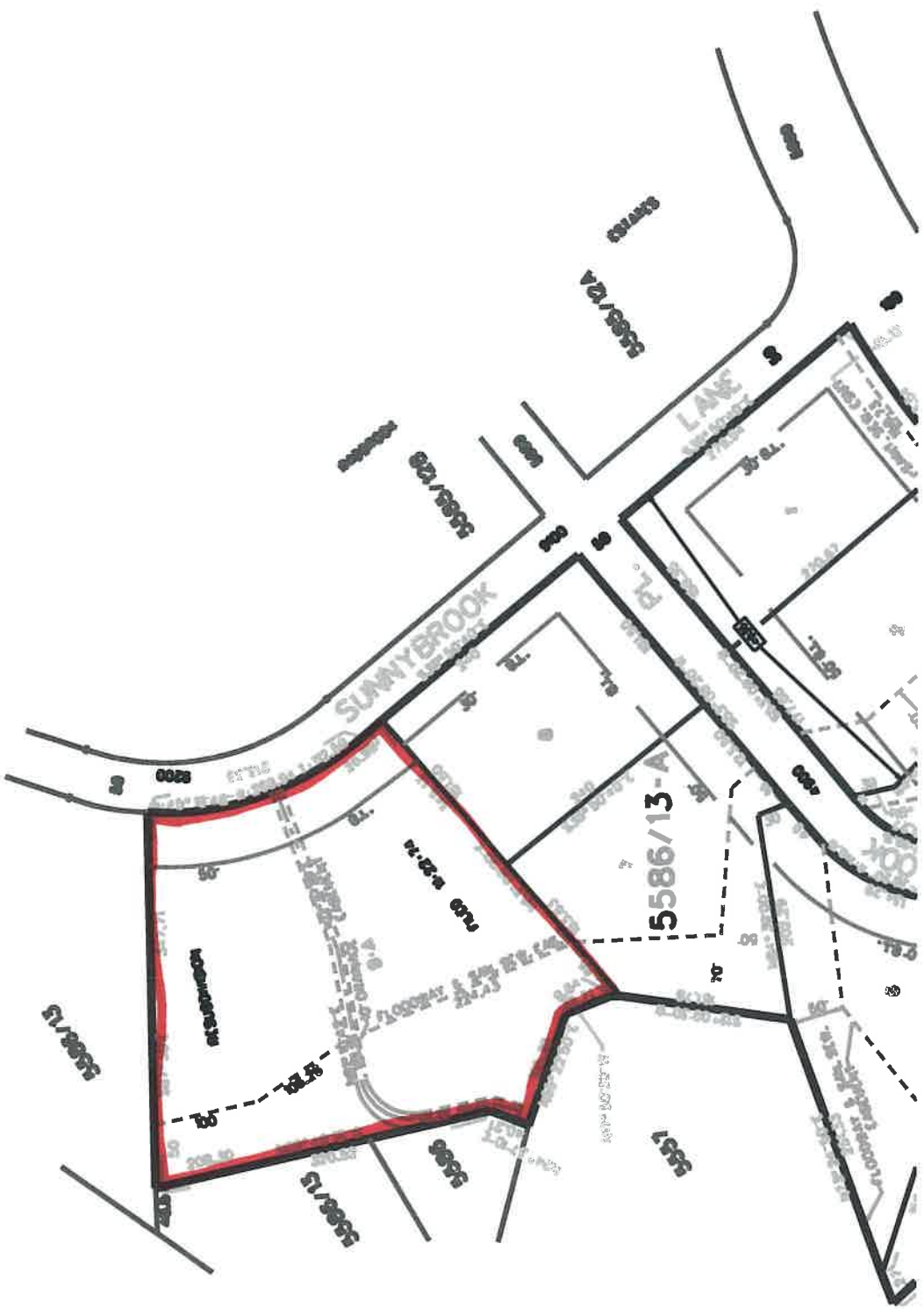
Printed: 1/10/2022

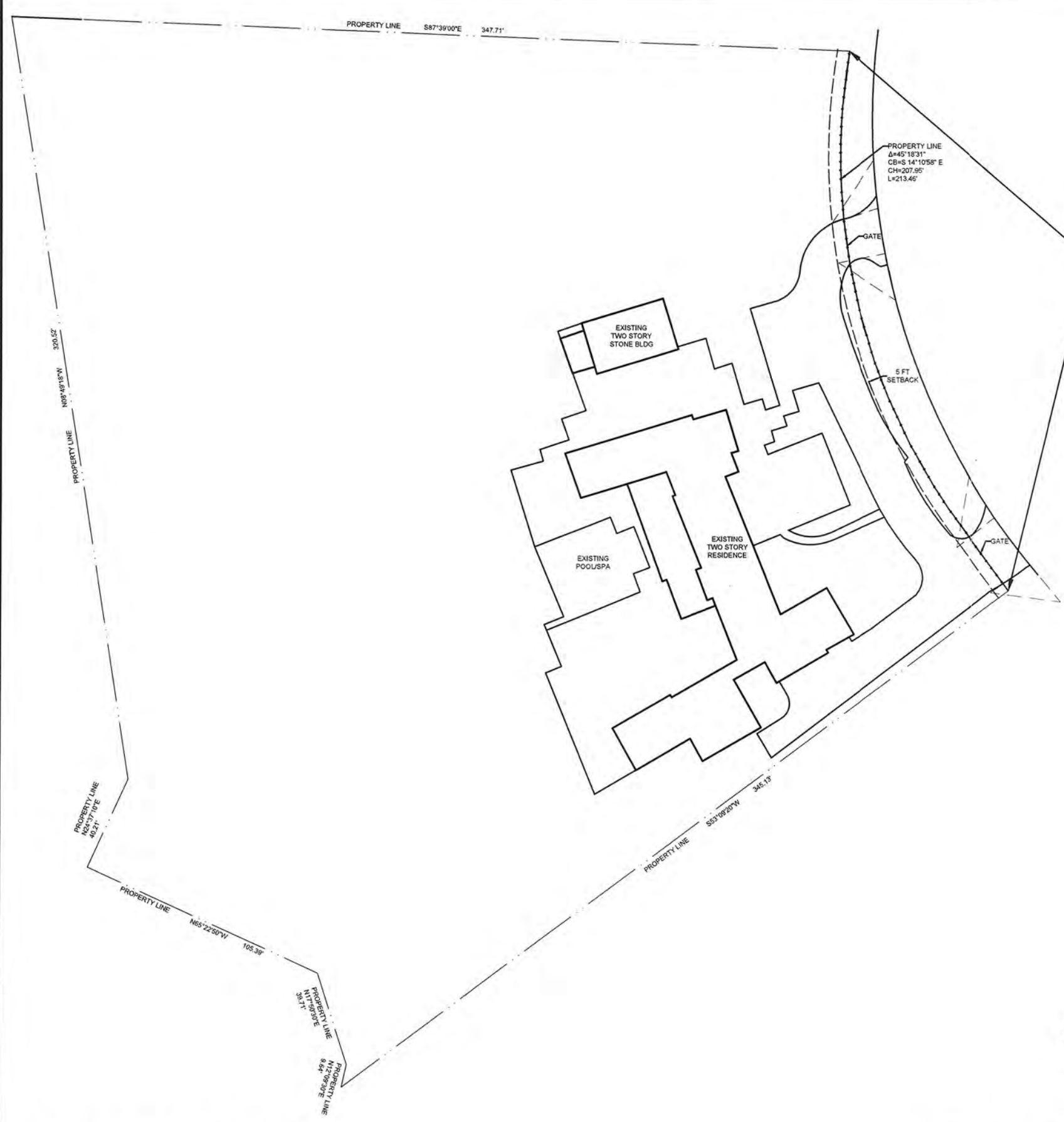
### Legend

- |                      |                                |                       |                            |
|----------------------|--------------------------------|-----------------------|----------------------------|
| City Limits          | railroad                       | Dry Overlay           | CD Subdistricts            |
| School               | Certified Parcels              | D                     | PD Subdistricts            |
| Floodplain           | Base Zoning                    | D-1                   | PDS Subdistricts           |
| 100 Year Flood Zone  | PD193 Oak Lawn                 | CP                    | NSO Subdistricts           |
| Mill's Creek         | Dallas Environmental Corridors | SP                    | NSO_Overlay                |
| Peak's Branch        | SPSD Overlay                   | MD Overlay            | Escarpment Overlay         |
| X Protected by Levee | Deed Restrictions              | Historic Subdistricts | Parking Management Overlay |
| Parks                | SUP                            | Historic Overlay      | Shop Front Overlay         |
|                      |                                | Height Map Overlay    |                            |

This data is to be used for graphical representation only. The accuracy is not to be taken/used as data produced by a Registered Professional Land Surveyor (RPLS) for the State of Texas. 'This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.' (Texas Government Code § 2051.102)







FENCE  
7 FT HEIGHT  
SOLID MASONRY  
(LIMESTONE OR OTHER  
LIGHT COLORED STONE)

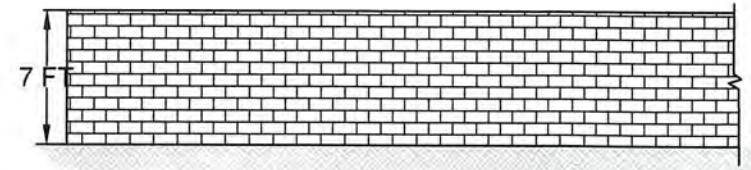
FENCE LOCATED AT  
PROPERTY LINE



VICINITY MAP



2B FENCE IMAGE  
SCALE: NTS



2A FENCE ELEVATION  
SCALE: 1:10

1 SITE PLAN  
SCALE: 1:50

02/07/2022  
PROJECT NUMBER  
CASE NUMBER

BALDWIN ASSOCIATES  
3904 Elm Street, Suite B  
Dallas, Texas 75226  
MOBILE: 214.729.7949  
OFFICE: 214.824.7949  
rob@baldwinplanning.com

Baldwin Associates

9207 SUNNY BROOK LANE  
DALLAS, TX

212-034

REVIEW COMMENT SHEET  
BOARD OF ADJUSTMENT  
HEARING OF APRIL 19, 2022

Has no objections

Has no objections if certain conditions  
are met (see comments below or attached)

Recommends denial  
(see comments below or attached)

No comments

BDA 212-013

BDA 212-026

BDA 212-027

BDA 212-031

BDA 212-034

COMMENTS:

**None**

***David Nevarez, PE, PTOE, DEV - Engineering***

Name/Title/Department

***3/31/2022***

Date

Please respond to each case and provide comments that justify or elaborate on your response. Dockets distributed to the Board will indicate those who have attended the review team meeting and who have responded in writing with comments.