

BOARD OF ADJUSTMENT, PANEL A  
TUESDAY, SEPTEMBER 18, 2012  
AGENDA

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BRIEFING	5/E/S	11:30 a.m.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS, 1500 MARILLA STREET	1:00 P.M.

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**David Cossum, Assistant Director**  
**Steve Long, Board Administrator**

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**MISCELLANEOUS ITEM**

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Approval of the <b>Tuesday, August 14, 2012</b> Board of Adjustment Public Hearing Minutes	M1
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**UNCONTESTED CASES**

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<b>BDA 112-014</b>	3439 Maybeth Street <b>REQUEST:</b> Application of Juana E. Reyes to enlarge a nonconforming use and a special exception to the landscape regulations	1
<b>BDA 112-089</b>	6230 Lupton Drive <b>REQUEST:</b> Application of Tom Dohearty for a special exception to the side yard setback regulations for tree preservation	2
<b>BDA 112-092</b>	1217 N. Tyler Street <b>REQUEST:</b> Application of Lauren Nitschke, represented by Tom Straight, for a special exception to the side yard setback regulations	3

## EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

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 Commission/Board 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 §551.086]

**(Rev. 6-24-02)**

**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel A, August 14, 2012 public hearing minutes.

**FILE NUMBER:** BDA 112-014

**BUILDING OFFICIAL'S REPORT:**

Application of Juana E. Reyes to enlarge a nonconforming use and a special exception to the landscaping regulations at 3439 Maybeth Street. This property is more fully described as Lot 1 in City Block N/7164 and is zoned R-5(A), which limits the legal uses in a zoning district and requires mandatory landscaping. The applicant proposes to enlarge a nonconforming general merchandise or food store 3500 square feet or less use and to provide an alternate landscape plan, which will require a request to enlarge a nonconforming use and a special exception to the landscape regulations.

**LOCATION:** 3439 Maybeth Street

**APPLICANT:** Juana E. Reyes

**REQUESTS:**

- The following appeals have been made on a site that is developed with a nonconforming "general merchandise or food store 3,500 square feet or less" use (R & J Grocery Store):
  1. A request is made to remedy enlargement of a nonconforming "general merchandise or food store" use from 646 square feet to 1,468 square feet (267.73 square feet for store space, 207 square feet for storage space and 347.70 square feet for additional storage space).
  2. A special exception to the landscape regulations in conjunction with enlargement of the nonconforming general merchandise or food store use and not fully meeting the landscape regulations.

**STANDARD FOR ENLARGING A NONCONFORMING USE:**

The board may allow the enlargement of a nonconforming use when, in the opinion of the Board, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

**STANDARD FOR A SPECIAL EXCEPTION TO THE LANDSCAPE REGULATIONS:**

The board may grant a special exception to the landscape 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; and
- the extent to which other existing or proposed amenities will compensate for the reduction of landscaping.

**STAFF RECOMMENDATION (nonconforming use enlargement):**

No staff recommendation is made on a request to enlarge a nonconforming use since the basis for this type of appeal is based on when, *in the opinion of the Board*, the enlargement: 1) does not prolong the life of the nonconforming use; 2) would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and 3) will not have an adverse effect on the surrounding area.

**STAFF RECOMMENDATION (landscape special exception):**

Approval, subject to the following conditions:

1. Compliance with the submitted alternate landscape plan is required.
2. All required landscaping must be protected from vehicles by a barrier and must provide at least the minimum soil planting requirements as specified in Article X of the Dallas Development Code.
3. Any existing or planted tree that is removed on the property must be replaced with another tree of similar species in the same general location.
4. The proposed “alternate surface paving” may be substituted with another acceptable surface as an enhanced or permeable vehicular pavement as specified in Article X of the Dallas Development Code.

Rationale:

- The applicant has substantiated how strict compliance with the requirements of the landscape regulations of the Dallas Development Code will unreasonably burden the use of the property, and that the special exception will not adversely affect neighboring property, particularly considering certain existing site constraints on/adjacent to the site (an easement, low-standing utility lines, a parking area for vehicles).
- The City’s Chief Arborist supports the request with the aforementioned conditions imposed.

**BACKGROUND INFORMATION:**

## **Zoning:**

Site: R-5(A) (Single family residential 5,000 square feet)  
North: R-5(A) (Single family residential 5,000 square feet)  
South: R-5(A) (Single family residential 5,000 square feet)  
East: R-5(A) (Single family residential 5,000 square feet)  
West: R-5(A) (Single family residential 5,000 square feet)

## **Land Use:**

The subject site is developed with a nonconforming general merchandise or food store 3,500 square feet or less use (R & J Grocery Store). The areas to the north, east, south, and west are developed with single family uses.

## **Zoning/BDA History:**

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

## **Timeline:**

- November 21, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 16, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 7<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 requests;
  - the section from the Dallas Development Code pertaining to nonconforming uses and structures; and
  - the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.
- August 20, 2012: The Board Administrator met the applicant on the subject site on his field trip. The applicant informed the Board Administrator that the notification signs had been stolen but that she would purchase new signs and post them on the property within the next 24 hours

and leave them posted on the property until final action on the application had occurred.

September 4, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, Building Inspection Chief Planners, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

September 10, 2012: The Chief Arborist submitted a memo regarding the applicant's request for a special exception to the landscape regulations (see Attachment A).

**GENERAL FACTS/STAFF ANALYSIS (nonconforming use enlargement):**

- This request focuses on the enlargement of a nonconforming “general merchandise or food store 3,500 square feet or less” use (R & J Grocery Store) on the subject site.
- In this particular case, according to the application, the enlargement involves the enlargement of the nonconforming use from 646 square feet to 1,468 square feet (267.73 square feet for store space, 207 square feet for storage space and 347.70 square feet for additional storage space).
- The Dallas Development Code defines a nonconforming use as “a use that does not conform to the use regulations of this chapter, but was lawfully established under regulations in force at the beginning of operation and has been in regular use since that time.”
- The Dallas Development Code states that enlargement of a nonconforming use means any enlargement of the physical aspects of a nonconforming use, including any increase in height, floor area, number of dwelling units, or the area in which the nonconforming use operates.
- The application states that the site is 0.16 acres in area.
- The subject site is zoned R-5(A) (Single family 5,000 square feet).
- A “general merchandise or food store 3,500 square feet or less” use is not permitted in R-5(A) single family zoning districts.
- DCAD states that the property at 3439 Maybeth Street has the following improvements: a free standing retail store with 912 square feet built in 1948.
- Records from Building Inspection Department indicate that the date in which the general merchandise or food store use became nonconforming on December 30, 1952 – date of annexation.
- A copy of a Certificate of Occupancy is included in the case file for R & J Grocery Store (CO #0411041071) issued on November 5, 2004.

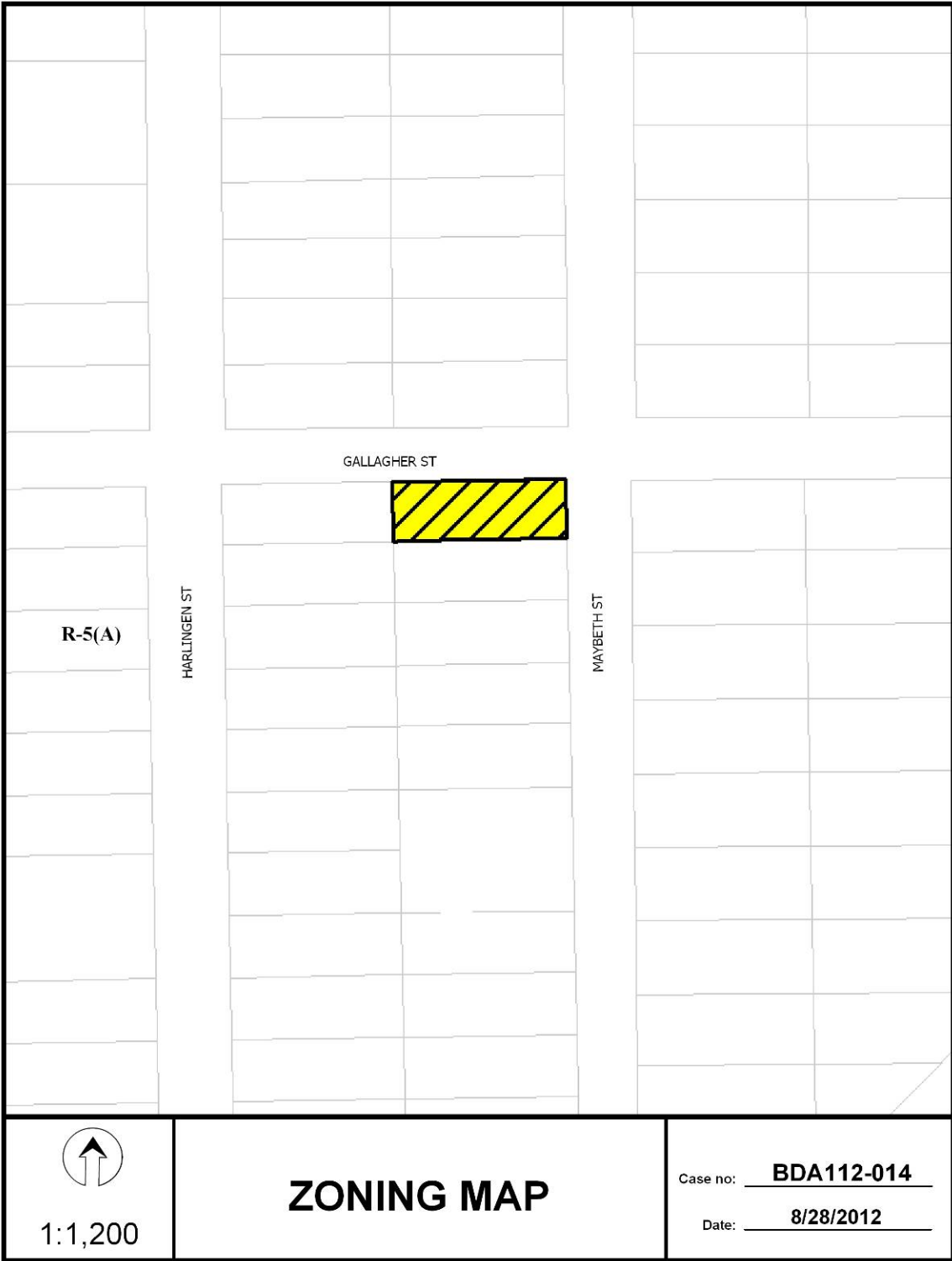
- Given provisions set forth the Dallas Development Code, the existing “general merchandise or food store 3,500 square feet or less” use on the site can obtain “conforming use” status upon obtaining a change in zoning from the City Council to GO(A), retail, CS, central area, mixed use, multiple commercial, and urban corridor districts.
- The applicant has been informed of the Dallas Development Code provisions pertaining to “Nonconforming Uses and Structures,” and how nonconforming uses can be brought to the Board of Adjustment for amortization where if the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for that nonconforming use - a compliance date that is provided under a plan whereby the owner’s actual investment in the use before the time that the use became nonconforming can be amortized within a definite time period.
- The applicant has the burden of proof to establish that the enlargement of the non-conforming use:
  1. does not prolong the life of the nonconforming use;
  2. would have been permitted under the zoning regulations that existed when the nonconforming use was originally established by right; and
  3. will not have an adverse effect on the surrounding area.
- If the Board were to grant this request, with a condition imposed that the applicant comply with the submitted site plan and elevations, the enlargement of the nonconforming use would be limited to what is shown on these documents.

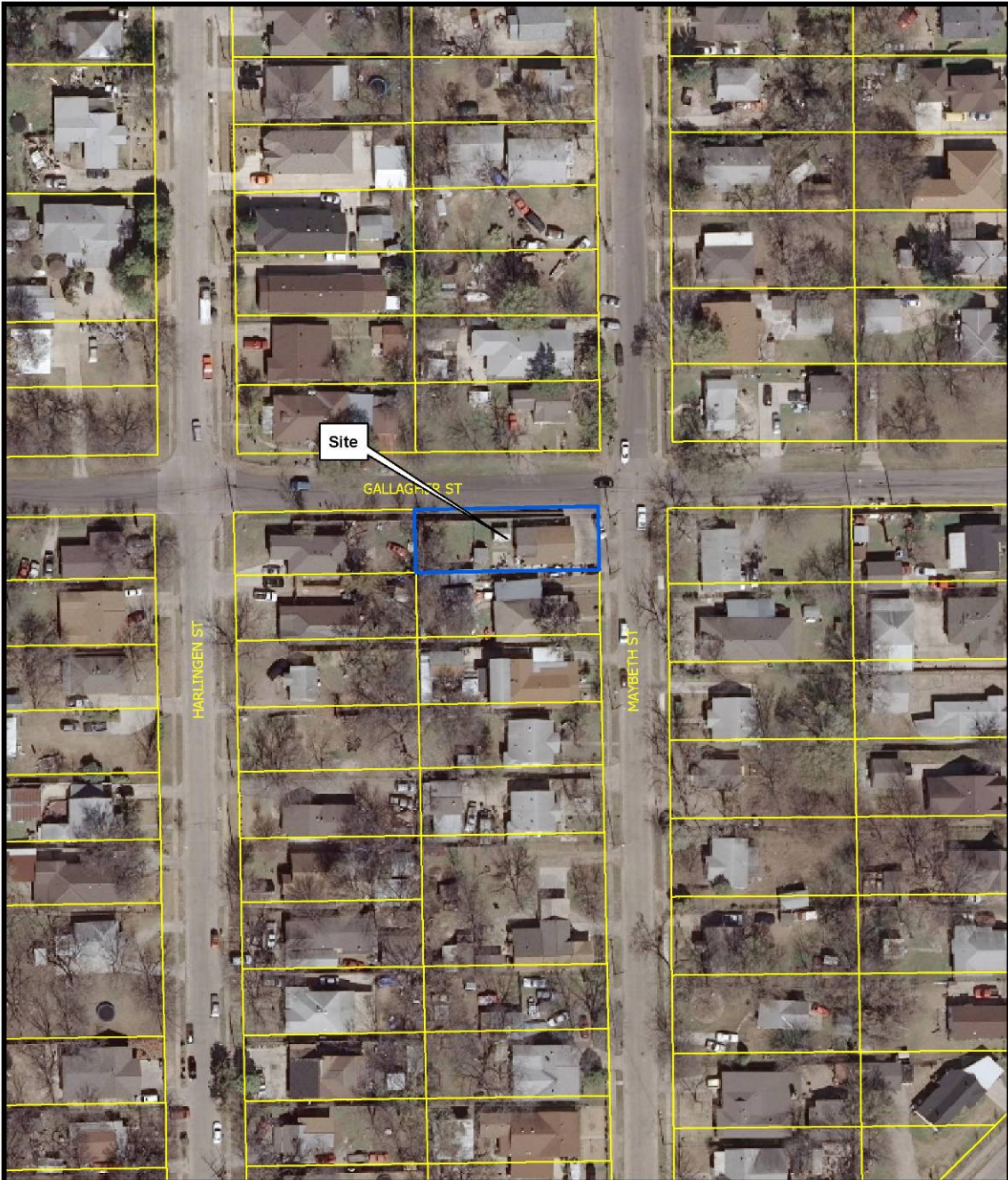
**GENERAL FACTS/STAFF ANALYSIS (landscape special exception):**

- This request focuses on the enlargement of a nonconforming “general merchandise or food store 3,500 square feet or less” use (R & J Grocery Store) on the subject site, and not fully complying with Article X: The Landscape Regulations of the Dallas Development Code.
- 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, this request is triggered by new floor area added to the subject site.
- The applicant has submitted an alternate landscape plan that, according to the City of Dallas Chief Arborist, does not fully comply with the following requirements of Article X: The Landscape Regulations: 1) perimeter landscape buffer with five plant groups; 2) four required street trees; and 3) two design standards.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator regarding the applicant’s request for a special exception to the landscape regulations (see Attachment A).
- The Chief Arborist supports the applicant’s request with consideration given to existing conditions/features of the site that preclude the applicant from fully meeting Article X: an easement, low-standing utility lines, and a parking area for vehicles.



- The applicant has the burden of proof in establishing the following:
  - Strict compliance with the requirements of the Landscape Regulations of the Dallas Development Code will unreasonably burden the use of the property; and
  - The special exception will not adversely affect neighboring property.
- If the Board were to grant this request and impose the submitted alternate landscape plan and other aforementioned conditions to the request, the site would be “excepted” from full compliance with the perimeter landscape, street tree, and design standard requirements of Article X: The Landscape Regulations.





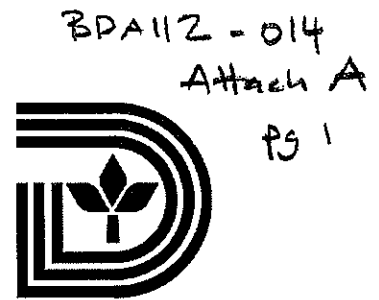
1:1,200

# AERIAL MAP

Case no: BDA112-014

Date: 8/28/2012

# Memorandum



CITY OF DALLAS

DATE September 10, 2012  
TO Steve Long, Board of Adjustment Administrator  
SUBJECT # BDA 112 - 014 3439 Maybeth Street

The applicant is requesting a special exception to the landscape requirements of Article X.

### Trigger

Permitting of additional floor area.

### Deficiencies

The site is within an R-5 district with residential adjacency on all sides. The plan does not provide for the full requirement of the 1) perimeter landscape buffer with five plant groups, 2) four required street trees, and 3) two design standards. The owner proposes a permeable vehicular surface material for one design standard.

### Factors

The site has been existing as a commercial use for many years. The front yard at the corner of Maybeth and Gallagher has been used for parking vehicles for at least the past ten years. There is no existing landscaping space available in that area.

A 7.5 feet wide easement is on the western edge of the property. It is permeable landscape area and fenced from the proposed improvement area. Large trees in the southwest portion of the property are intended to remain. Screening fence to the west is to remain, and a solid screen fence is proposed along the south line.

Low-standing overhead electric and utility lines run along Gallagher Street. Crape myrtles are proposed for tree planting in the restricted space. Pavement, and existing building space, occupy a portion of the southern required perimeter landscape buffer area. Small trees are proposed for the locations where a large street tree and perimeter buffer tree would be required. Manual irrigation is proposed for the property.

An alternative surface paving material (one design standard) is proposed for the western surface of the lot to allow for parking vehicles. The landscape plan does not distinguish between the paved surface and the edge of the landscaping for the trees on the western portion of the property to the fence line, other than to provide 12" clearance for tree trunks.

BDA 112-014  
Attach A  
pg 2

Recommendation

Approval of the submitted alternate landscape plan subject to conditions:

All required landscaping must be protected from vehicles by a barrier, per Section 51A-10.105, and must be provided at least the minimum soil planting requirements of Section 51A-10.104.

Any existing or planted tree that is removed from the property must be replaced with another tree of similar species in the same general location.

The proposed 'alternative surface paving' may be substituted by another surface that is acceptable under Article X as an 'enhanced' or 'permeable vehicular pavement' of Section 51A-10.126, and as approved by the Building Official.

Philip Erwin, ISA certified arborist #TX-1284(A)  
Chief Arborist



City of Dallas

A

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 112-014

Data Relative to Subject Property:

Date: 11/21/11

Location address: 3439 Maybeth St. Zoning District: R-5(A)

Lot No.: 1 Block No.: N/7164 Acreage: .16 Census Tract: 106.01

Street Frontage (in Feet): 1) 48.64 2) 139.45 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

SWA

To the Honorable Board of Adjustment :

Owner of Property (per Warranty Deed): Juana E. Reyes

Applicant: Juana E. Reyes Telephone: 469/254-8505

Mailing Address: 3435 Maybeth St. Zip Code: 75212

E-mail Address: vjgrocerystore@yahoo.com

Represented by: Juana E. Reyes Telephone: 469/254-8505

Mailing Address: 3435 Maybeth St Zip Code: 75212

E-mail Address: vjgrocerystore@yahoo.com

Affirm that an appeal has been made for a Variance, or Special Exception X, of the enlargement of a non-conforming use from 646 SF to 1460 SF. (267.73 SF for store space, 207 SF for storage space and 347.70 SF for additional storage space)

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:

Special Exception to enlarge floor. Addition was necessary to meet the growing needs of the growing community and was not intended to be a separate stand alone location. If special Exception is not granted this will cause direct and immediate harm to those who cannot travel to another location.

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.

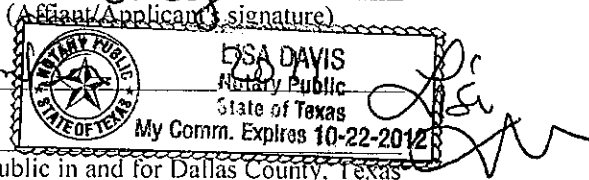
Affidavit

Before me the undersigned on this day personally appeared Juana E. Reyes  
(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 Juana E. Reyes  
(Affiant/Applicant's signature)

Subscribed and sworn to before me this 21 day of November



(Rev. 08-01-11)

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 Juana E. Reyes

did submit a request to enlarge a nonconforming use, and for a special exception to the landscaping regulations

at 3439 Maybeth Street

BDA112-014. Application of Juana E. Reyes for a special exception to enlarge a nonconforming use and a special exception to the landscaping regulations at 3439 Maybeth Street. This property is more fully described as lot 1 in city block N/7164 and is zoned R-5(A), which limits the legal uses in a zoning district and requires mandatory landscaping. The applicant proposes to enlarge a nonconforming general merchandise or food store 3500 square feet or less use, which will require a special exception to the nonconforming use regulation, and provide an alternate landscape plan, which will require a special exception to the landscape regulations.

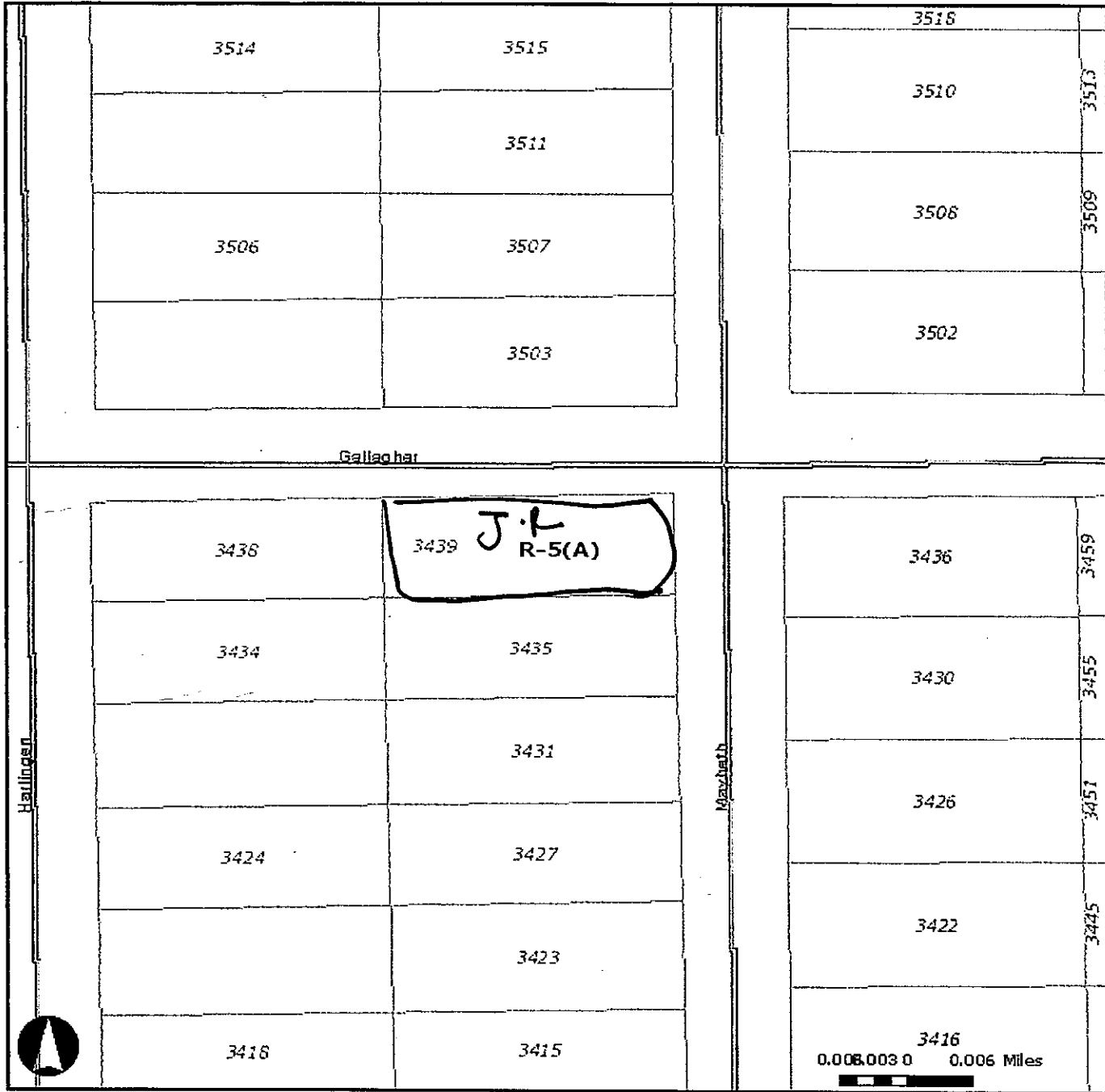
Sincerely,

  
Lloyd Denman, Building Official

The store has been serving the Ledbetter community for the past 50 years. The store has become a place where people come to meet. The store's enlargement does not have an adverse effect on the neighborhood. We pray that the City of Dallas grants this Special Exception. We thank you in advance for the favorable outcome.



# City of Dallas Zoning



Address Candidates



City Boundaries



County



Certified Parcels



DISD Sites



Deed Restrictions



SUP



Dry Overlay



Historic Overlay



PD Subdistricts



PD193 Oak Lawn



PDS Subdistricts



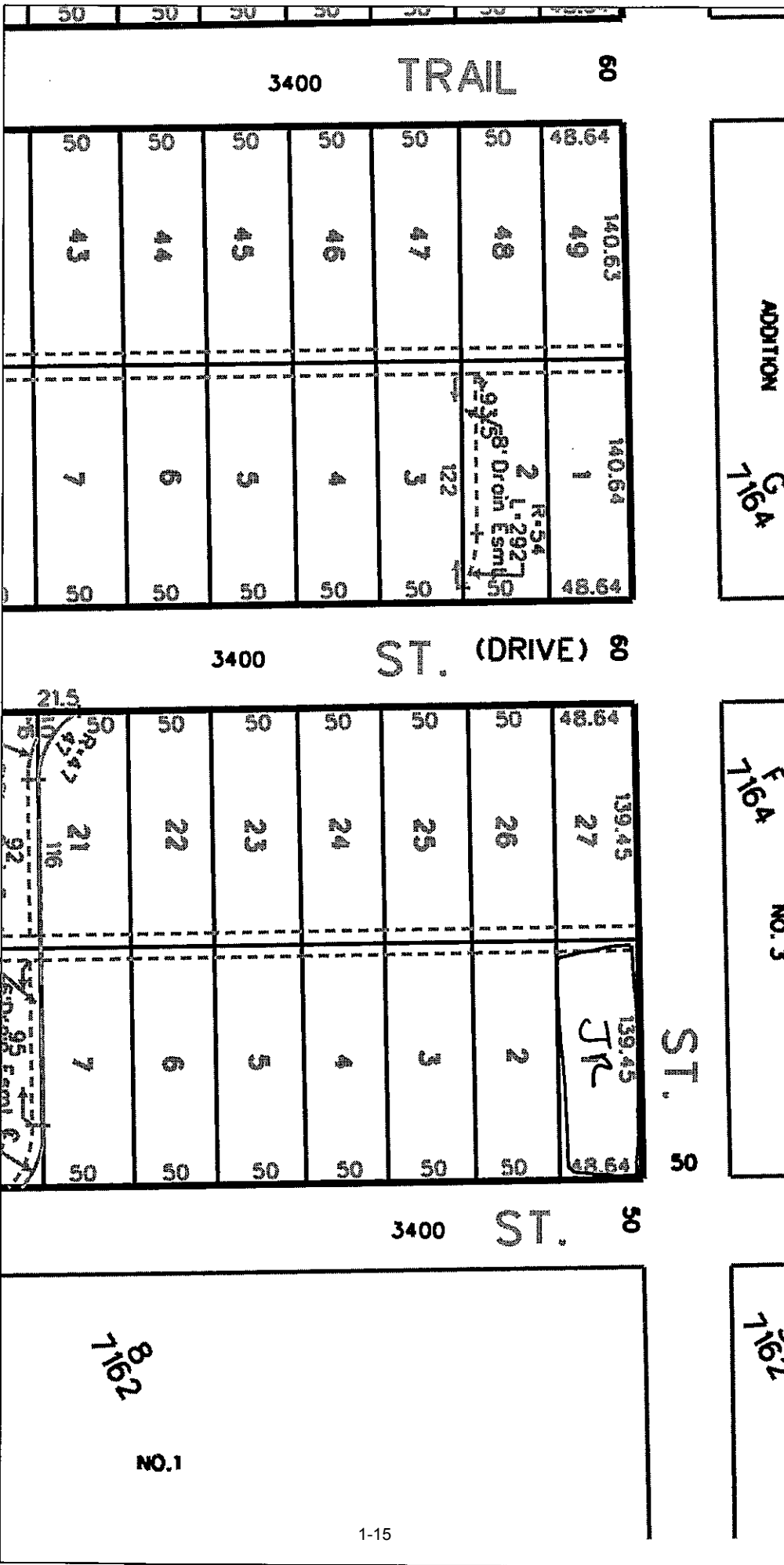
Base Zoning



Pedestrian Overlay



C:\tax\_plats\7164\_k.dgn 11/21/2011 9:53:23 AM



ADDITION

7164

F 7164

NO. 3

ST. 50

7162

8162

NO. 1



City of Dallas

Zoning Board of Adjustment

Appeal to establish a compliance date for a nonconforming use.
Sec. 51A-4.704(a)(1)(A)

or

Appeal to reinstate a nonconforming use. Sec. 51A-4.704(a)(2)

SEC. 51A-4.704. NONCONFORMING USES AND STRUCTURES.

(a) Compliance regulations for nonconforming uses. It is the declared purpose of this subsection that nonconforming uses be eliminated and be required to comply with the regulations of the Dallas Development Code, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.

(1) Amortization of nonconforming uses.

(A) Request to establish compliance date. The city council may request that the board of adjustment consider establishing a compliance date for a nonconforming use. In addition, any person who resides or owns real property in the city may request that the board consider establishing a compliance date for a nonconforming use. Upon receiving such a request, the board shall hold a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties. If, based on the evidence presented at the public hearing, the board determines that continued operation of the use will have an adverse effect on nearby properties, it shall proceed to establish a compliance date for the nonconforming use; otherwise, it shall not.

(2) The right to operate a nonconforming use ceases if the nonconforming use is discontinued for six months or more. The board may grant a special exception to this provision only if the owner can show that there was a clear intent not to abandon the use even though the use was discontinued for six months or more.

Property address: 3439 Maybeth St. Dallas, Tx 75212

- 1. The nonconforming use being enlarged, appealed/reinstated: Gen. merchandise or food store 23000 SF
(The use as stated on the current valid Certificate of Occupancy. Copy of C.O. attached)
2. Reason the use is classified as nonconforming: use existed prior to annexation
(Was there a change in zoning of the property or in the use requirements. Be specific.)
3. Date that the nonconforming use became nonconforming: December 30, 1992
(Date the property zoning or use requirements changed.) of annexation
4. Date the nonconforming use was discontinued: N/A
5. Current zoning of the property on which the use is located: R-5(A)
6. Previous zoning of the property on which the use is located: R-5(A)
(Applies if a zoning district change caused the use to become nonconforming.)

(Rev. 10/04/11)

# Certificate of Occupancy

Address: 3439 MAYBETH ST 75212 Issued Date: 11/05/2004

Owner: REYES JUANA E  
004236 CHANUTE CT DALLAS TX 75211

DBA: R & J GROCERY STORE

Land Use: (5999) GEN MERCHANDISE OR FOOD STORE < 3500 SQ. FT.

C.O.#: 0411041071

Lot:	Block:	Zoning:	R5	PDD:	0	SUP:	
Historic Dist:	Consv Dist:	Pro Park:	0	Req Park:	0	Park Agrmt:	N
Dwlg Units:	0	Stories:	1	Occ Code:	B	Total Area:	0
Type Const:	Sprinkler:	Occ Load:		Alcohol:	Y	Dance Floor:	N

Remarks: BQ 27153

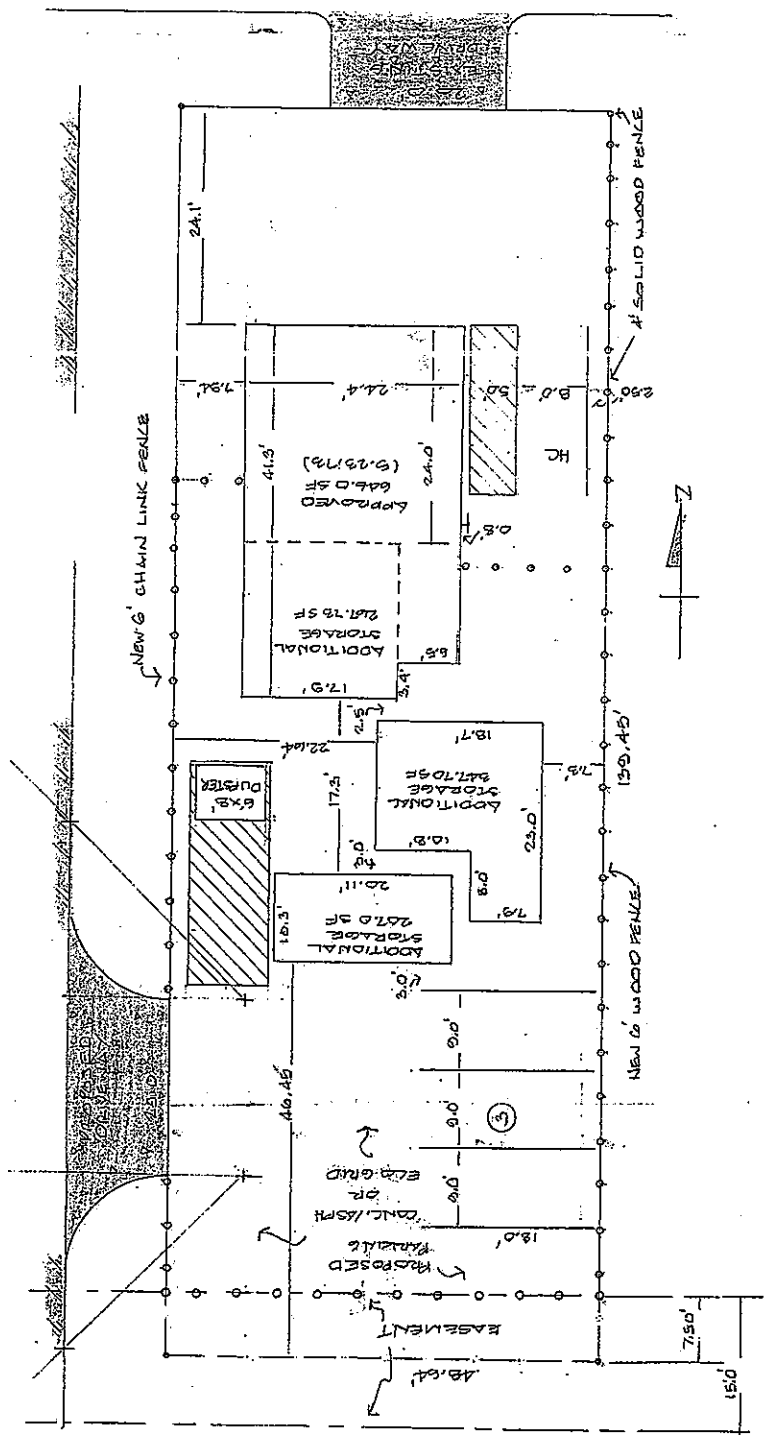


Lloyd Denman, Building Official

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

NOTE:  
 APPROVED STORE AREA: 646 SF  
 APPROVED PARKING: 2  
 (5.23, 73)  
 REQUESTING APPROVAL FOR ADDITIONAL  
 STORAGE SPACE: 822.43 SF  
 PARKING SPACES PROVIDED: 3 + 1 (K-0000)

GALLAGHER



MAYBETH ST

R & J GROCERY STORE	
SCALE: 1/8" = 1'-0"	APPROVED BY: ASBH
DATE: 3/2/12	DRAWN BY: QLOLL
REVISION: 3/5/12	
3423 MAYBETH STREET	
DALLAS, TX 75212	
HEK-REX GROUP	
DRAWING NUMBER:	RJ-08-03



10301 Bellfort Drive  
 Frisco, Texas 75035  
 (214) 488-4225  
 email@kirrkmcdonald.com  
 www.kirrkmcdonald.com

**PROJECT INFORMATION**

SITE AREA  
 LOT AREA

±0.16 ACRES

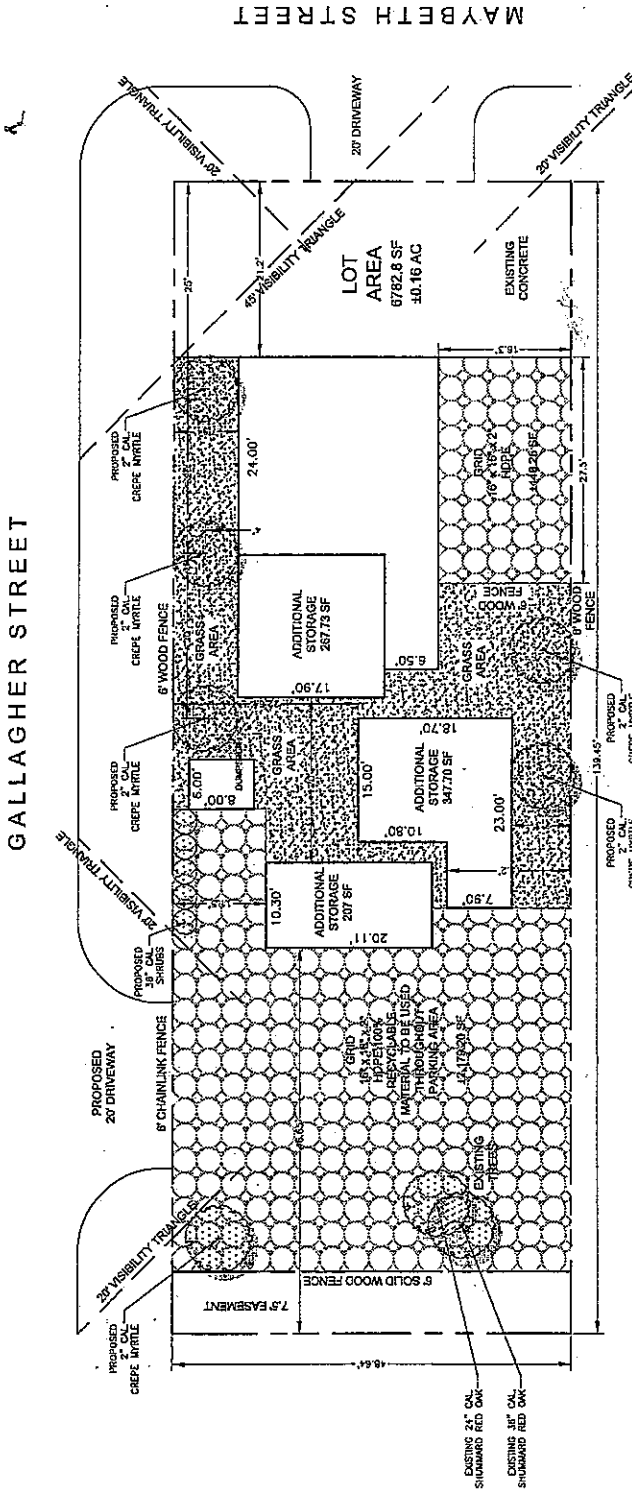
ZONING CLASSIFICATION CITY OF DALLAS  
 JURISDICTION TX  
 EXISTING ZONING TBY  
 REQUIRED ZONING TBY

**PROJECT NOTES**  
 1. THIS SITE PLAN IS FOR PLANNING PURPOSES ONLY. THE EXACT INFORMATION SHOWN AS EXISTING OR PROPOSED SHOULD BE VERIFIED BY THE CLIENT.  
 2. THIS SITE PLAN IS BASED ON THE MOST RECENT SURVEY DATA.  
 3. ALL CURB CUTS AND TRUNK LOCATIONS SHOWN, EXCEPT AS NOTED, MUST BE VERIFIED.  
 DRAWING (REVISION/VERSION) RECORD  
 DATE: 08/27/12  
 DESIGNED: JRM  
 DRAWN: JRM

DALLAS TX  
 800 MAYBETH STREET & GALLAGHER STREET  
**LANDSCAPE PLAN**  
 SCALE: 1/8" = 1'-0"

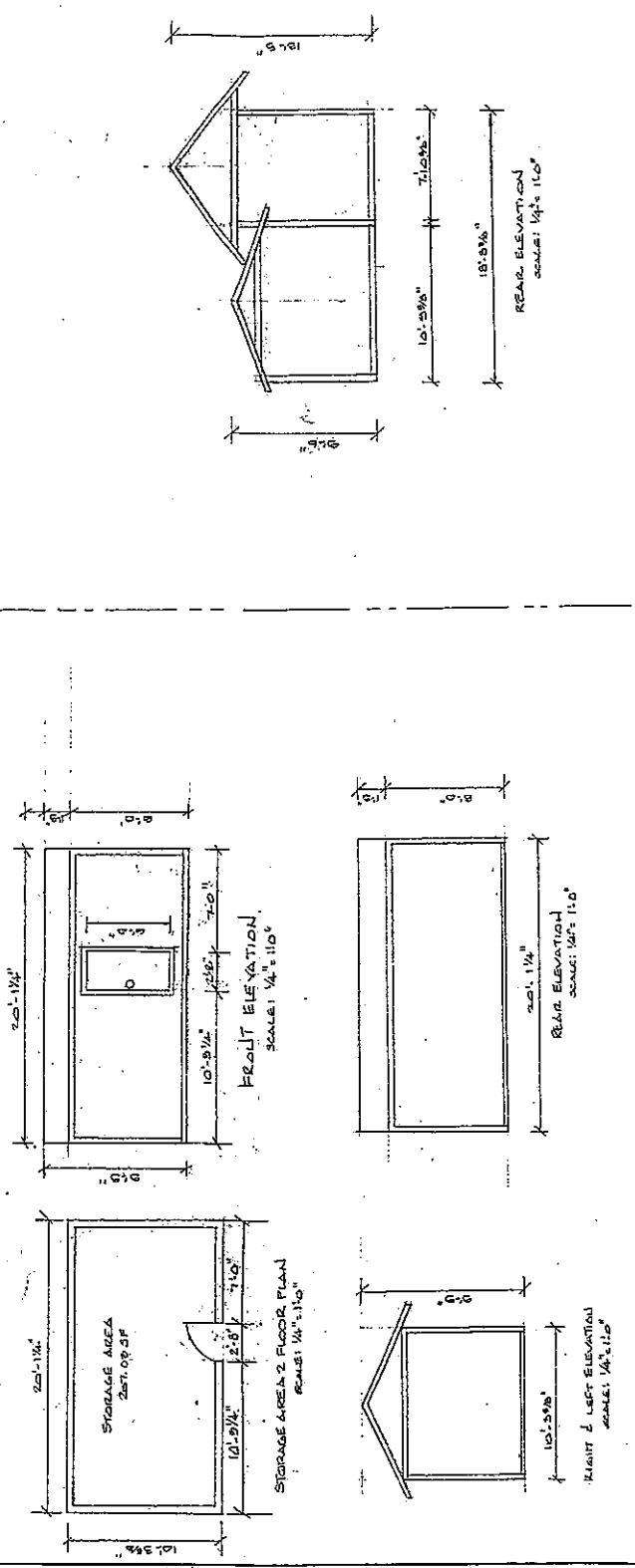
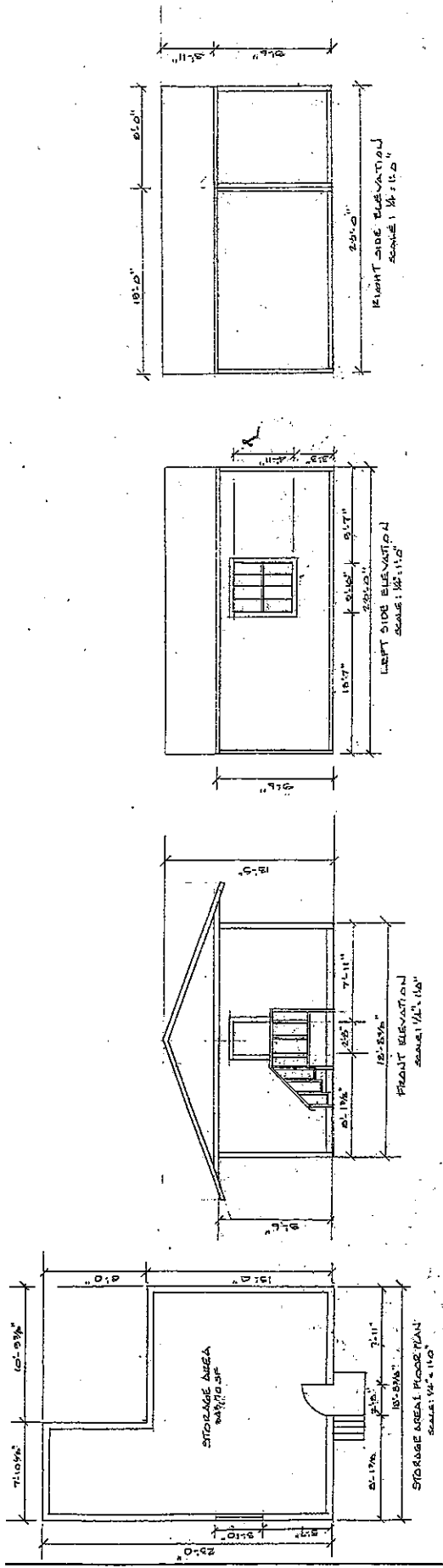
**SCHEME 1**

PHOTO: JRM  
 214988-4117



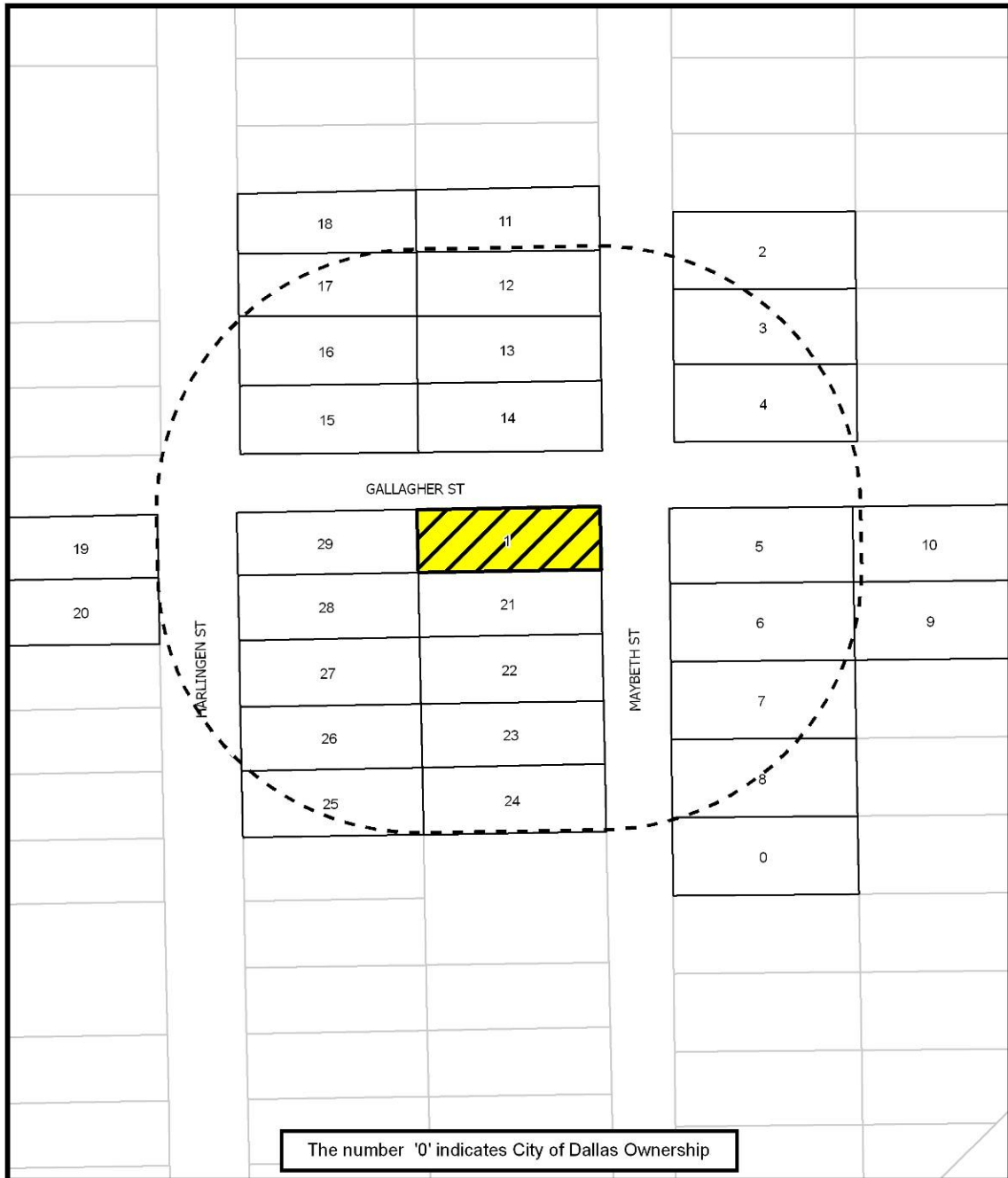
**NOTES:**

- BUSHES AND GRASS TO BE HAND-WATERED
- ALTERNATIVE SURFACE PAVING MATERIAL SHOULD BE 12" AWAY FROM TREE TRUNKS



R.J. GROCERY STORE		DATE: 01/15/10	SCALE: 1/4" = 1'-0"
STORAGE BUILDING		PROJECT: ALI 6	SCALE: 1/4" = 1'-0"
3439 MAYBETH ST		DESIGNER: ALI 6	SCALE: 1/4" = 1'-0"
MENDOTA GROUP		DATE: 01/15/10	SCALE: 1/4" = 1'-0"





 1:1,200	<b>NOTIFICATION</b>		Case no: <b>BDA112-014</b>
	<div style="border: 1px solid black; padding: 2px; display: inline-block;">200'</div> AREA OF NOTIFICATION <div style="border: 1px solid black; padding: 2px; display: inline-block;">29</div> NUMBER OF PROPERTY OWNERS NOTIFIED		Date: <b>8/28/2012</b>

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

***BDA112-014***

## ***29 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	3439 MAYBETH ST	REYES JUANA E
2	3510 MAYBETH ST	DELTORO AGUSTINA EST OF
3	3508 MAYBETH ST	RIOS JOE P
4	3502 MAYBETH ST	DE LA LUZ MARTIN MARIA
5	3436 MAYBETH ST	GARCIA RICHARD
6	3430 MAYBETH ST	MARTINEZ JUAN & ELOISA
7	3426 MAYBETH ST	MONTELONGO ROBERTO
8	3422 MAYBETH ST	DELAROSA SABINO & FILOMENA
9	3455 PALACIOS AVE	SAENZ ABEL GOMEZ
10	3459 PALACIOS AVE	CAVAZOS JOSE & MARCELA
11	3515 MAYBETH ST	ZUNIGA JENARO & CLAUDIA LORENA
12	3511 MAYBETH ST	LEON EDWARD
13	3507 MAYBETH ST	JUVENAL MARIA AMPARO
14	3503 MAYBETH ST	PALACIOS ROBERTO & MARIA JUANA
15	3502 HARLINGEN ST	MENDEZ SIMON M & MARIA FELIX
16	3506 HARLINGEN ST	HERRERA ARTURO
17	3510 HARLINGEN ST	ARREOLA J SOCORRO & ESPERANZA
18	3514 HARLINGEN ST	ARREOLA JOSE M & NORMA GH
19	3439 HARLINGEN ST	HINOJOSA JUAN A & MARIA ESTHER R HINOJOS
20	3435 HARLINGEN ST	RODRIGUEZ HERVEY JR & DARIELA
21	3435 MAYBETH ST	REYES JUANA E
22	3431 MAYBETH ST	DELAROSA SABINO G
23	3427 MAYBETH ST	FLORES DOMINGA A
24	3423 MAYBETH ST	ESQUIVEL ELISEO & PAULA
25	3422 HARLINGEN ST	PADILLA JESUS & ESPERANZA
26	3424 HARLINGEN ST	CARDOZA JAIME M
27	3430 HARLINGEN ST	SANCHEZ FILIBERTO
28	3434 HARLINGEN ST	BUSTOS SANTOS
29	3438 HARLINGEN ST	BUSTOS SANTOS

**FILE NUMBER:** BDA 112-089

**BUILDING OFFICIAL'S REPORT:**

Application of Tom Dohearty for a special exception to the side yard setback regulations for tree preservation at 6230 Lupton Drive. This property is more fully described as Lot 4 in City Block C/5481 and is zoned R-10(A), which requires a side yard setback of 6 feet. The applicant proposes to construct/maintain a structure and provide a 2 foot side yard setback, which will require a special exception to the side yard setback regulations of 4 feet for tree preservation.

**LOCATION:** 6230 Lupton Drive

**APPLICANT:** Tom Dohearty

**REQUEST:**

- A special exception to the side yard setback regulations of 4' for tree preservation is requested in conjunction with constructing and maintaining a one-story accessory/garage/storage structure, part of which is proposed to be located in the site's western 6' side yard setback on a site that is developed with a single family home.

**STANDARD FOR A SPECIAL TO THE SIDE YARD REGULATIONS FOR TREE PRESERVATION:**

The Dallas Development Code specifies that the board may grant a special exception to the minimum side yard requirements to preserve an existing tree. In determining whether to grant this special exception, the board shall consider the following factors:

- A) Whether the requested special exception is compatible with the character of the neighborhood.
- B) Whether the value of the surrounding properties will be adversely affected.
- C) Whether the tree is worthy of preservation.

**STAFF RECOMMENDATION:**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The City of Dallas Chief Arborist has no objection to the request and has determined that the trees on the site are worthy of preservation.
- The applicant has substantiated that there are trees on the site worthy of preservation (as deemed by a certified arborist), and that the requested special

exception is compatible with the character of the neighborhood and that the value of the surrounding properties will not be adversely affected. The applicant has shown how a similarly-sized slightly-redesigned accessory structure could be located on the site in the setback without requiring a request for variance or special exception to the board of adjustment but with the removal of one if not two existing “worthy of preservation” Red Oak trees, and has obtained support from the neighbor/owner to the west who is nearest to the proposed encroachment.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-10(A) (Single family district 10,000 square feet)  
North: R-10(A) (Single family district 10,000 square feet)  
South: R-10(A) (Single family district 10,000 square feet)  
East: R-10(A) (Single family district 10,000 square feet)  
West: R-10(A) (Single family district 10,000 square feet)

### **Land Use:**

The subject site is developed with a single family use. The areas to the north, east, south, and west are developed with single family uses.

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

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

### **Timeline:**

- July 27, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 16, 2012: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A.
- August 16, 2012: The Board Administrator emailed the applicant the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 7<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.

August 24, 2012: The applicant submitted additional information beyond what was submitted with the original application (see Attachment A).

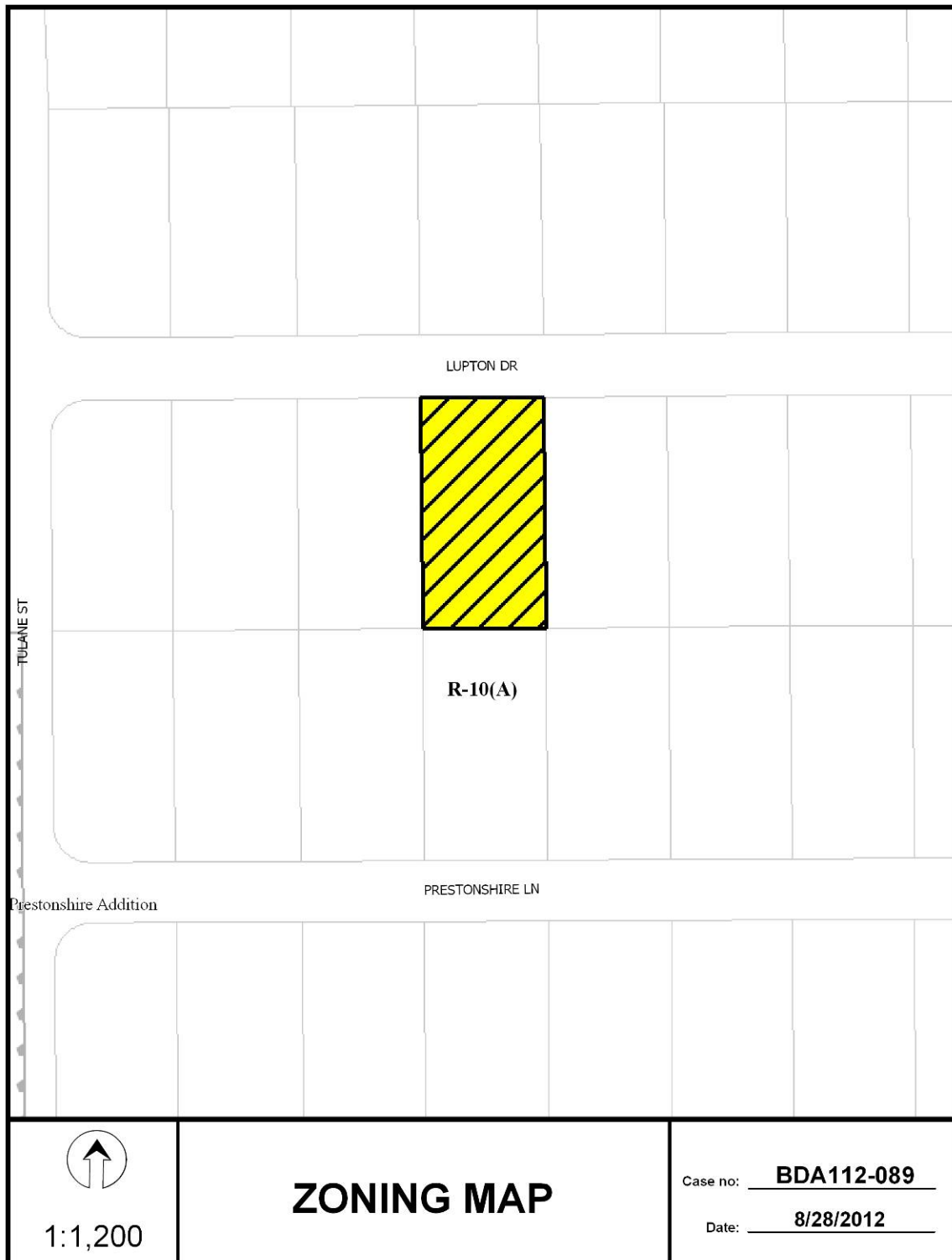
September 4, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, Building Inspection Chief Planners, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

September 7, 2012: The Chief Arborist submitted a memo to the Board Administrator (see Attachment B). This memo stated how he has no objection to the request and that he has determined that the trees on the site are worthy of preservation.

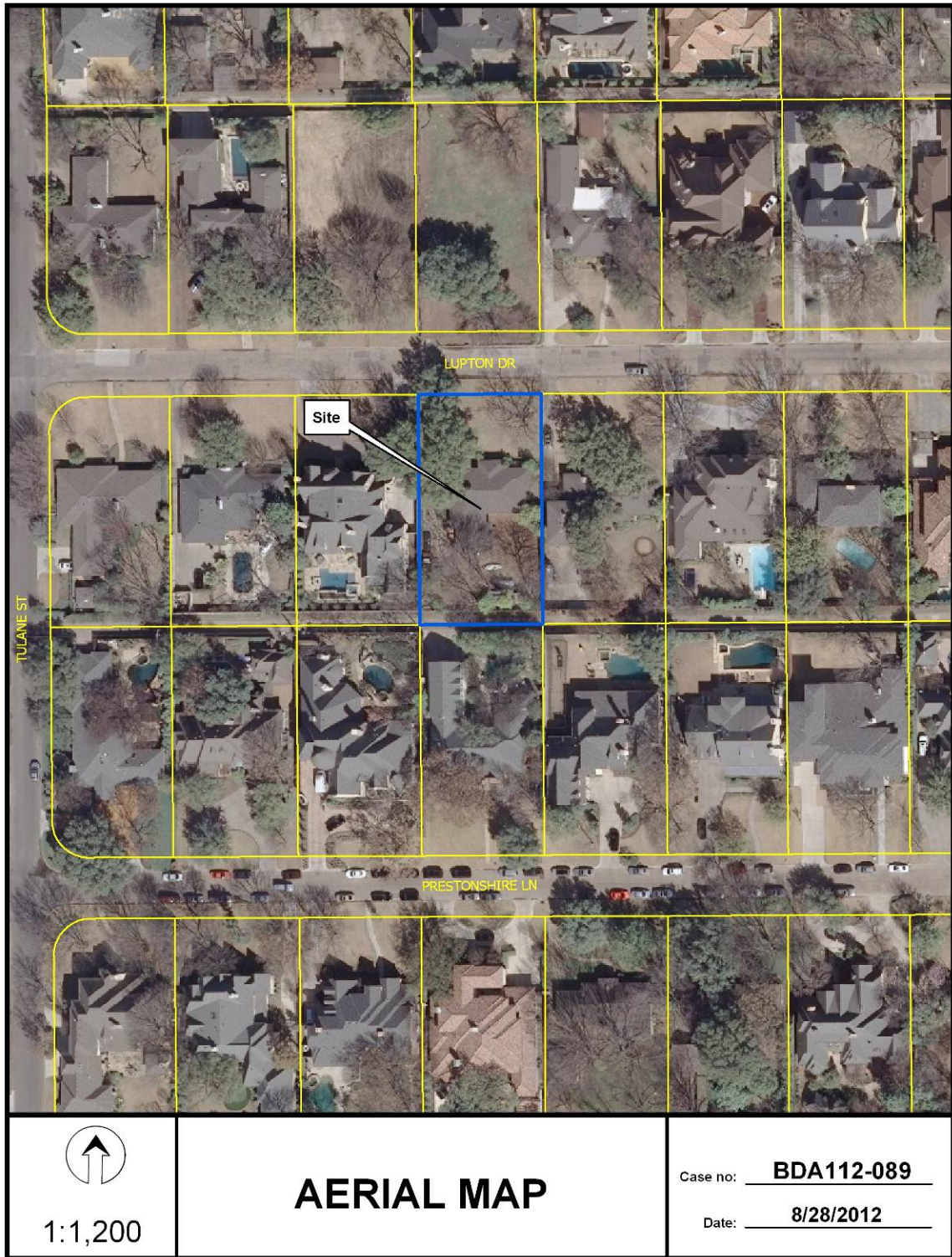
#### **GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on constructing and maintaining a one-story accessory/garage/storage structure, part of which is proposed to be located in the site's western 6' side yard setback on a site that is developed with a single family home.
- A 6' side yard setback is required in the R-10(A) Single Family District. The applicant has submitted a site plan that denotes an accessory structure that is located 2' from the site's western side property line (or 4' into the required 6' side yard setback). The submitted site plan denotes four trees in the southern half of the property: two 18" Red Oaks in the southwest corner, one 36" Red Oak near the center, and one 30" Red Oak in the southeast corner of the subject site.
- The Dallas Development Code allows the Board of Adjustment to consider this proposed structure encroachment in a side yard setback by an application for a special exception to the side yard setback regulations to preserve an existing tree with a standard largely based on compatibility, property values, and whether a tree located on a site that is worthy of preservation
- According to calculations taken from the site plan, about 150 square feet (or approximately 1/10) of the proposed approximately 1,200 square foot accessory/garage/storage structure is to be located in the site's western 6' side yard setback, and the footprint of the single family home on the site is approximately 3,200 square feet in area.
- The Dallas Development Code states that in a residential district, a person need not provide a side yard setback for a structure accessory to a residential use if the structure does not exceed 15' in height and is located in the rear 30 percent of the lot.

- If the proposed accessory structure were 10' shorter in length or redesigned into a rectangle and shifted 10' southward from what is shown on the submitted site plan, no side yard setback would be required. But the applicant states that locating the proposed accessory structure in the rear 30 percent of the lot would require removal of at least one of two Red Oak trees in the southwest corner of the subject site hence this special exception request to the board to the side yard setback regulations to preserve a tree.
- The applicant submitted information beyond what was submitted with the original application (see Attachment A). This information included the following:
  - a document providing additional details about the application;
  - photographs of the subject site;
  - two site plans of the property – one that depicts the applicant's proposal to the board, the other depicting a proposal showing compliance with setback but with the subsequent removal of at least one of two trees in the southwest corner of the subject site;
  - a copy of a letter from a certified arborist stating among other things how the applicant's request of the board will allow two healthy red oak trees to continue to thrive; and
  - two letters of support – one being from the owner of the property immediately west of the subject site nearest the proposed side yard encroachment.
- The City of Dallas Chief Arborist submitted a memo to the Board Administrator stating that he has no objection to the request and has determined that the trees on the site are worthy of preservation.
- The applicant has the burden of proof in establishing the following related to the side yard special exception request:
  1. Whether the requested special exception is compatible with the character of the neighborhood.
  2. Whether the value of the surrounding properties will be adversely affected.
  3. Whether the tree is worthy of preservation.
- If the Board were to grant the side yard special exception request of 4', imposing a condition whereby the applicant must comply with the submitted site plan, the structure in the side yard setback would be limited to that what is shown on this plan – which in this case is a portion of an accessory structure located 2' from the site's western side property line (or 4' into this 6' side yard setback).









8/24/12

Mr. Steve Long  
Board of Adjustment Administrator  
City of Dallas Sustainable Development and Construction  
1500 Marilla Street, Room 5BN  
Dallas, Texas 75201

Re: Case No. BDA 112-089

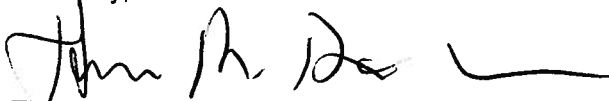
Dear Mr. Long –

Please include the attached documents to my case. Attached you will find two photographs of the southwest corner of my back yard at 6230 Lupton Drive. One of them is taken from inside my yard on my driveway; the other is taken from across the alley looking back at the corner of my yard. Both photos show the two 18" caliper red oaks that I am trying to preserve through this appeal. Note that the trees provide shade and beauty not only to my yard, but also to my neighbor to the west at 6222 Lupton Drive. Removal of these trees would cause an obvious adverse affect to both of our properties. This should very strongly address Section 51A-4.402(d)(2)(B) of the Dallas City Code. These two photographs should also demonstrate absolutely that these two trees are "worthy of preservation" as required in Section 51A-4.402(d)(2)(C). They are mature red oak trees, one of the more desirable species to be preserved.

Also attached please find two different site plans, labeled Sheet 2 and Sheet 2A. These have been highlighted with a red dashed line to indicate the allowable limits of building for a garage, or "accessory structure" as defined in the Dallas City Code. Sheet 2 is the site plan I am requesting to be able to construct, and it is the site plan included in my application package. Sheet 2A is a site plan that would be allowable by City Code without my having to make an appeal to the Board of Adjustment. Note that the garage shown on Sheet 2A is completely inside the red dashed lines and has a 2 foot side yard setback. It also requires removal of the two red oak trees to construct. The preferred option on Sheet 2 is the same size garage, but shears the square shape along a north-south line to produce a shape that shifts the west portion of the building to the north to stay clear of the existing two red oak trees. I have indicated a red hatched area on that drawing that indicates the portion of the garage that lies outside of the typical allowable building area. It totals only 40 square feet (4 feet by 10 feet). Both my neighbor at 6222 Lupton Drive and I believe that this slight bulge of the building across that building line is more than offset by the benefit of keeping two healthy, beautiful red oak trees that we can continue to enjoy after the garage is built. Thus, this exception is certainly "compatible with the character of the neighborhood" per 51A-4.402(d)(2)(A). I have also attached a memo signed by that neighbor, Mr. and Mrs. George Diamond, stating that they are in support of this special exception request.

Thank you for accepting these additional documents to my case.

Sincerely,



Thomas M. Dohearty, AIA, LEED AP  
6230 Lupton Drive  
Dallas, Texas 75225



6230 Lupton

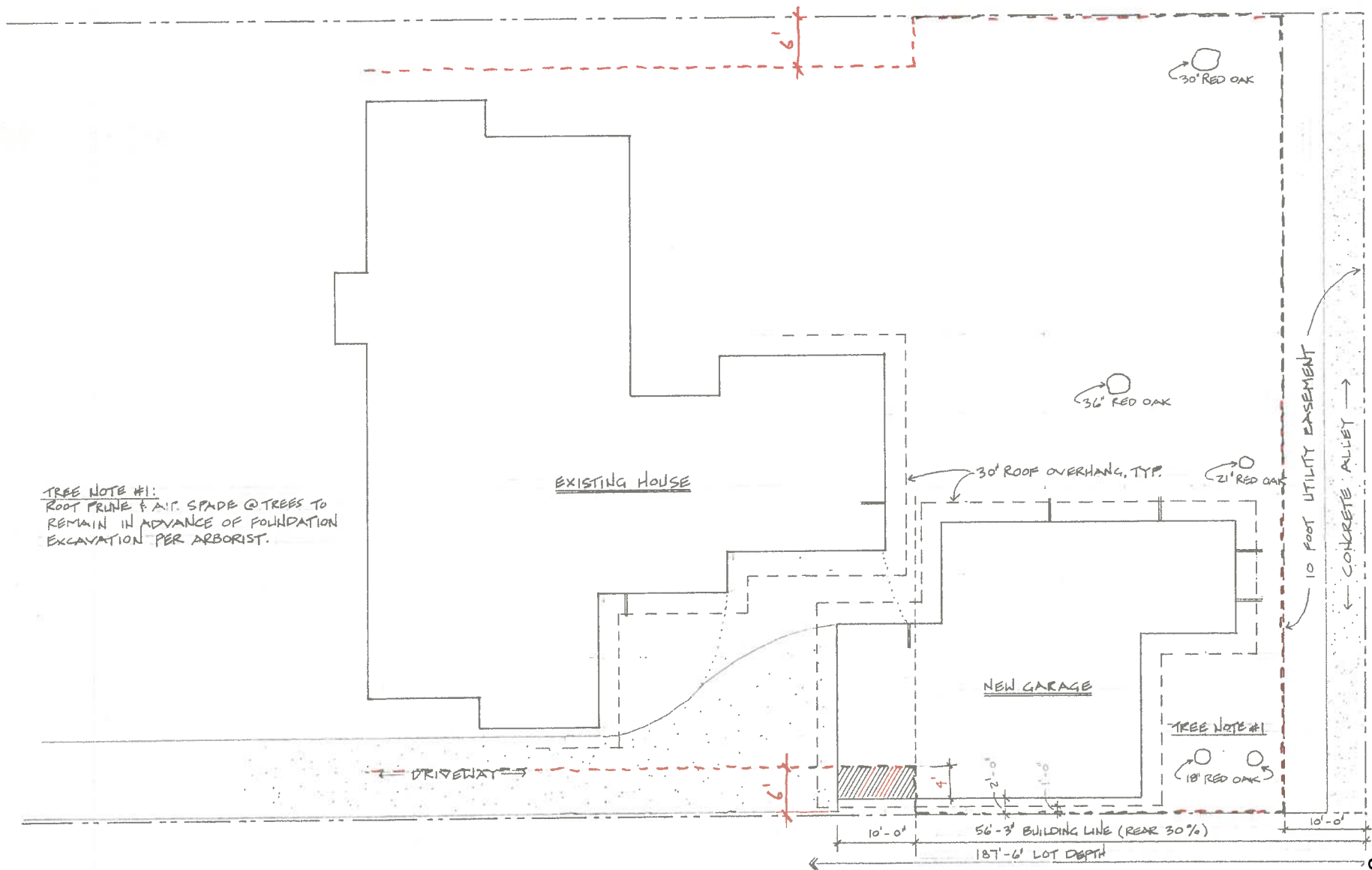
6222 Lupton



6222 Lupton

6230 Lupton

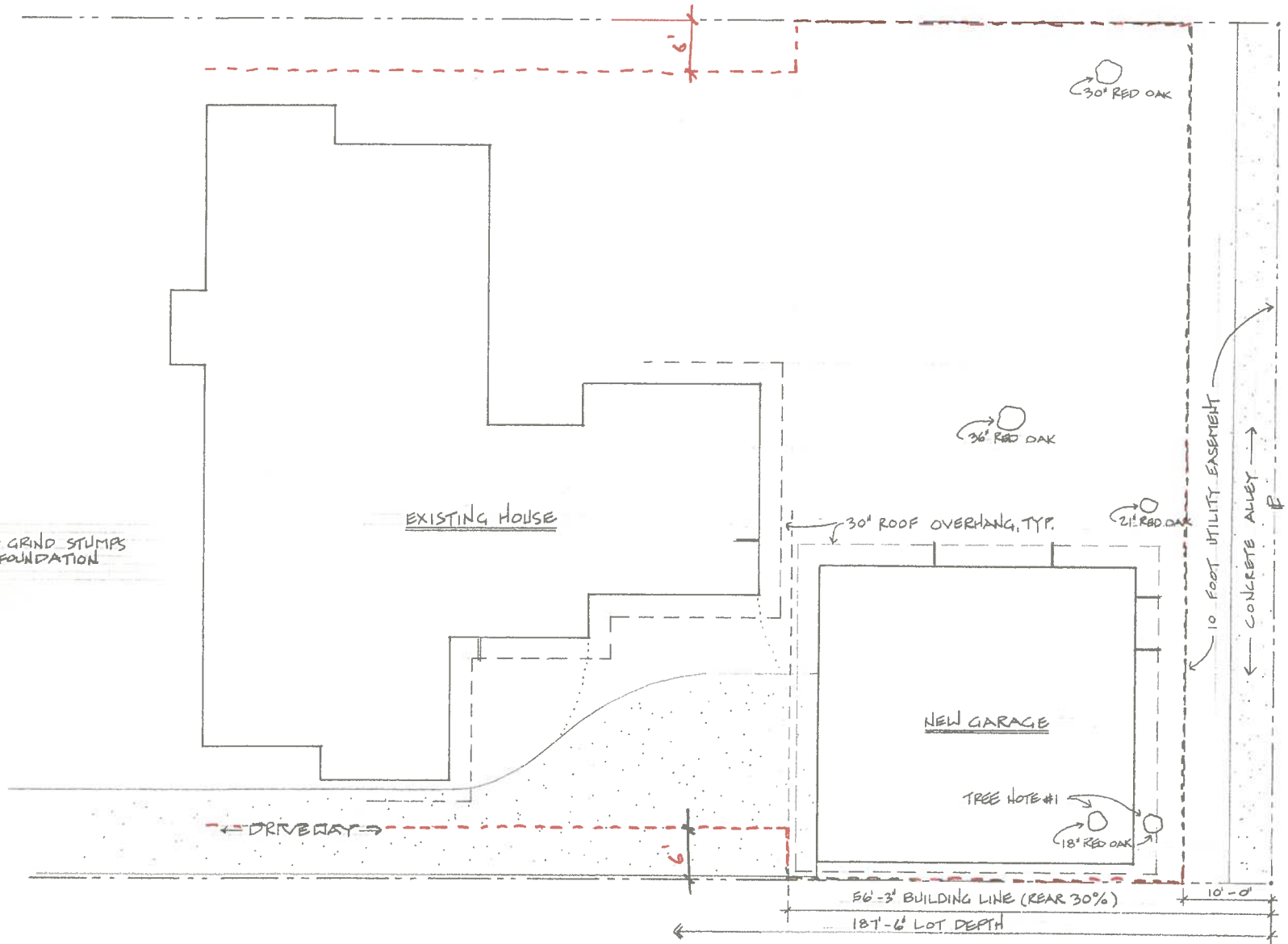




TREE NOTE #1:  
 ROOT PRUNE & AIR SPADE @ TREES TO  
 REMAIN IN ADVANCE OF FOUNDATION  
 EXCAVATION PER ARBORIST.

TREE NOTE #1  
 18' RED OAK

TREE NOTE #1:  
 REMOVE TREES & GRIND STUMPS  
 IN ADVANCE OF FOUNDATION  
 EXCAVATION.



① - SITE PLAN  
 1/8" = 1' - 0"

2-11

SHEET 2A



# Preservation Tree

August 29, 2012

Mr. Steve Long, Board of Adjustment Administrator  
City of Dallas Sustainable Development and Construction  
1500 Marilla Street, Room 5BN  
Dallas, Texas 75201

Dear Mr. Long :

We at Preservation Tree have been working with Tom Dohearty at his residence at 6230 Lupton Drive for many years, taking care of his trees and helping him plan for the proposed garage project. We have advised on selective tree removal in his back yard in order to maintain the health of the remaining five red oak trees. Mr. Dohearty has already removed a large hackberry tree that previously grew just to the north of the two 18 inch caliper red oaks in the southwest corner of his yard. He has also removed a red oak tree that was in decline that previously was located just northeast of the two large red oaks. Those removed trees influenced the growing pattern of the red oaks over the years, inhibiting their canopy growth to the north and east. This has left the drip line of the trees such that the proposed garage infringes very little on the current drip line of these trees.

We believe that the proposed site plan that Mr. Dohearty has submitted in his appeal to your Board for a special exception to the side yard requirements for the purpose of tree preservation will allow these two healthy red oak trees to continue to thrive. He has obviously planned a structure that is more complex than the simple square that would be allowed by the Zoning Code in which the two trees would have to be removed. We are making recommendations to him for pre-construction air spading and root pruning as needed to maximize their chances for healthy survival. We are in complete support of this appeal and believe the two red oak trees under discussion have excellent chances of living as a result of this action.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold Spiegel". The signature is fluid and cursive, with a large loop at the end.

Harold Spiegel, President  
Preservation Tree Services, Inc.

214.528.2266

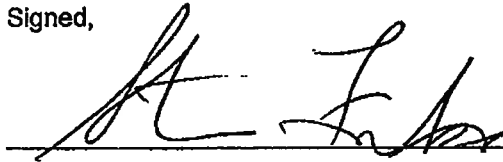
2222 Empire Central Dr. Dallas Texas 75235

preservationtree.com

Notice of Support  
For Case No. BDA 112-089  
6230 Lupton Drive

I, STEVE FRANKO am the owner of the residence  
located at 6147 LUPTON D. I have reviewed the documents  
and drawings prepared by Thomas M. Dohearty for the proposed New Garage to be constructed  
at his property at 6230 Lupton Drive and am in favor of this Special Exception, Case No. BDA  
112-089, in order to preserve the two large red oak trees in the southwest corner of that property.

Signed,




9/25/2012  
Date

Notice of Support  
For Case No. BDA 112-089  
6230 Lupton Drive

I, George Diamond and Kessie Diamond am the owner of the residence located at 6222 Lupton Dr, Dallas, TX 75225 I have reviewed the documents and drawings prepared by Thomas M. Dohearty for the proposed New Garage to be constructed at his property at 6230 Lupton Drive and am in favor of this Special Exception, Case No. BDA 112-089, in order to preserve the two large red oak trees in the southwest corner of that property.

Signed,

 8/23/12  
Date



# Memorandum



Date September 7, 2012  
To Steve Long  
Subject 6230 Lupton Drive – Arborist report

The arborist office has assessed the trees in proximity to the proposed structure on the property at 6230 Lupton Drive. I have determined the trees to be worthy of preservation.

I have no objection to the request.

Philip Erwin  
Chief Arborist



City of Dallas

APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 112-089

Data Relative to Subject Property:

Date: July 27, 2012

Location address: 6230 Lupton Drive

Zoning District: R-10(A)

Lot No.: 4 Block No.: C/5481 Acreage: 0.43

Census Tract: ~~B~~ 77.00

Street Frontage (in Feet): 1) 100 2) \_\_\_\_\_ 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

NE 3S

Owner of Property (per Warranty Deed): Thomas M. Dohearty

Applicant: Thomas M. Dohearty Telephone: (214)915-0913

Mailing Address: 6230 Lupton Drive Zip Code: 75225

E-mail Address: tom.dohearty@cunninghamarchitects.com

Represented by: \_\_\_\_\_ Telephone: \_\_\_\_\_

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

E-mail Address: \_\_\_\_\_

Affirm that an appeal has been made for a Variance or Special Exception 8, of 4 feet to the side yard setback for tree preservation.

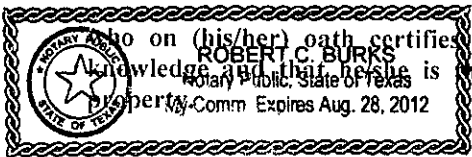
Application is made to the Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described appeal for the following reason:

I request that I can build a detached garage with a portion of it ten feet outside of the rear 30% of the lot, in order to preserve two 18" caliper red oak trees that would otherwise have to be demolished if the garage were completely within the rear 30% of the lot.

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 Thomas M. Dohearty (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 belief, he/she is the owner/or principal/or authorized representative of the subject property. Comm Expires Aug. 28, 2012

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

Subscribed and sworn to before me this 27th day of July 2012

Notary Public in and for Dallas County, Texas

The roof would extend an additional 30 inches.

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 TOM DOHEARTY

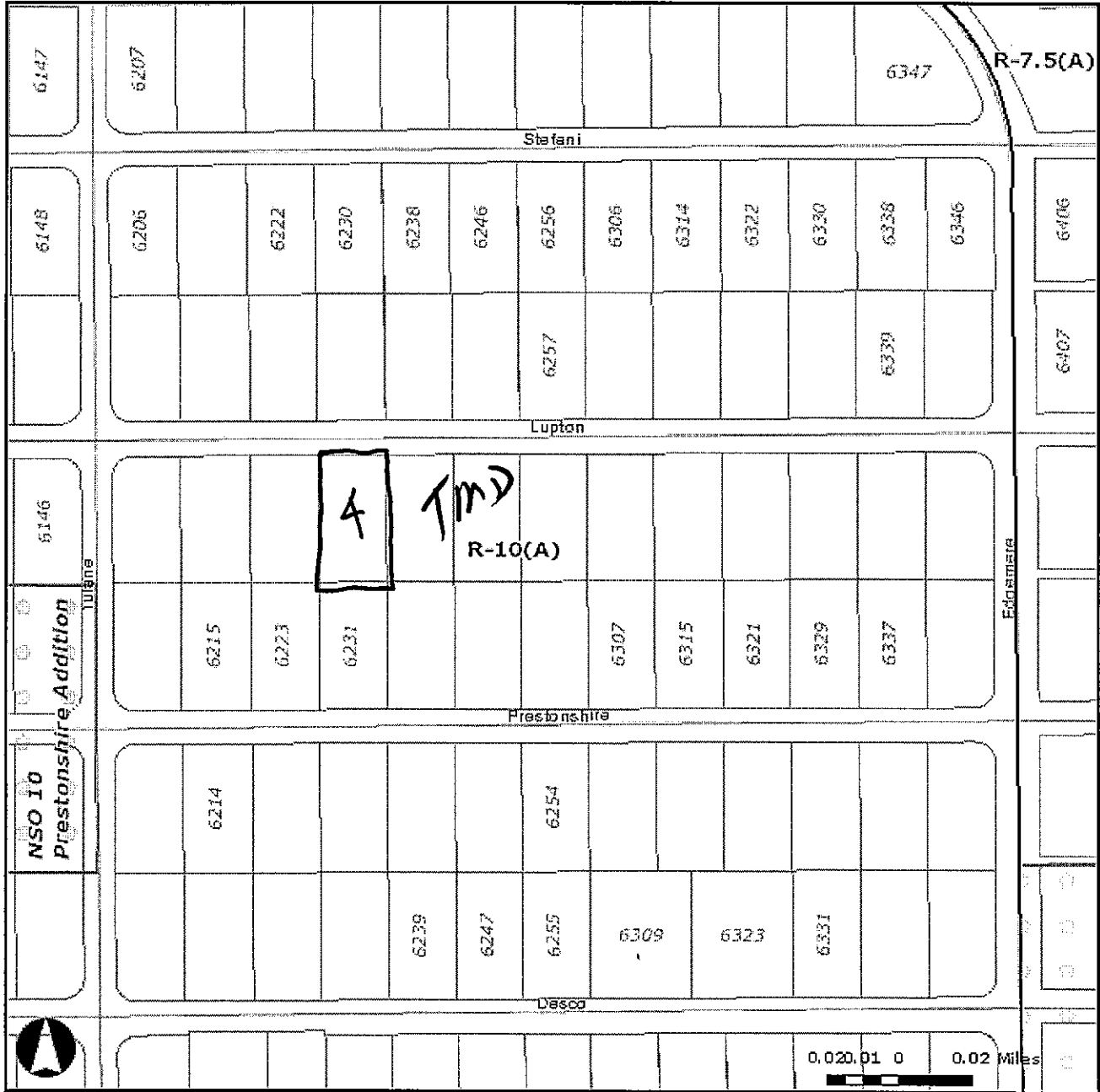
did submit a request for a special exception to the side yard setback regulation for tree preservation  
at 6230 Lupton Drive

BDA112-089. Application of Tom Dohearty for a special exception to the side yard setback regulations at 6230 Lupton Drive. This property is more fully described as lot 4 in city block C/5481 and is zoned R-10(A), which requires a side yard setback of 6 feet. The applicant proposes to construct a single family residential accessory structure and provide a 2 foot side yard setback, which will require a 4 foot special exception to the side yard setback regulation for tree preservation.

Sincerely,

  
Lloyd Denman, Building Official

# City of Dallas Zoning



### Address Candidates

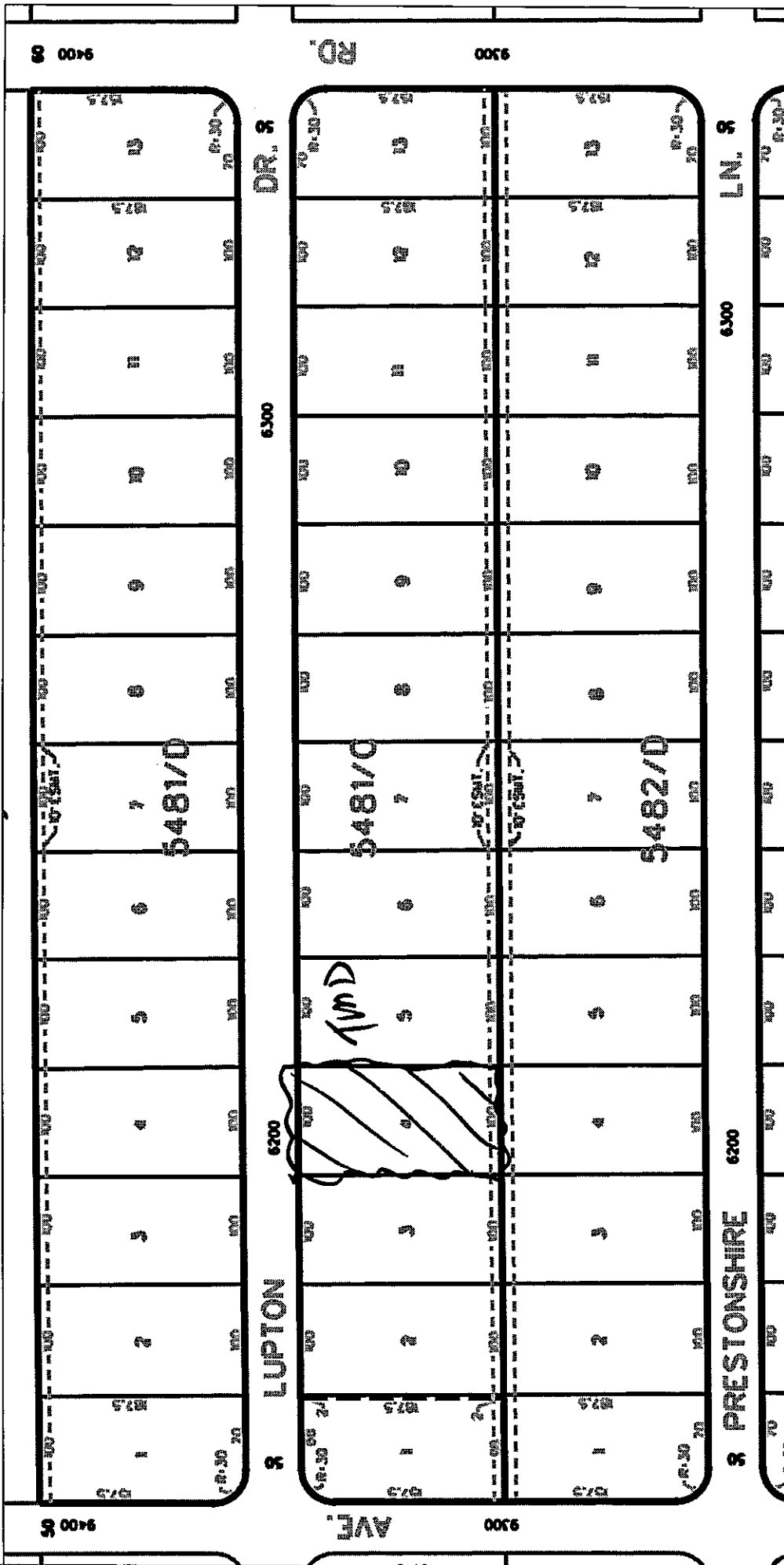
- Address Candidates
- City Boundaries
- County
- Certified Parcels
- DISD Sites
- Council Districts
- Waterways

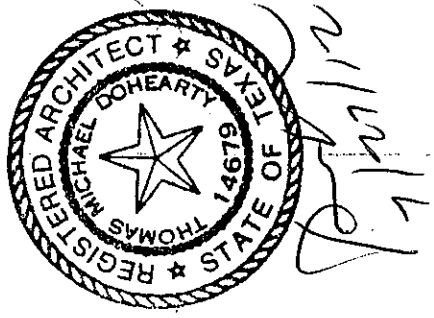
### SUP

- Dry Overlay
- D
- D-1
- Historic Overlay
- Historic Subdistricts
- NSO Overlay
- NSO Subdistricts

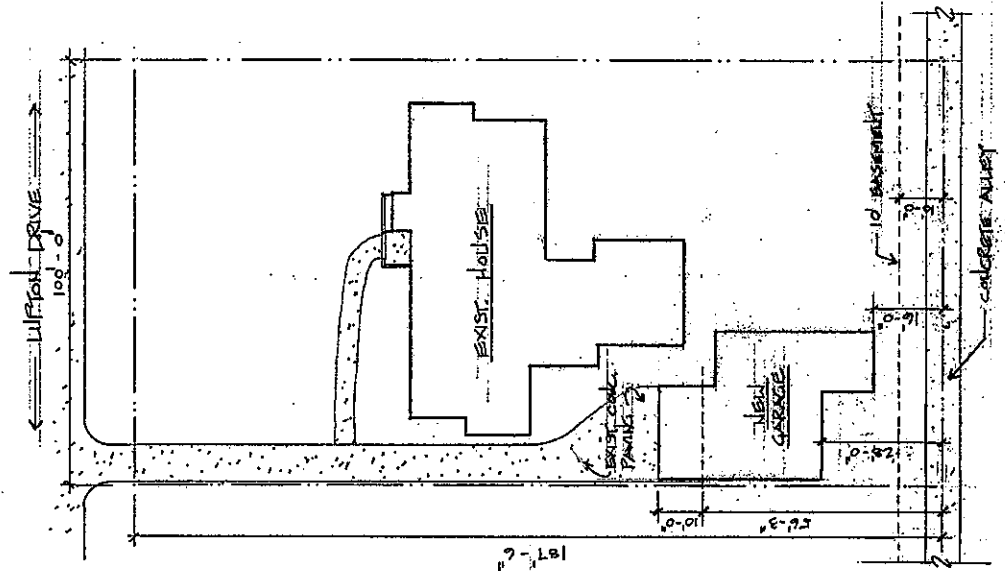
### PDS Subdistricts

- Base Zoning
- Floodplain
- 100 Flood Zone
- Mill's Creek
- Peak's Branch
- X PROTECTED BY LEVEE
- Pedestrian Overlay
- CP





OWNER:  
TOM DOHEARTY (214) 915-0913  
GARAGE  
6230 LUPTON DRIVE  
DALLAS, TEXAS 75225



6230 LUPTON DRIVE  
DALLAS, TEXAS  
NEW DETACHED GARAGE

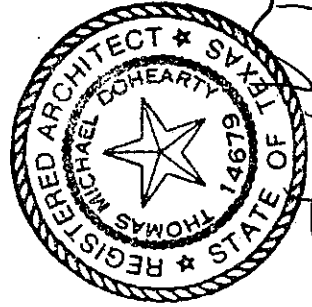
GENERAL NOTES

1. TIERS SHALL BE 12 DIA. REINF. W/ 10#0 REBAR @ CENTER.
2. CONCRETE SLAB SHALL BE 6" THICK UNDO REINF. W/ #3 REBAR @ 16" O.C. B.M. IS TO BE PLACED ON 4" VAP. CURTAINS ON EXIST. GRADE.

1 FLOOR PLAN  
1" = 20'-0"

GARAGE  
8230 LIFTON DRIVE  
DALLAS, TEXAS 75225  
OWNER:  
THE DOHEARTY ARCHITECTS

3"Ø RED OAK



211217

3"Ø RED OAK

TREE DATE #1:  
DO NOT REMOVE. TRUNK STAKE CONTIGUOUS TO  
REMAIN IN ADVANCE OF FOUNDATION  
EXCAVATION PER ARBORIST

EXISTING HOUSE

30' RAMP OVERSIGHT, TIP  
2 1/2" RES OAK

TRUCK DRIVEWAY

DRIVEWAY

10' FOOT UTILITY EASEMENT  
CONCRETE ALLEY

5 1/2" Ø BOLLARD, LINES (SPACE 30%)

18' 6" PER DRIVEWAY

1- SITE PLAN

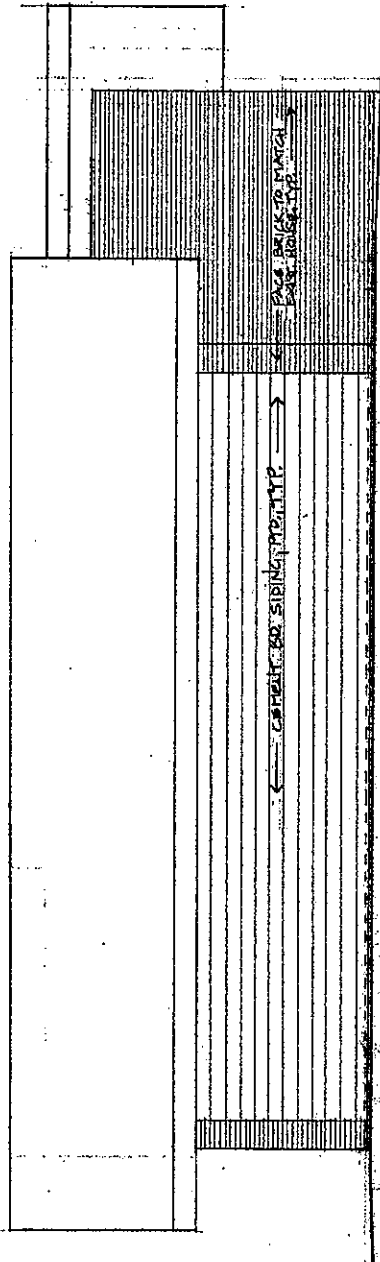
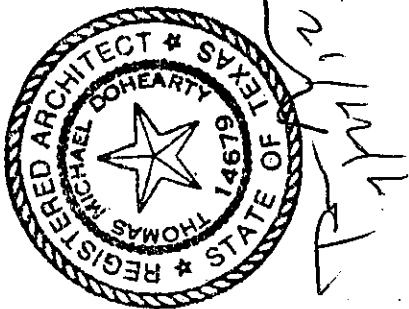
1/8" = 1' = 0



SHEET 2

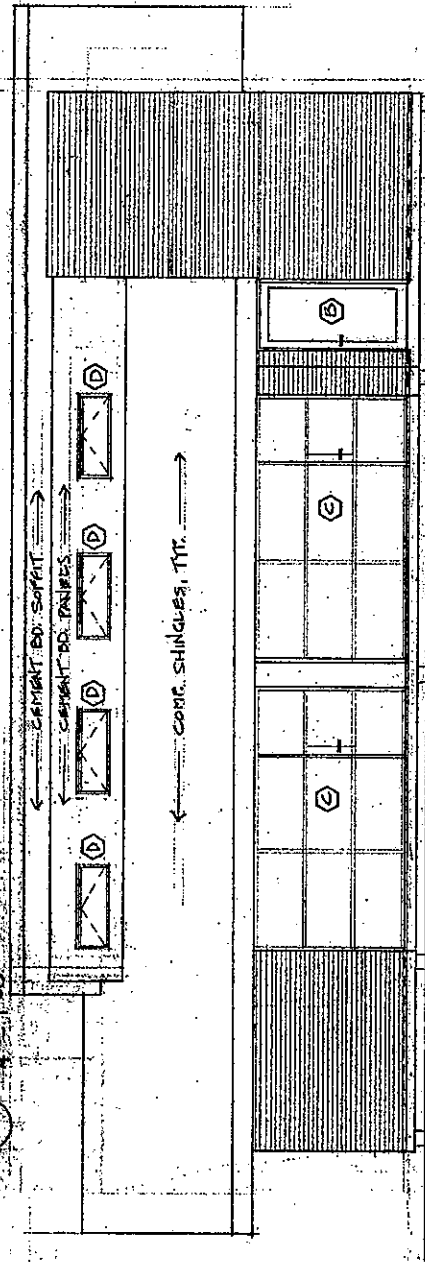




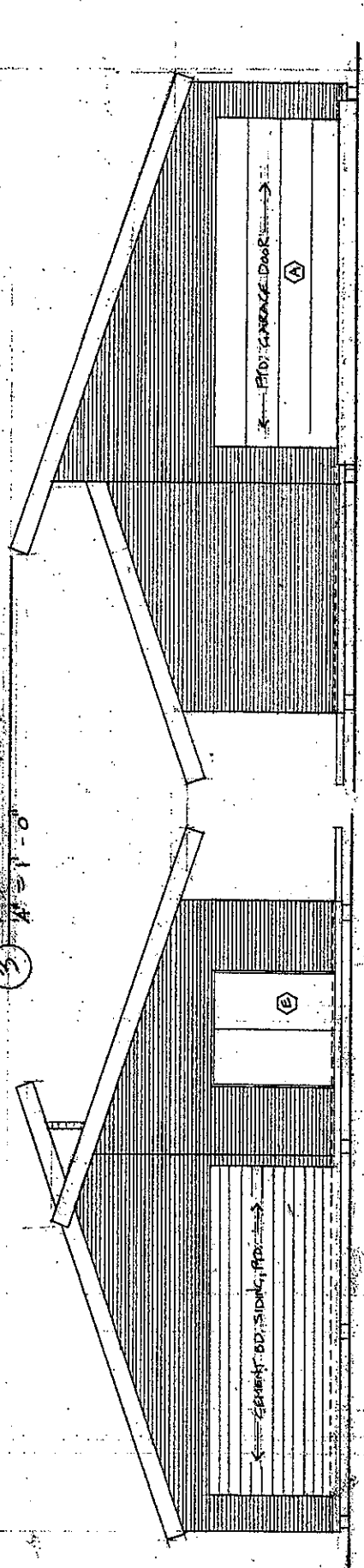


1 WEST ELEVATION  
 1/4" = 1'-0"

WINDOW & DOOR SCHEDULE	PKT. LIST	HEIGHT	DESCRIPTION
A	18'-0"	7'-0"	11/8" GL. MTL. BT. OVERHEAD DOOR CO.
B	3'-0"	3'-0"	ACQU. GLAD. HD. BT. MTLK.
C	10'-0"	7'-0"	AQUA. STORNGHT BT. MTL. WINDOW
D	4'-0"	4'-0"	AQUA. GLAD. HD. BT. MTLK.
E	16'-0"	7'-0"	ACQU. STORNGHT BT. MTL. WINDOW

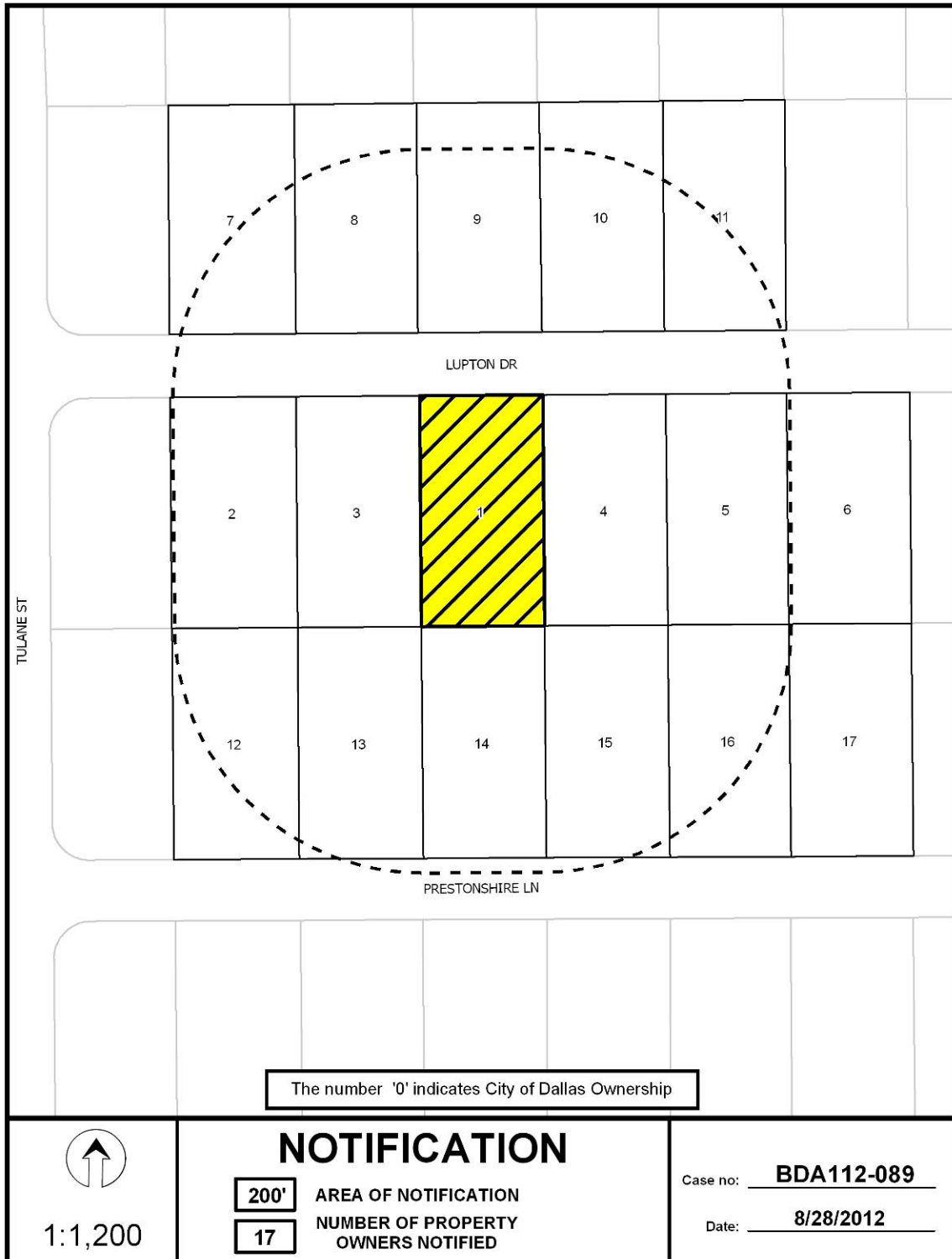


3 EAST ELEVATION  
 1/4" = 1'-0"



2 SOUTH ELEVATION  
 1/4" = 1'-0"

4 NORTH ELEVATION  
 1/4" = 1'-0"



1:1,200

# NOTIFICATION

**200'**

AREA OF NOTIFICATION

**17**

NUMBER OF PROPERTY OWNERS NOTIFIED

Case no: **BDA112-089**

Date: **8/28/2012**

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

***BDA112-089***

## ***17 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	6230 LUPTON DR	DOHEARTY THOMAS M
2	6214 LUPTON DR	FRANKS CHARLES B
3	6222 LUPTON DR	DIAMOND GEORGE L & LESLIE
4	6238 LUPTON DR	STEPHENSON CUSTOM BUILDERS IN
5	6246 LUPTON DR	HURST BRIAN & LISA HURST
6	6256 LUPTON DR	ARCHER LAURA B & SANDRA K HALLIBURTON
7	6215 LUPTON DR	JAMES JANICE E
8	6223 LUPTON DR	JAMES JANICE
9	6231 LUPTON DR	JAIN RAJEEV & MAMTA K
10	6239 LUPTON DR	SCHENCK DAVID JOHN
11	6247 LUPTON DR	HERNANDEZ CARLOS M & DEBORAH P
12	6215 PRESTONSHIRE LN	WALKER JAMES A & LAURIE
13	6223 PRESTONSHIRE LN	TOUBIN JEFFREY & FRAN
14	6231 PRESTONSHIRE LN	STONE MARVIN J
15	6239 PRESTONSHIRE LN	GEHAN TIMOTHY E
16	6247 PRESTONSHIRE LN	SPOMER ERIC L & BETTY W
17	6255 PRESTONSHIRE LN	DHINGRA ARUN H & KOSHI

**FILE NUMBER:** BDA 112-092

**BUILDING OFFICIAL'S REPORT:**

Application of Lauren Nitschke, represented by Tom Straight, for a special exception to the side yard setback regulations at 1217 N. Tyler Street. This property is more fully described as Lot 17 in City Block 8/3841 and is zoned CD-13 (Subarea 1), which requires a side yard setback of 5 feet. The applicant proposes to construct/maintain a carport structure and provide a 0 foot side yard setback, which will require a special exception to the side yard setback regulations for a carport of 5 feet.

**LOCATION:** 1217 N. Tyler Street

**APPLICANT:** Lauren Nitschke  
Represented by Tom Straight

**REQUEST:**

- A special exception to the side yard setback regulations of 5' is requested in conjunction with constructing and maintaining an approximately 560 square foot carport that would attach to a single-family home, part of which is proposed to be located in the site's southern 5' side yard setback.

**STANDARD FOR A SPECIAL EXCEPTION TO ALLOW A CARPORT IN THE SIDE YARD:**

The Board of Adjustment may grant a special exception to the minimum side yard requirements to allow a carport for a single-family or duplex use when, in the opinion of the Board, the carport will not have a detrimental impact on surrounding properties. In determining whether to grant a special exception, the Board shall consider the following:

- (1) Whether the requested special exception is compatible with the character of the neighborhood.
- (2) Whether the value of surrounding properties will be adversely affected.
- (3) The suitability of the size and location of the carport.
- (4) The materials to be used in construction of the carport.

(Storage of items other than motor vehicles is prohibited in a carport for which a special exception is granted in this section of the Code).

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the side yard setback regulations since the basis for this type of appeal is *when in the*

*opinion of the board*, the carport will not have a detrimental impact on surrounding properties.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: CD 13 (Subarea 1) (Conservation District)  
North: CD 13 (Subarea 1) (Conservation District)  
South: CD 13 (Subarea 1) (Conservation District)  
East: CD 13 (Subarea 1) (Conservation District)  
West: CD 13 (Subarea 1) (Conservation District)

**Land Use:**

The subject site is developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

**Zoning/BDA History:**

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

**Timeline:**

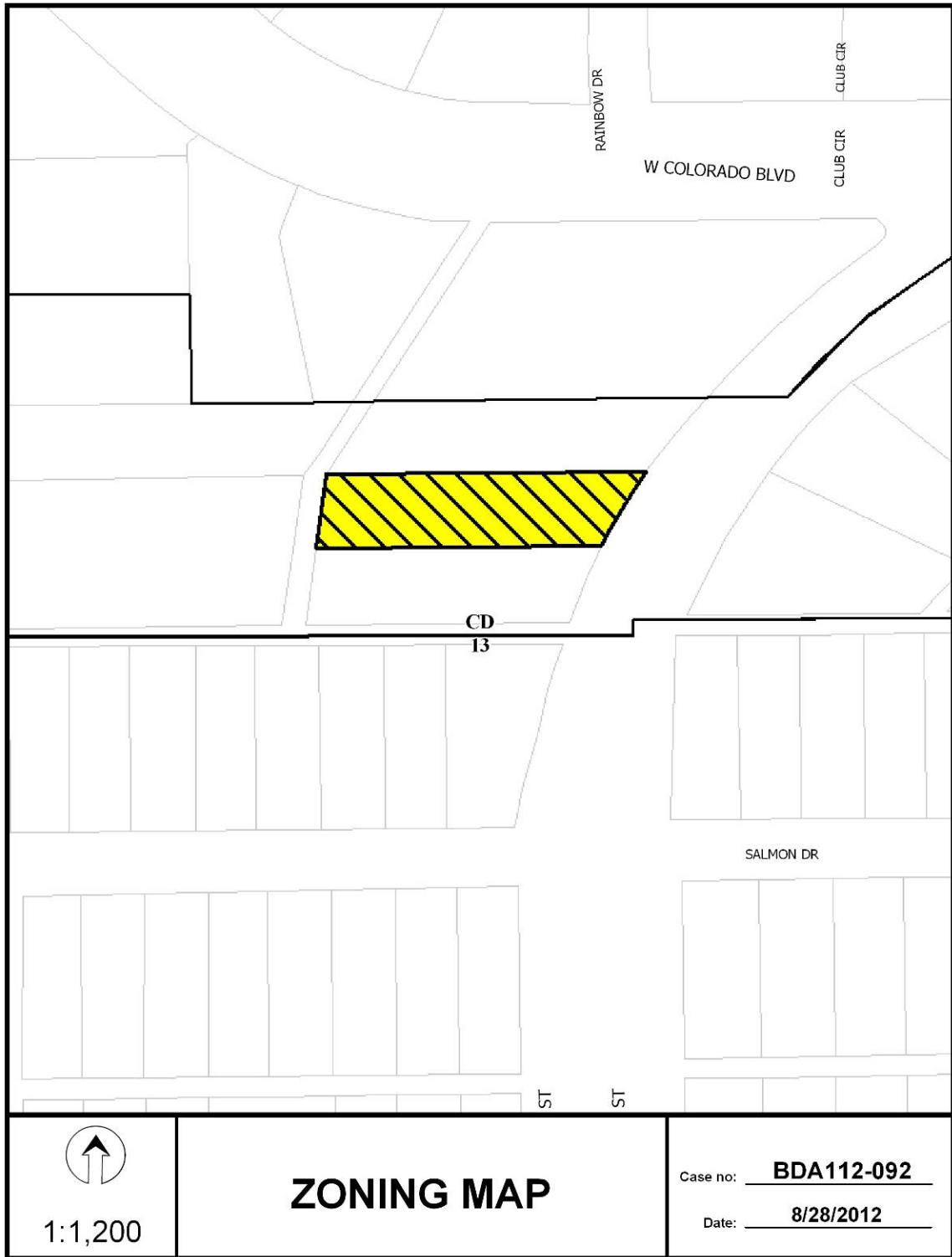
- August 8, 2012: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- August 16, 2012: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- August 16, 2012: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the August 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis; and the September 7<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.
- August 29, 2012: The applicant’s representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).

September 4, 2012: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for September public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Division Assistant Director, the Sustainable Development and Construction Department Engineering Division Assistant Director, Building Inspection Chief Planners, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the Chief Arborist, and the Assistant City Attorney to the Board.

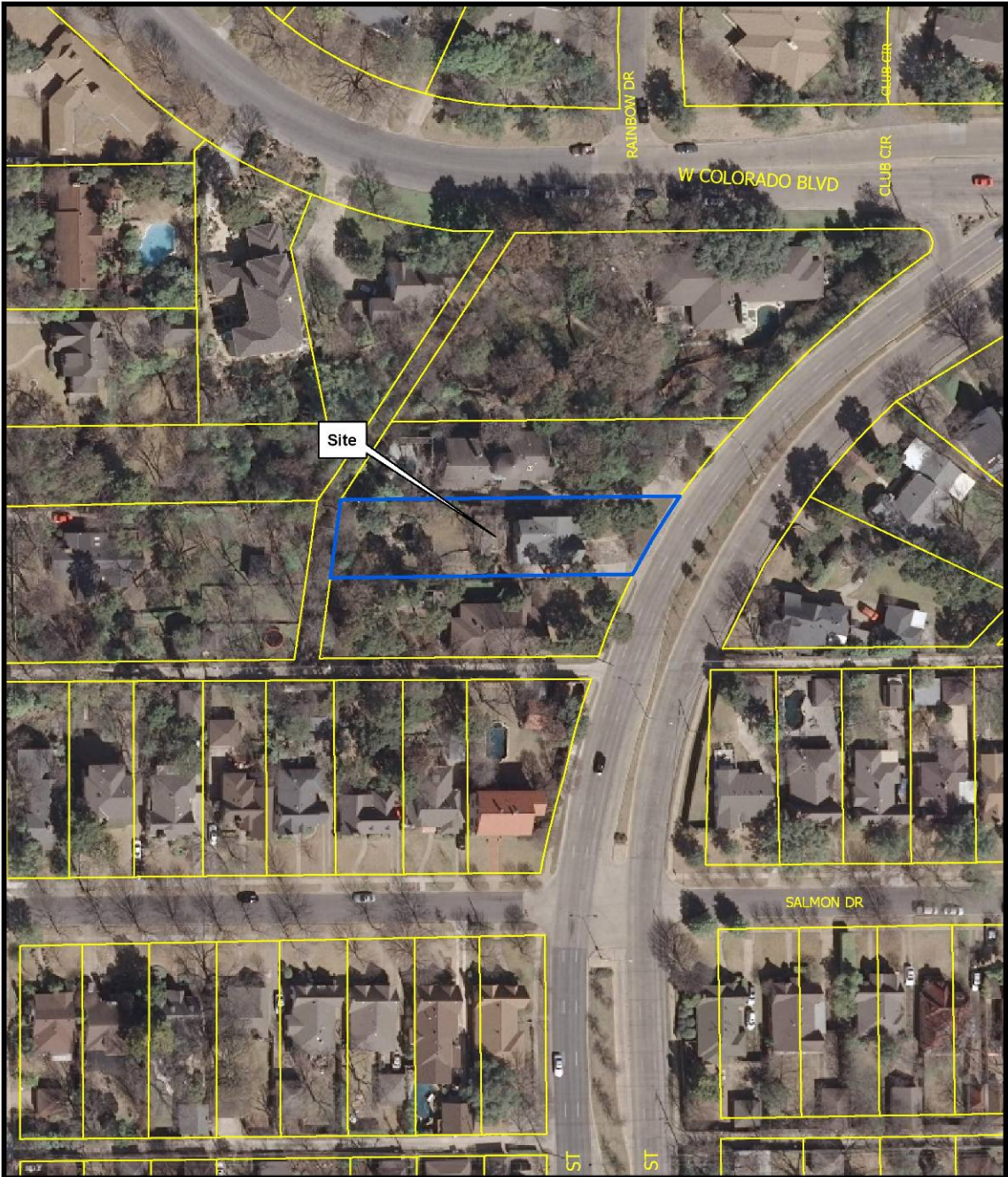
### **GENERAL FACTS/STAFF ANALYSIS:**

- This request focuses on constructing and maintaining an approximately 560 square foot carport that would attach to a single-family home, part of which is proposed to be located in the site's southern 5' side yard setback.
- A 5' side yard setback is required in the CD 13 (Subarea 1) zoning district. The applicant has submitted a revised site plan and revised elevations (see Attachment A) indicating the location of the proposed carport about 1' away from the site's southern side property line or about 4' into the 5' side yard setback.
- The Dallas Development Code provides for the Board of Adjustment to consider special exceptions for *carports* in the side yard with a specific basis for this type of appeal. (Note that the Dallas Development Code does not provide a definition of "carport" however Building Inspection interprets a "carport" to be a structure that would cover a vehicle and be open on at least one side. Building Inspection has recently been interpreting what would appear to a layperson to be a garage without a garage door as a "carport").
- The Dallas Development Code provides for the Board of Adjustment to consider *variances for structures* in the side yard setback with a different basis for appeal than that of *special exceptions for carports* in the side yard setback.
- The following information was gleaned from the submitted revised site plan:
  - The carport is represented to be 40' +/- in length and 14' in width (approximately 560 square feet in total area) of which approximately 160 square feet (or approximately 1/3) is located in the southern side yard setback.
- The following information was gleaned from the submitted revised elevations:
  - Represented to be approximately 9' in height with brick columns and brick arch that "alludes to lines of home's front elevation."
- The subject site is approximately 230' x 61' (or about 14,000 square feet) in area.
- The applicant has the burden of proof in establishing the following:
  - that granting this special exception to the side yard setback regulations of 5' will not have a detrimental impact on surrounding properties.
- As of September 10, 2012, three letters had been submitted in support of the request and no letters had been submitted in opposition.
- Granting this request and imposing the following conditions would require that the carport be constructed/maintained in the location and of the heights and materials as shown on these documents:

1. Compliance with the submitted revised site plan and revised elevations is required.
2. The carport structure must remain open at all times.
3. No lot-to-lot drainage is permitted in conjunction with this carport special exception.
4. All applicable building permits must be obtained.
5. No item (other than a motor vehicle) may be stored in the carport.







1:1,200

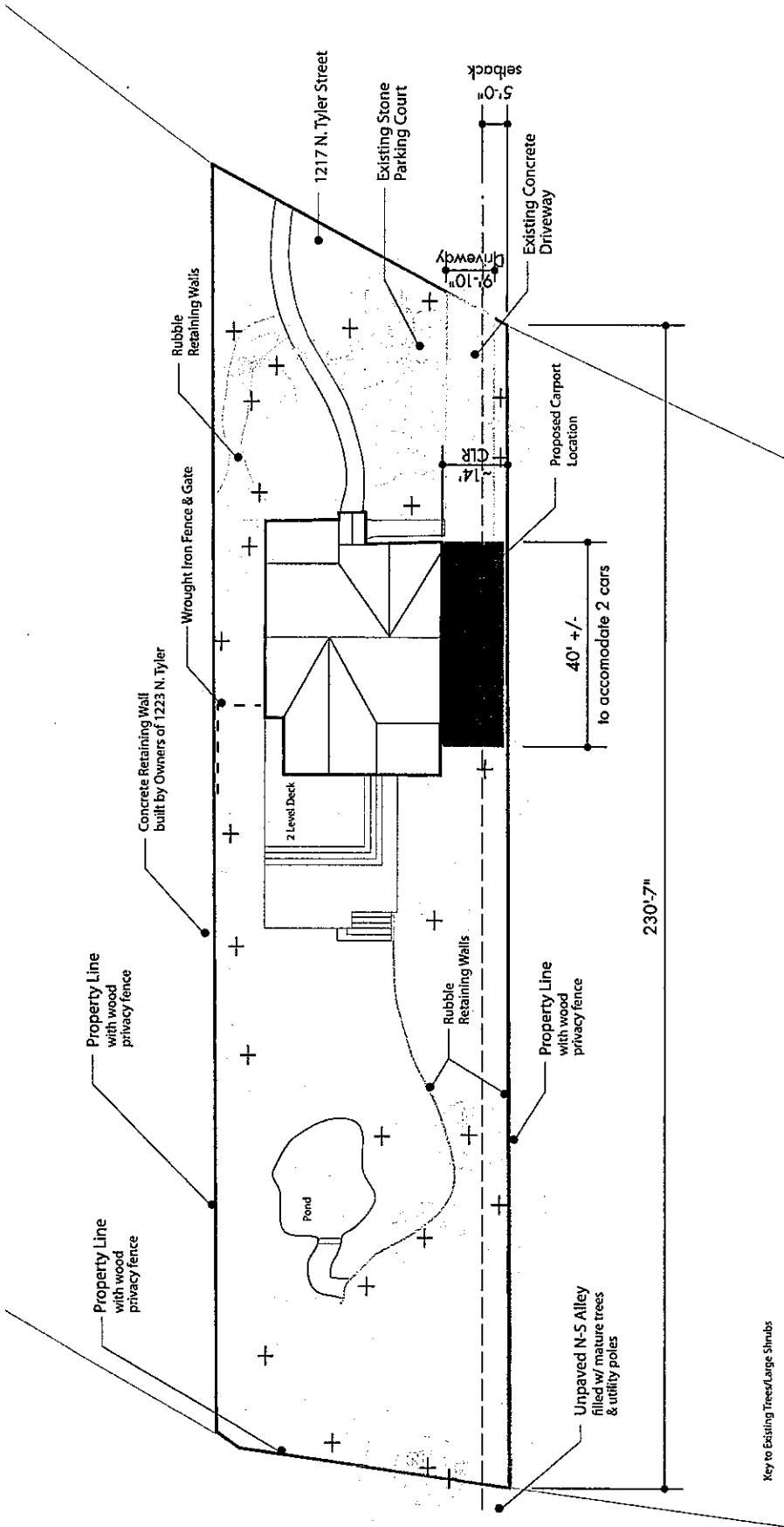
# AERIAL MAP

Case no: BDA112-092

Date: 8/28/2012



CONCEPT ONLY  
NOT FOR CONSTRUCTION

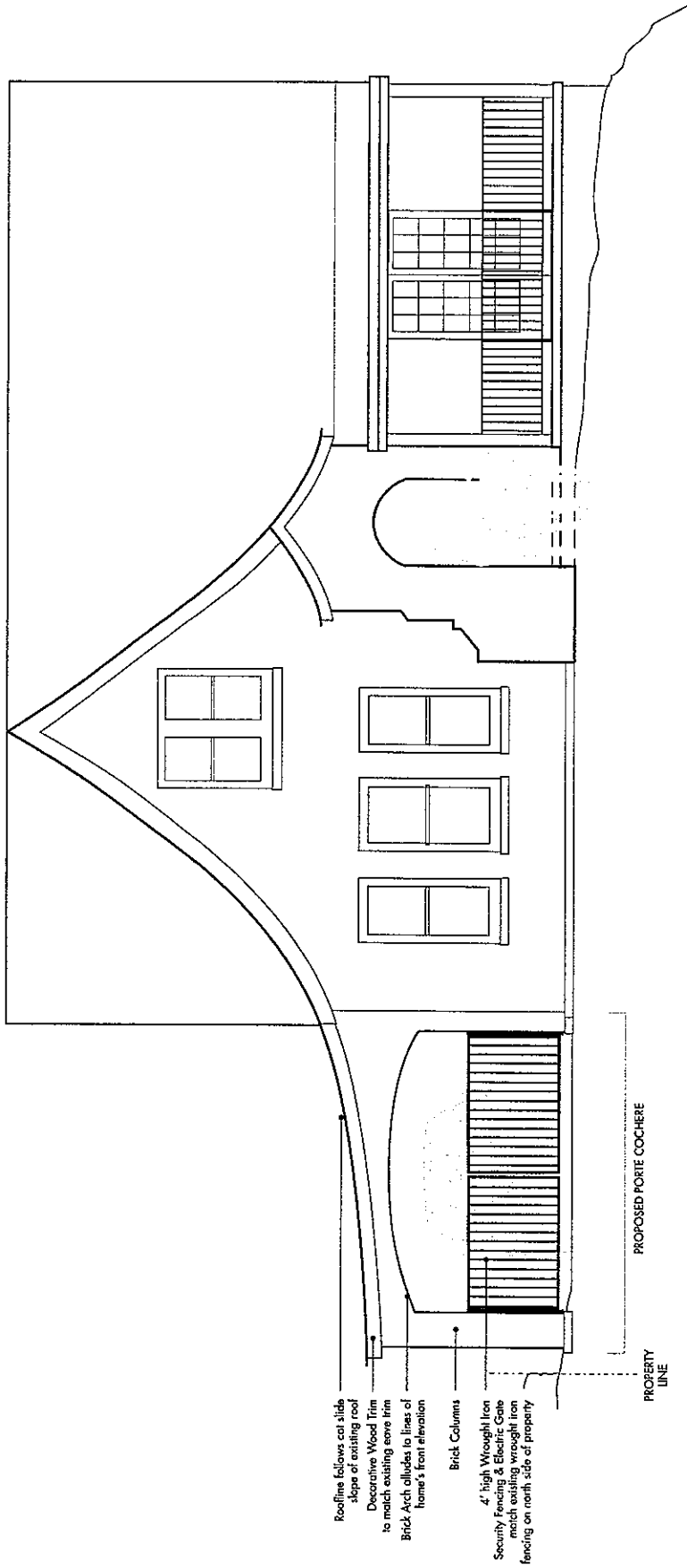


Key to Existing Trees/Large Shrubs

- |                 |                |                                  |                    |               |
|-----------------|----------------|----------------------------------|--------------------|---------------|
| 1 Red Oak       | 6 American Elm | 11 Cherry Laurel                 | 17 Cedar Elm       | 23 Min. Cedar |
| 2 Cherry Laurel | 7 Pecan        | 12 Cedar Elm (leaving supported) | 18 OK Redbud       | 24 OK Redbud  |
| 3 Cedar Elm     | 8 OK Redbud    | 13 Chittamwood                   | 19 Min. Cedar      | 25 Min. Cedar |
| 4 Ligustrum     | 9 Pecan        | 14 Red Oak                       | 20 Crepe Myrtle    | 26 OK Redbud  |
| 5 OK Redbud     | 10 OK Redbud   | 15/16 Min. Cedar                 | 21/22 Crepe Myrtle | 27 Pecan      |

PROPOSED PORTE COCHERE ADDITION  
1217 N. TYLER  
DALLAS TEXAS 75208

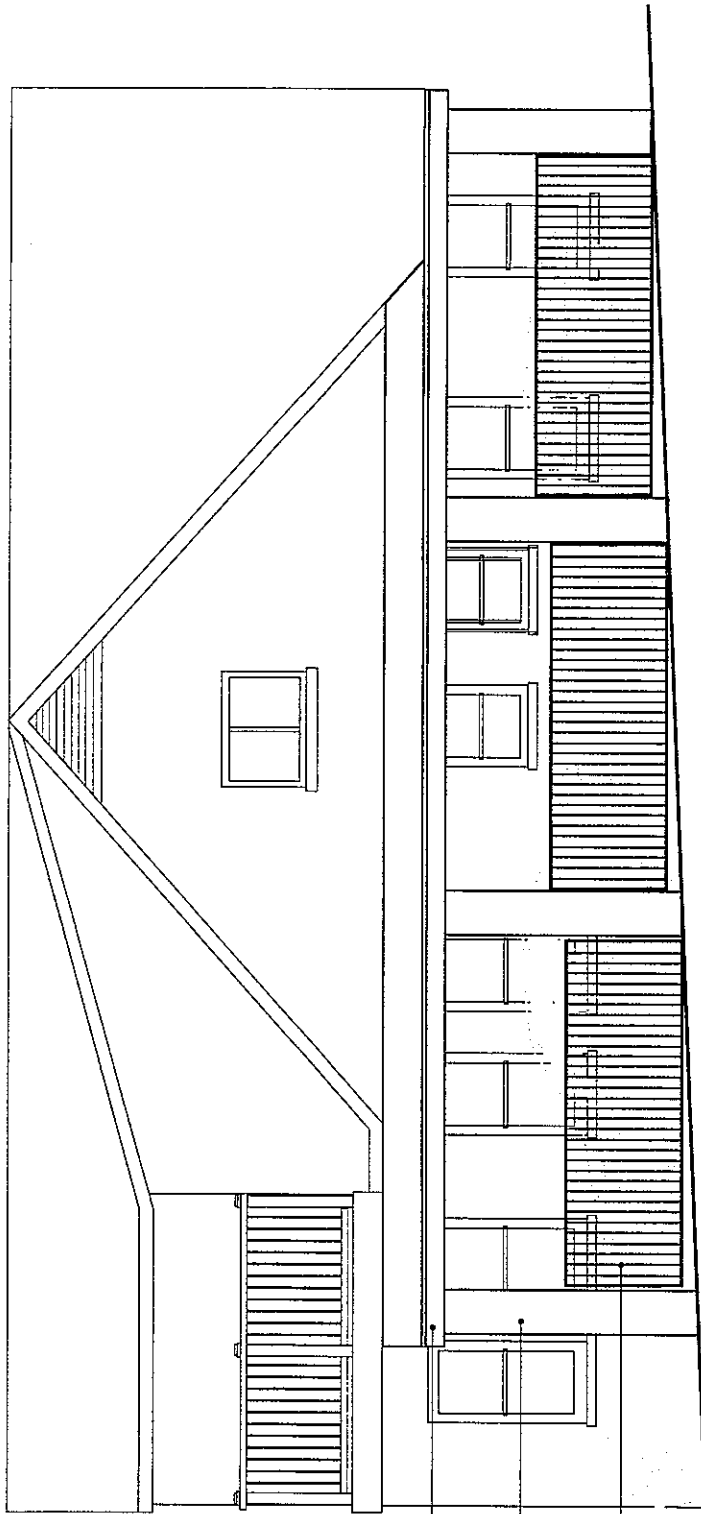
SITE PLAN 1" = 20'



CONCEPT ONLY  
NOT FOR CONSTRUCTION

PROPOSED PORTE COCHERE ADDITION  
1217 N. TYLER  
DALLAS TEXAS 75208

EAST ELEVATION 1/4" = 1'-0"



Decorative Wood Trim  
to match existing stone trim

Brick Columns

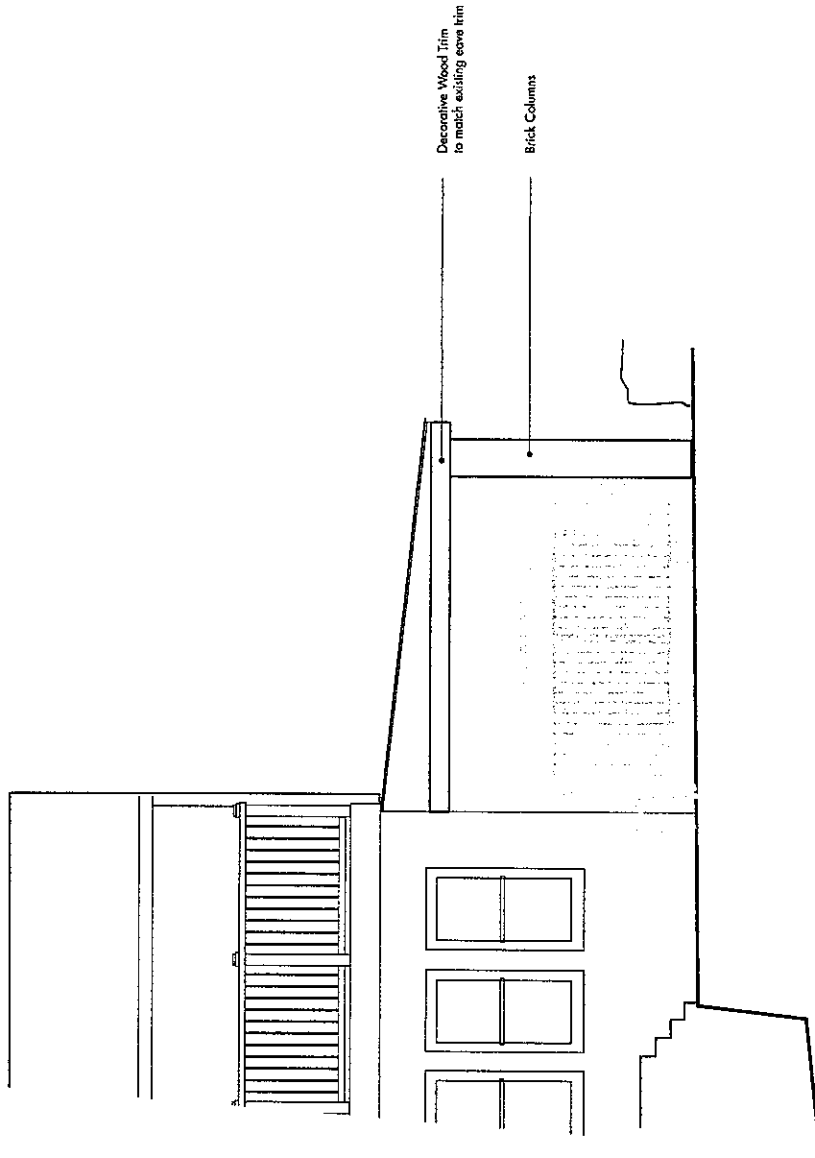
4' high Wrought Iron  
Security Fencing & Electric Gate  
match existing wrought iron  
fencing on north side of property

PROPOSED PORTE COCHERE ADDITION  
1217 N. TYLER  
DALLAS TEXAS 75208

SOUTH ELEVATION 1/4"=1'-0"

CONCEPT ONLY  
NOT FOR CONSTRUCTION

BDA112-092  
Attach A  
pg 4



Decorative Wood Trim  
to match existing eave trim

Brick Columns

CONCEPT ONLY  
NOT FOR CONSTRUCTION

PROPOSED PORTE COCHERE ADDITION  
1217 N. TYLER  
DALLAS TEXAS 75208

PARTIAL WEST ELEVATION 1/4" = 1'-0"

Date: 8/28/12

City of Dallas  
Board of Adjustment  
Case No.: BDA 112-092  
Address: 1217 N. Tyler St. 75208  
Owners: Lauren & Gary Nitschke

Action Requested by Owner: Special Exception to the 5' sideyard setback requirement in order to construct a single family residential carport which would necessitate a 0' sideyard setback along the south property line.

Adjacent Property Owner and Comments:

1211 N. Tyler St. (property immediately south of subject)

Owner(s): JIM HERRILL, Jimmy OWEN

Comments: Based on the graphics provided, and the description of materials to be used, we approve the design, and support the project.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature(s): J. Herrill Jimmy Owen

Date: 8-27-12

City of Dallas  
Board of Adjustment  
Case No.: BDA 112-092  
Address: 1217 N. Tyler St. 75208  
Owners: Lauren & Gary Nitschke

Action Requested by Owner: Special Exception to the 5' sideyard setback requirement in order to construct a single family residential carport which would necessitate a 0' sideyard setback along the south property line.

Adjacent Property Owner and Comments:

1214 N. Tyler St. (property immediately east of subject, directly across Tyler St.)

Owner(s): Tim & Karen Dofen

Comments: None - no objection

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature(s): Jim Dofen / Karen Dofen

Date: 8-23-12

City of Dallas  
Board of Adjustment  
Case No.: BDA 112-092  
Address: 1217 N. Tyler St. 75208  
Owners: Lauren & Gary Nitschke


Action Requested by Owner: Special Exception to the 5' sideyard setback requirement in order to construct a single family residential carport which would necessitate a 0' sideyard setback along the south property line.

Adjacent Property Owner and Comments:

1223 N. Tyler St. (property immediately north of subject)

Owner(s): GRANT HELLYER & RICHARD GIBBONS

Comments: We do not object at all. We think  
it will add value to their home and  
therefore to the neighborhood.

Signature(s):  Richard C. Gibbons





City of Dallas

APPLICATION/APEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 112-092

Data Relative to Subject Property:

Date: 8-8-12

Location address: 1217 N. TYLER ST.

Zoning District: CD13 (Sub 2 1)

Lot No.: 17 Block No.: B/3841 Acreage: .3

Census Tract: 44.00

Street Frontage (in Feet): 1) ~69' 2) \_\_\_\_\_ 3) \_\_\_\_\_ 4) \_\_\_\_\_ 5) \_\_\_\_\_

To the Honorable Board of Adjustment :

*zw17*

Owner of Property (per Warranty Deed): GARY NITSCHKE & LAUREN NITSCHKE

Applicant: LAUREN NITSCHKE Telephone: 214-942-0518

Mailing Address: 1217 N. TYLER ST. Zip Code: 75208

E-mail Address: lhn@3-dg.com

Represented by: Tom STRAIGHT Telephone: 214-600-2076

Mailing Address: 5135 VICKERY BLVD. DALLAS Zip Code: 75206

E-mail Address: tom@london-tucker.com

Affirm that an appeal has been made for a Variance \_\_, or Special Exception , of 5' SIDEYARD SETBACK FOR A CARPORT

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:

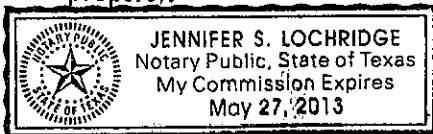
TO ALLOW CONSTRUCTION OF A CARPORT OVER EXISTING DRIVEWAY. THE REASON THE CARPORT ADDITION WILL NOT HAVE AN ADVERSE AFFECT ON NEIGHBORING PROPERTY IS: ALTHOUGH IT'S ENCRDACHING THE 5' SETBACK, IT IS HIDDEN BY A RETAINING WALL & TREES AS WELL AS THE NEIGHBOR HAS A CARPORT.

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 GARY NITSCHKE LAUREN NITSCHKE (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 16th day of July, 2012

*[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

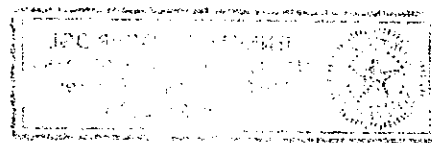
**Building Official's Report**

I hereby certify that Lauren Nitschke  
represented by Tom Straight  
did submit a request for a special exception to the side yard setback regulations for a carport  
at 1217 N. Tyler Street

BDA112-092. Application of Lauren Nitschke represented by Tom Straight for a special exception to the side yard setback regulations at 1217 N. Tyler Street. This property is more fully described as lot 17 in city block 8/3841 and is zoned CD-13 (Subarea 1), which requires a side yard setback of 5 feet. The applicant proposes to construct a single family residential carport structure and provide a 0 foot side yard setback, which will require a 5 foot special exception to the side yard setback regulation for a carport.

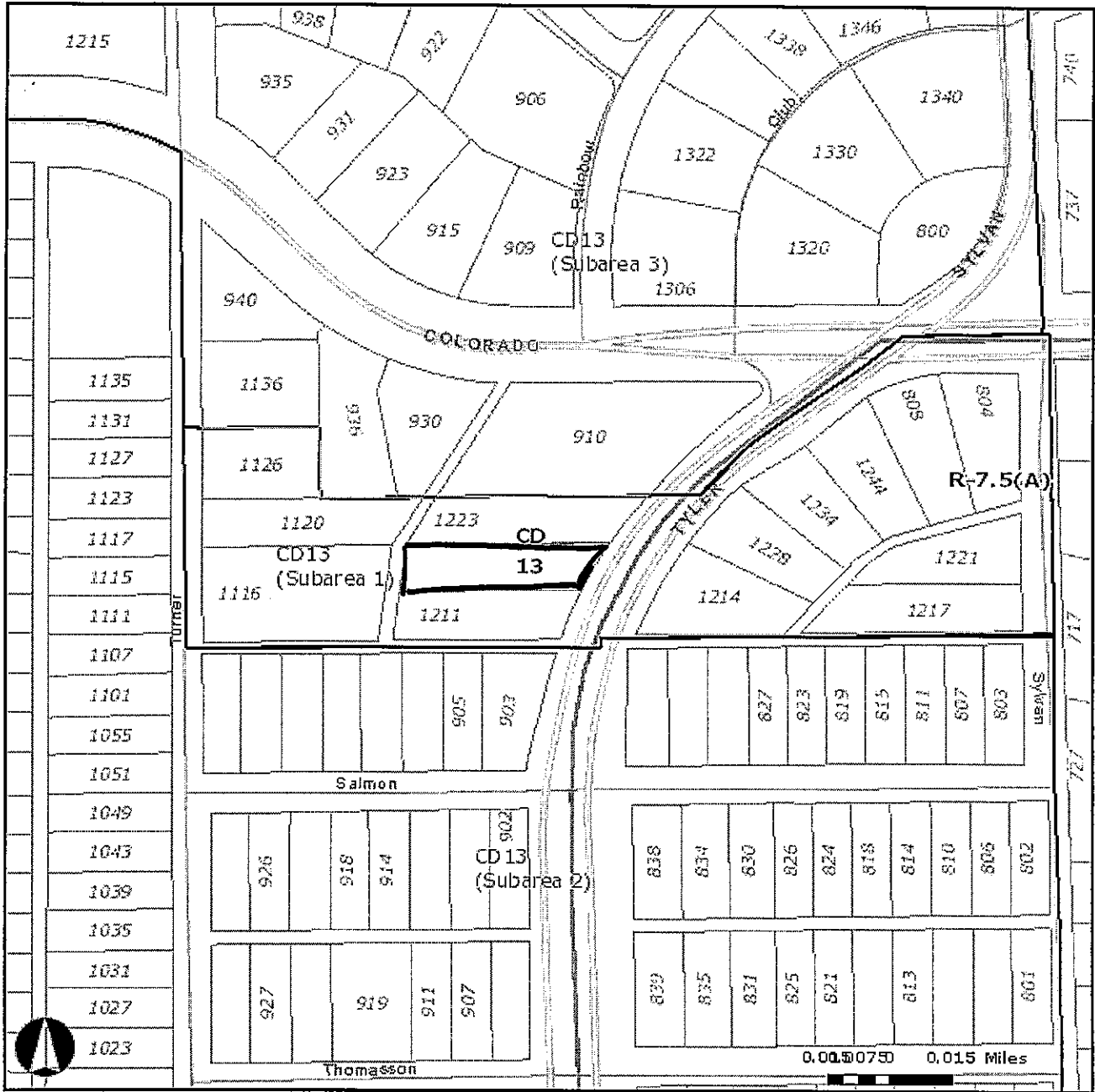
Sincerely,

  
Lloyd Denman, Building Official





# City of Dallas Zoning



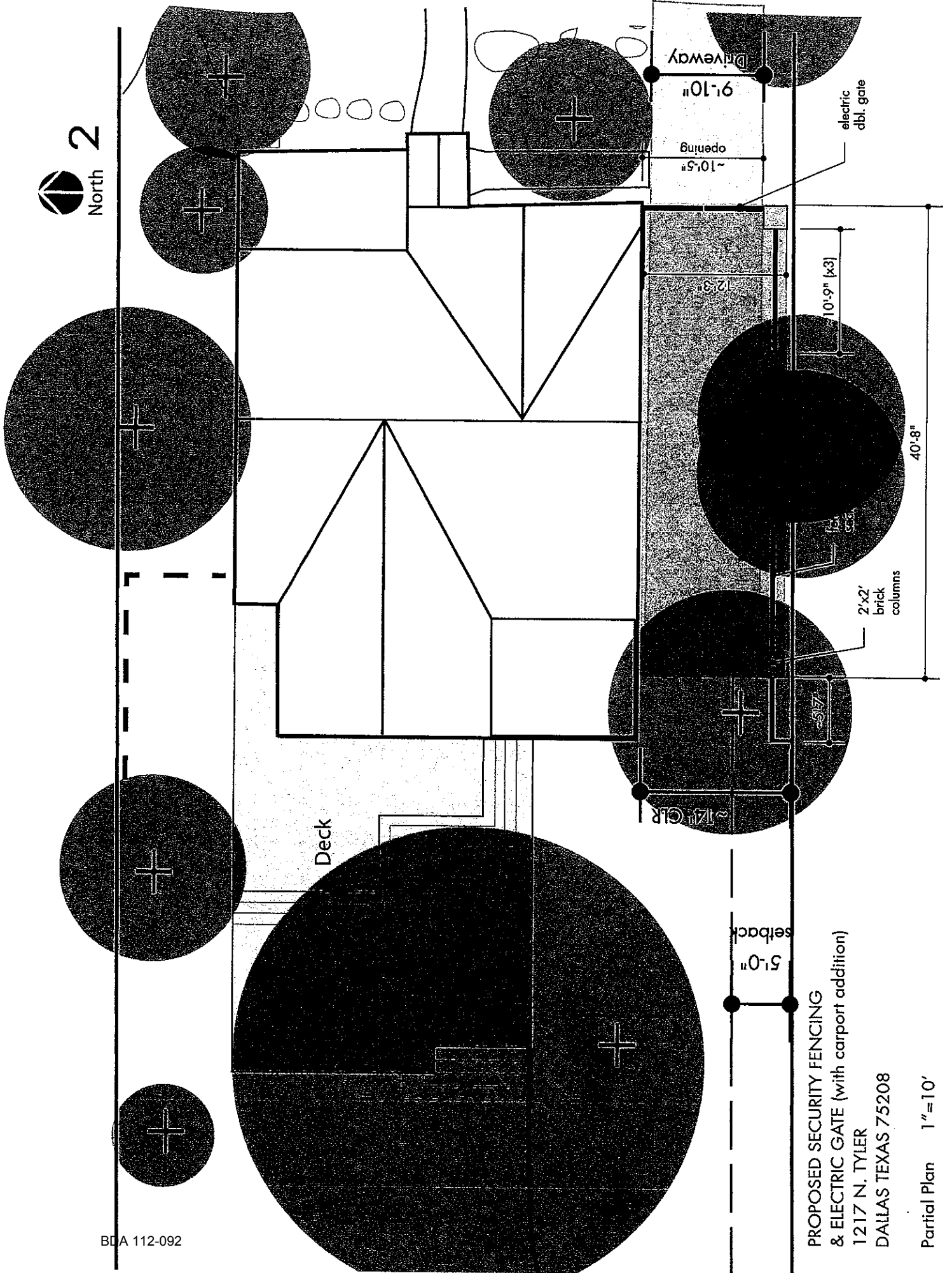
- City Boundaries
- County
- Certified Parcels
- DISD Sites
- Council Districts
- Waterways
- Parks

- Dry Overlay
- D
- D-1
- Historic Overlay
- Historic Subdistricts
- NSO Overlay
- NSO Subdistricts
- MD Overlay



- Base Zoning
- Floodplain
- 100 Flood Zone
- Mill's Creek
- Peak's Branch
- X PROTECTED BY LEVEE
- Pedestrian Overlay
- CP
- SP
- Environmental Corridors

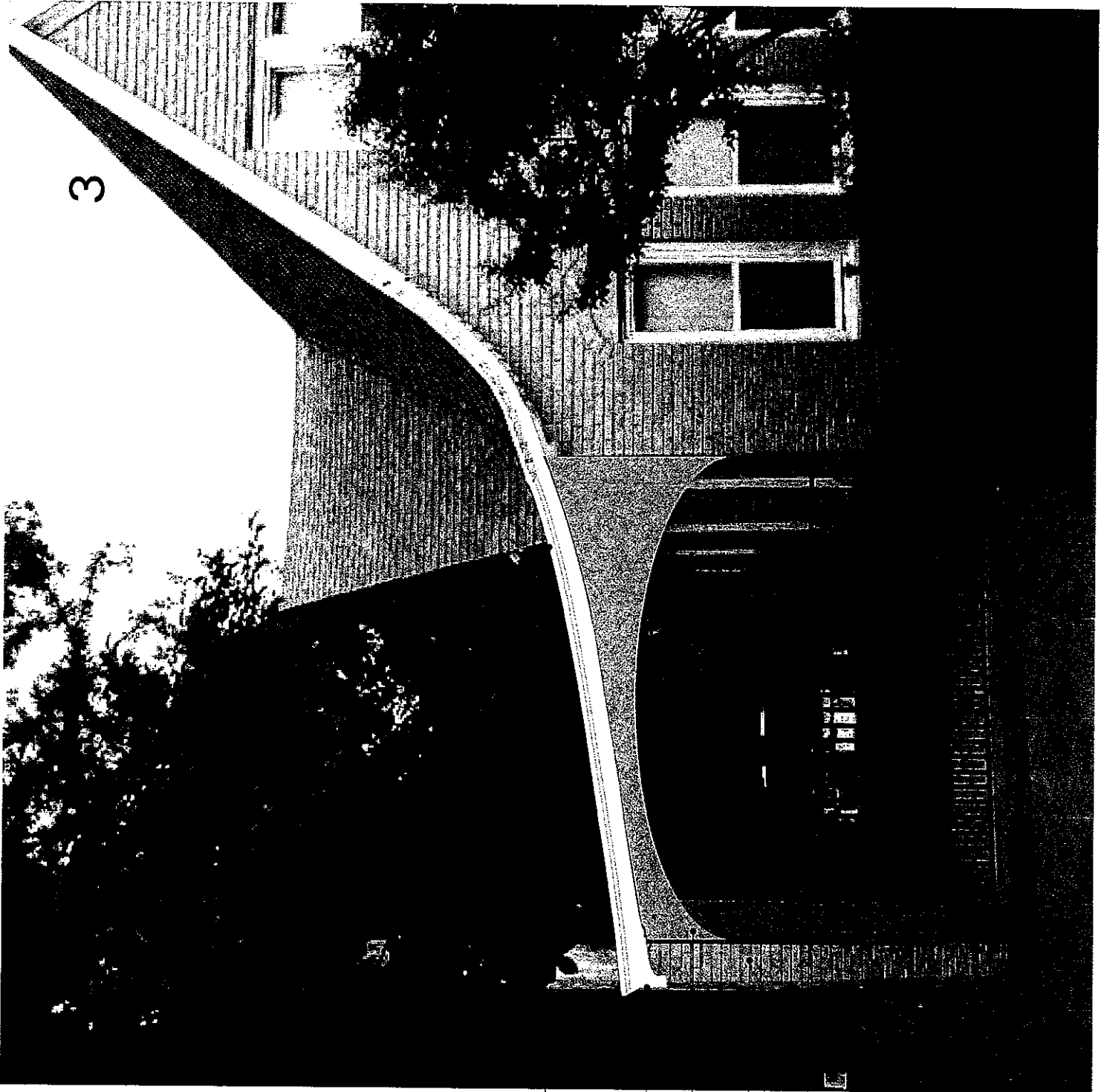




BLA 112-092

PROPOSED SECURITY FENCING  
 & ELECTRIC GATE (with carport addition)  
 1217 N. TYLER  
 DALLAS TEXAS 75208

Partial Plan 1"=10'



Roofline follows cat slide slope of existing roof

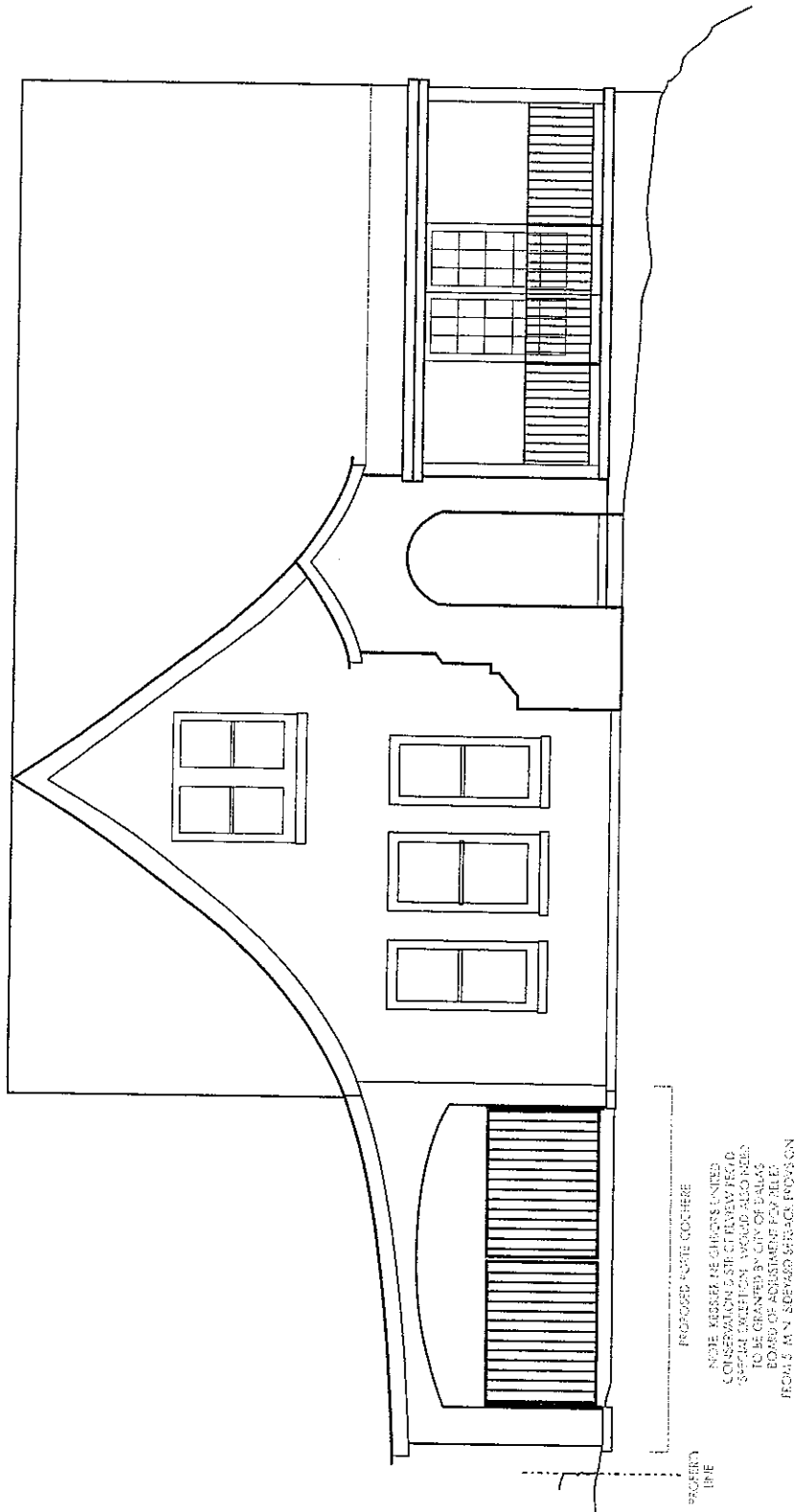
Decorative Wood Trim to match existing eave trim  
Brick Arch alludes to lines of home's front elevation

Brick Columns

4' high Wrought Iron Security Fencing & Electric Gate match existing wrought iron fencing on north side of property

**PROP'D CARPORT ADD'N  
& SECURITY FENCING/GATES**  
1217 N. TYLER  
DALLAS TEXAS 75208

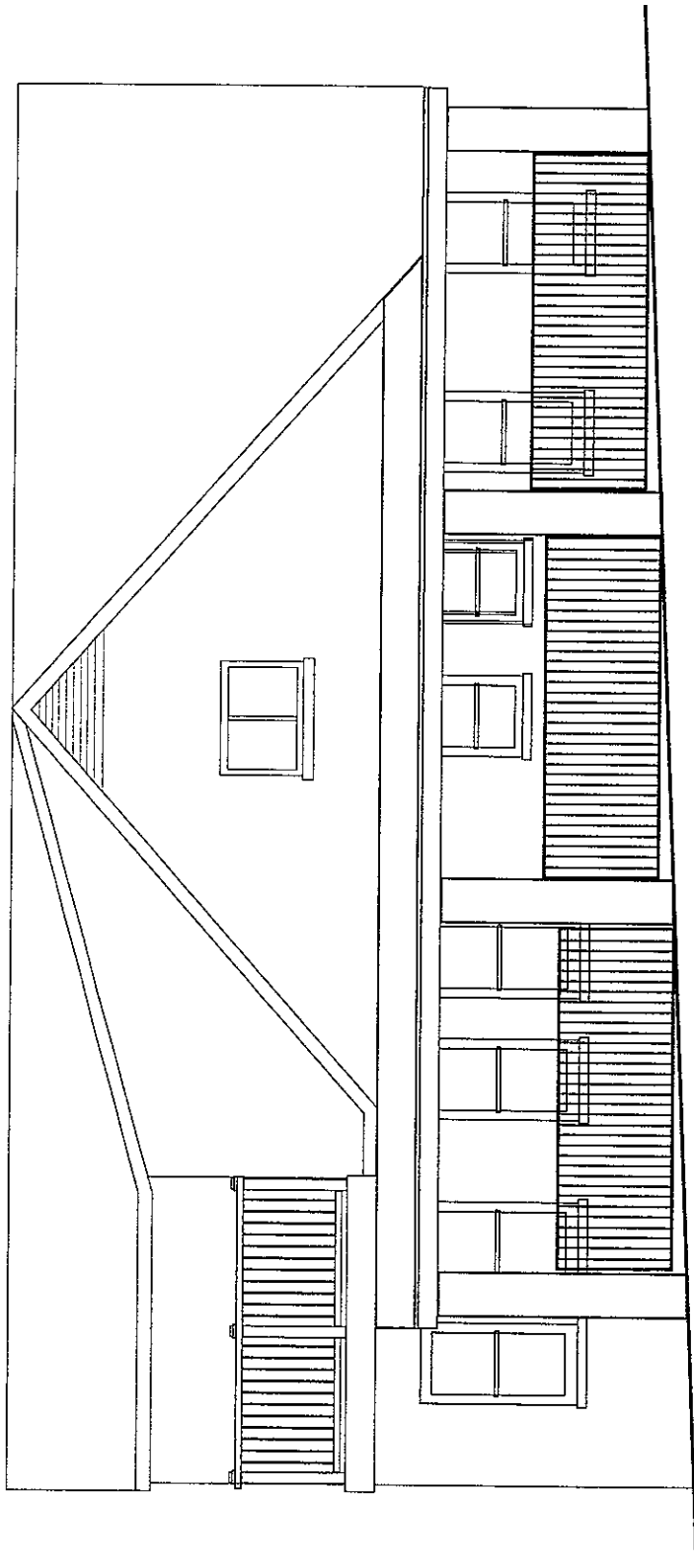
East Elevation Schematic



PROPOSED PORTE COCHERE ADDITION  
 1217 N. TYLER  
 DALLAS TEXAS 75208

EAST ELEVATION 1/4"=1'-0"

CONCEPT ONLY  
 NOT FOR CONSTRUCTION  
 JUNE 7, 2010



PROPOSED PORTE COCHERE ADDITION  
1217 N. TYLER  
DALLAS TEXAS 75208

SOUTH ELEVATION 1/4" = 1'-0"

CONCEPT ONLY  
NOT FOR CONSTRUCTION

JUNE 7, 2010





CONCEPT ONLY  
NOT FOR CONSTRUCTION  
JUNE 7, 2010

PROPOSED PORTE COCHERE ADDITION  
1217 N. TYLER  
DALLAS TEXAS 75208  
PARTIAL WEST ELEVATION 1/4"=1'0"

# SURVEY PLAT

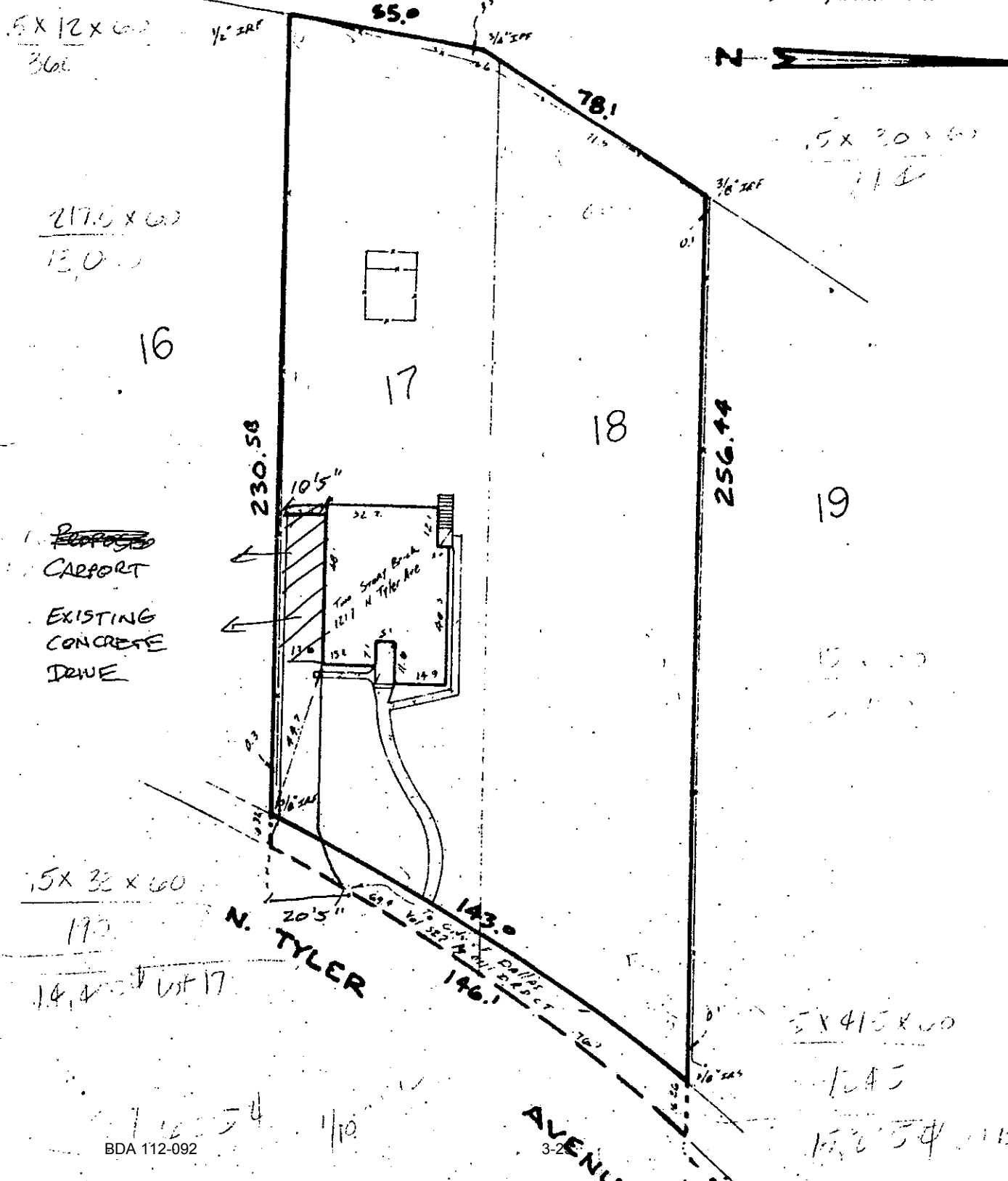
TO ALL PARTIES INTERESTED IN PREMISES SURVEYED:

This is to certify that I have, this date, made a careful and accurate survey on the ground of property located at 1217 N. TYLER AVENUE in the city of DALLAS Texas

Lot No.'s 17 AND 18 Block No. 8 City Block No. 3841  
of KESSLER HIGHLANDS an addition to the

City of DALLAS Texas, according to the

plat recorded in Volume 3 Page 74 Map Records DALLAS County, Texas,  
Save and Except that part of said lots conveyed to the City of Dallas for street purposes by deed recorded in Vol. 527 P. 011, D. R. D. C. T.



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

***BDA112-092***

## ***22 Property Owners Notified***

<b><i>Label #</i></b>	<b><i>Address</i></b>	<b><i>Owner</i></b>
1	1217 TYLER ST	NITSCHKE GARY K & LAUREN
2	831 SALMON DR	STEARNS KENNETH L JR
3	835 SALMON DR	WOOTERS BRIAN T &
4	839 SALMON DR	BARTHLOW HEATHER S & DARIN
5	1214 TYLER ST	DOLAN JAMES H & KAREN A
6	1228 TYLER ST	MERLINO ANDREW P & LYNNE H
7	1234 TYLER ST	SNYDER JUANITA GARDNER
8	903 SALMON DR	CALIENDO ANTHONY M
9	905 SALMON DR	WINNUBST ADRIAN B & ANGELA C WINNUBST
10	909 SALMON DR	WILLIAFORD NANCY A
11	915 SALMON DR	SLACK DAVID
12	919 SALMON DR	ALMENDARIZ MOISES
13	923 SALMON DR	TAYLOR DOROTHY E TR & SCOTT WARD SURA TR
14	927 SALMON DR	GETTMAN JAMES A
15	1116 TURNER AVE	FEDERAL NATIONAL MTG ASSOC
16	1120 TURNER AVE	YOUNG PATRICK G
17	1136 TURNER AVE	NOEL EMANUEAL B
18	930 COLORADO BLVD	HARRIS RONALD D
19	936 COLORADO BLVD	CHANTELOIS STEVEN D
20	1211 TYLER ST	SHERRILL JAMES C JR
21	1223 TYLER ST	HELLYER GRANT &
22	910 COLORADO BLVD	PALMER WAYNE MICHAEL