CITY OF SAN ANTONIO
Board of Adjustment
Regular Public Hearing Agenda

Cliff Morton Development and Business Services Center
1901 South Alamo Street
Board Room

Monday, March 1, 2010
1:00 PM

BOARD OF ADJUSTMENT MEMBERS

Liz Victor – District 1	Vacant – District 6
Edward Hardemon – District 2	Mary Rogers – District 7
Helen Dutmer – District 3	Andrew Ozuna – District 8
George Britton, Jr. – District 4	Mike Villyard – District 9
Vacant – District 5	Gene Camargo – District Mayor

Michael Gallagher – District 10
Chairman

Maria Cruz	Paul Klein
Henry Rodriguez	Mimi Moffat
Harold Atkinson	Steve Walkup

1. 1:00 PM – Public Hearing Call to Order.

2. Roll Call.

3. Pledges of Allegiance.

4. **CASE NO. A-09-093:** The request of Paul Heirs, for a complete variance from the requirement that a minimum 20-foot front setback be maintained (Volume 9506, Page 151 Deed and Plat Records of Bexar County), in order to keep an existing carport on the front property line, 8919 Deer Park.

5. **CASE NO. A-10-017:** The request of Esther Ponce, for a special exception to allow a one operator beauty/barber shop, 1220 Wyoming Street.

6. **CASE NO. A-10-018:** The request of Brown and Ortiz, P.C., to appeal the decision of the Director of the Planning and Development Services Department to deny the registration of a non-conforming use for a nightclub for the property located at 2907 Fredericksburg Road.

7. **CASE NO. A-10-020:** The request of Trudy E. Hamilton, for an 18-foot variance from the requirement that a 20-foot perimeter setback be maintained for residential uses in a Planned Unit Development, in order to keep an existing deck 2 feet from the rear property line, 13115 Brook Arbor.

8. Consideration of **Sign Master Plan No. 10-006**, Bulverde Marketplace, located at Bulverde and Loop 1604.

9. Consideration of cancellation of the March 15, 2010 public hearing.

9. Approval of the minutes from the regular meeting on February 1, 2010.

10. Executive Session: consultation on attorney-client matters (real estate, litigation, personnel and security matters) as well as any of the above agenda items may be discussed.

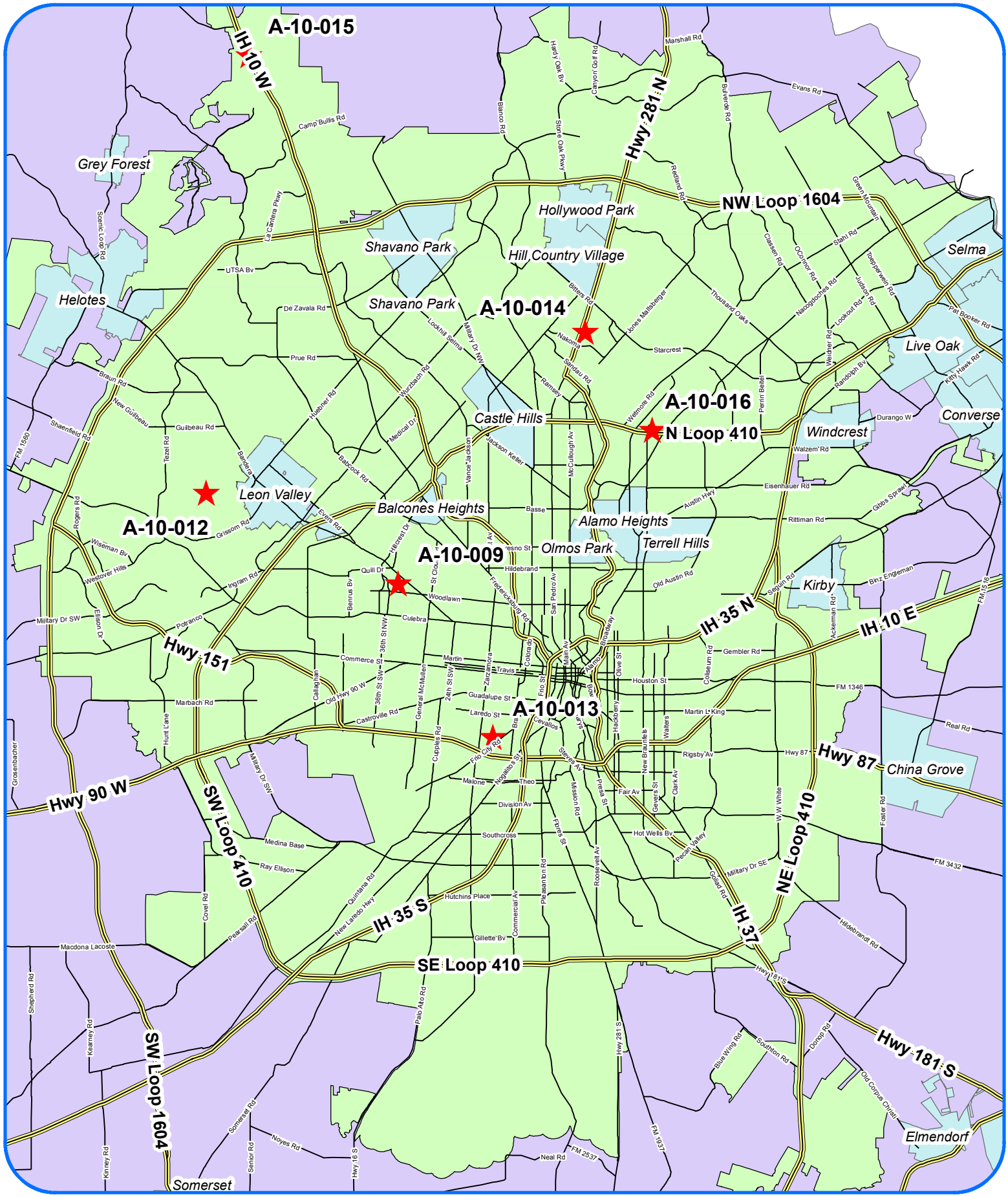
11. **Adjournment**

Note: The City of San Antonio Board of Adjustment Agenda can be found on the Internet at: www.sanantonio.gov/dsd

At any time prior to the meeting, you may contact a case manager at 207-0170 to check the status of a case.

ACCESSIBILITY STATEMENT

This meeting site is accessible to persons with disabilities. Parking is available. **Auxiliary Aids and Services are available upon request (Interpreters for the Deaf must be requested forty-eight [48] hours prior to the meeting).** For Assistance, Call (210) 207-7245 Voice/TTY.



Board of Adjustment

Subject Property Locations
Cases for February 1, 2010

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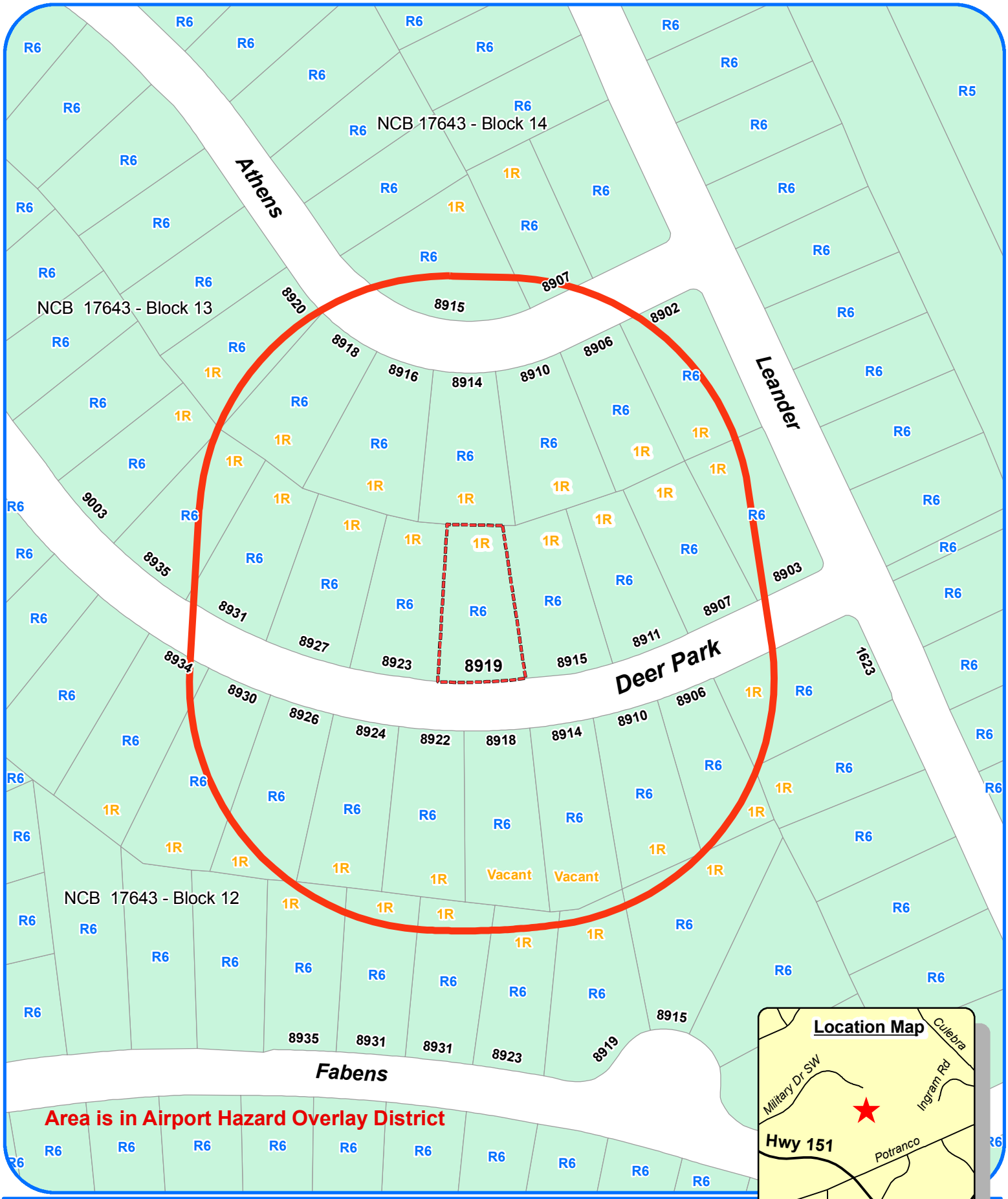
Planning and Development Services Dept
City of San Antonio
(1/14/2010 - P. Trinkle)



Board of Adjustment

Notification Plan for

Case A-09-093

Legend

Subject Property

200' Notification Boundary

Scale: 1" approx. = 100'
Council District 6

Planning and Development Services Dept
City of San Antonio
(09/18/2009 - P. Trinkle)

City of San Antonio
Planning & Development Services Department
Staff Report

To:	Board of Adjustment
Case No.:	A-09-093
Date:	March 1, 2010
Applicant:	Paul Hiers
Owner:	Paul L. and Roxanne B. Hiers
Location:	8919 Deer Park
Legal Description:	Lot 15, Block 13, NCB 17643
Zoning:	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District
Subject:	Front Setback Variance
Prepared By:	Jacob Floyd, Planner

Summary

The applicant is requesting a complete variance from the requirement that a minimum 20-foot front setback be maintained, as recorded in Volume 9506, Page 151 Deed and Plat Records of Bexar County.

Procedural Requirements

The request was publicly noticed in accordance with Section 403 of the Unified Development Code (UDC). Notices were sent to property owners and registered neighborhood associations within two hundred (200) feet of the subject property on February 11. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation on February 12. Additionally, notice of this meeting was posted at city hall and on the city's internet website on February 26, in accordance with Section 551.043(a) of the Texas Government Code.

Surrounding Zoning/Land Use

North	R-6	Single-Family Residence
South	R-6	Single-Family Residence
East	R-6	Single-Family Residence
West	R-6	Single-Family Residence

Project Description

The applicant is requesting this variance to keep an existing carport as it is currently located on the front property line. The structure in question was built without permits. This case was initiated by the Neighborhood Action Division of the Housing and Neighborhood Services Department.

The applicant states that enforcement of the ordinance would result in severe hardship because the structure of the carport is supported, in part, by the frame of the house and the removal of the carport would leave a "gaping hole" in the front of the house.

Comprehensive Plan Consistency/Neighborhood Association

The subject property is not located within the boundaries of a Neighborhood or Community Plan. The property is not located within the boundaries of a Neighborhood Association.

Criteria for Review

According to Section 482(e) of the Unified Development Code, in order for a variance to be granted, the applicant must demonstrate all of the following:

1. The variance is not contrary to the public interest:

   It appears that the granting of the variance would be contrary to the public interest as the carport may create a visual obstruction to motorists and pedestrians.

2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.

   The property does not appear to be characterized by any special conditions that would create unnecessary hardship through the literal enforcement of the ordinance. The subject property is typical of others in the area and is not of unusual shape or size. The hardship stated by the applicant is self-imposed and has resulted in a notice of violation.

3. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.

   Staff does not believe that the spirit of the ordinance will be observed nor substantial justice done through the granting of the variance. The carport was built without permits being sought and the property owners will not be denied the reasonable use of the property through the denial of the variance.

4. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.

   The granting of the variance will not authorize the operation of a use other than those uses specifically authorized in "R-6" zoning districts.

5. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.

It does not appear that the granting of the variance will substantially injure the appropriate use of adjacent conforming property. However, Staff believes that this carport is dramatically out-of-scale within this neighborhood.

6. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.

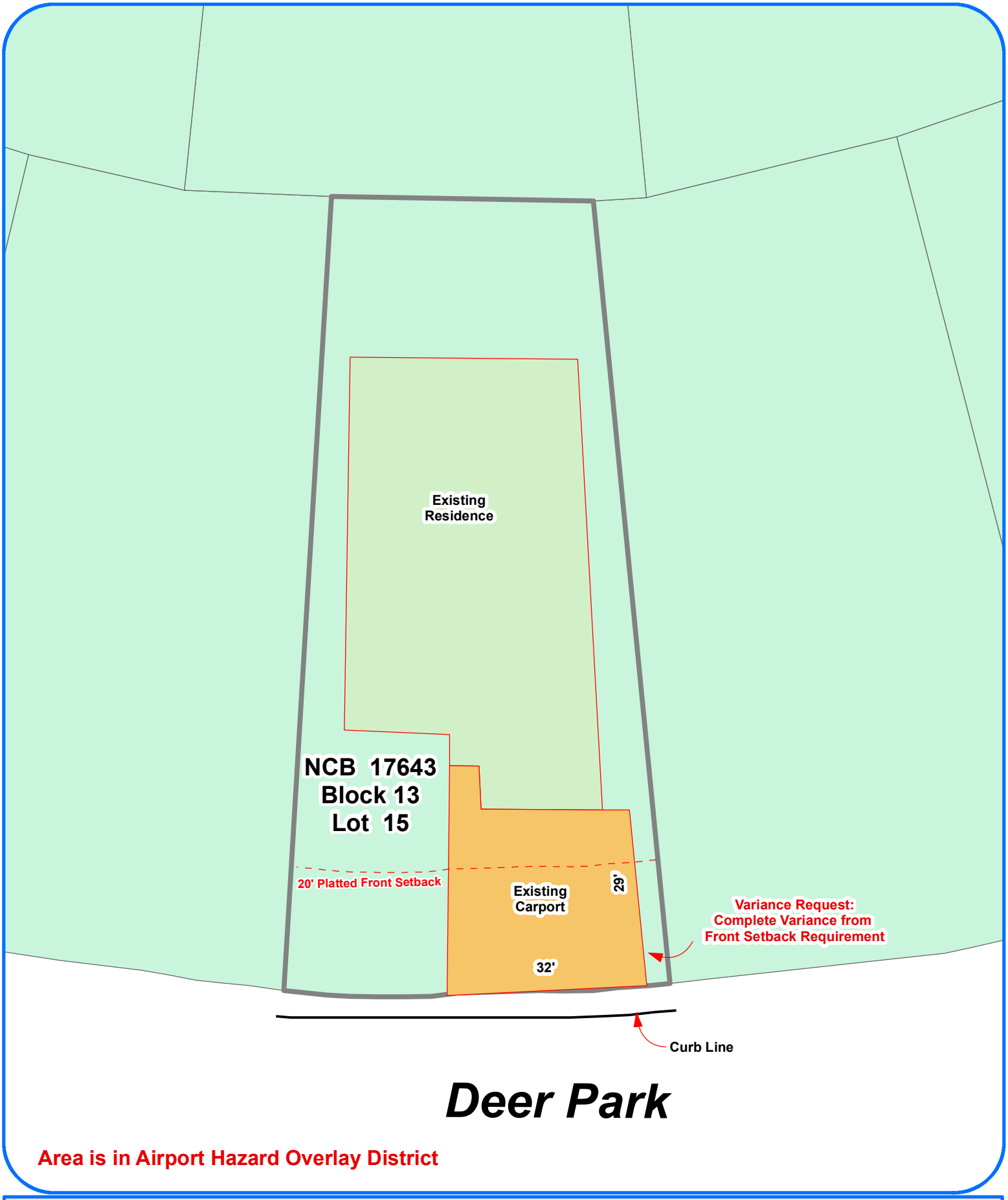
   There do not appear to be any unique circumstances that support the approval of a variance for this subject property.

Staff Recommendation

Staff recommends that **A-09-093, 8919 Deer Park, be denied** because the findings of fact have not been satisfied as presented above. The plight of the owner is self-created and not due to any unique physical characteristic of the property. Furthermore, the applicant has not provided sufficient evidence of a hardship that is not merely financial.

Attachments

Attachment 1 – Location Map
Attachment 2 – Plot Plan
Attachment 3 – Richland Hills, Unit – 5A Subdivision Plat
Attachment 4 – Applicant's Submitted Plot Plan



Board of Adjustment

Plot Plan for

Case A-09-093

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Legend

Scale: 1" approx. = 20'
Council District 6

8919 Deer Park

Planning and Development Services Dept
City of San Antonio
(2/9/2010 - P. Trinkle)

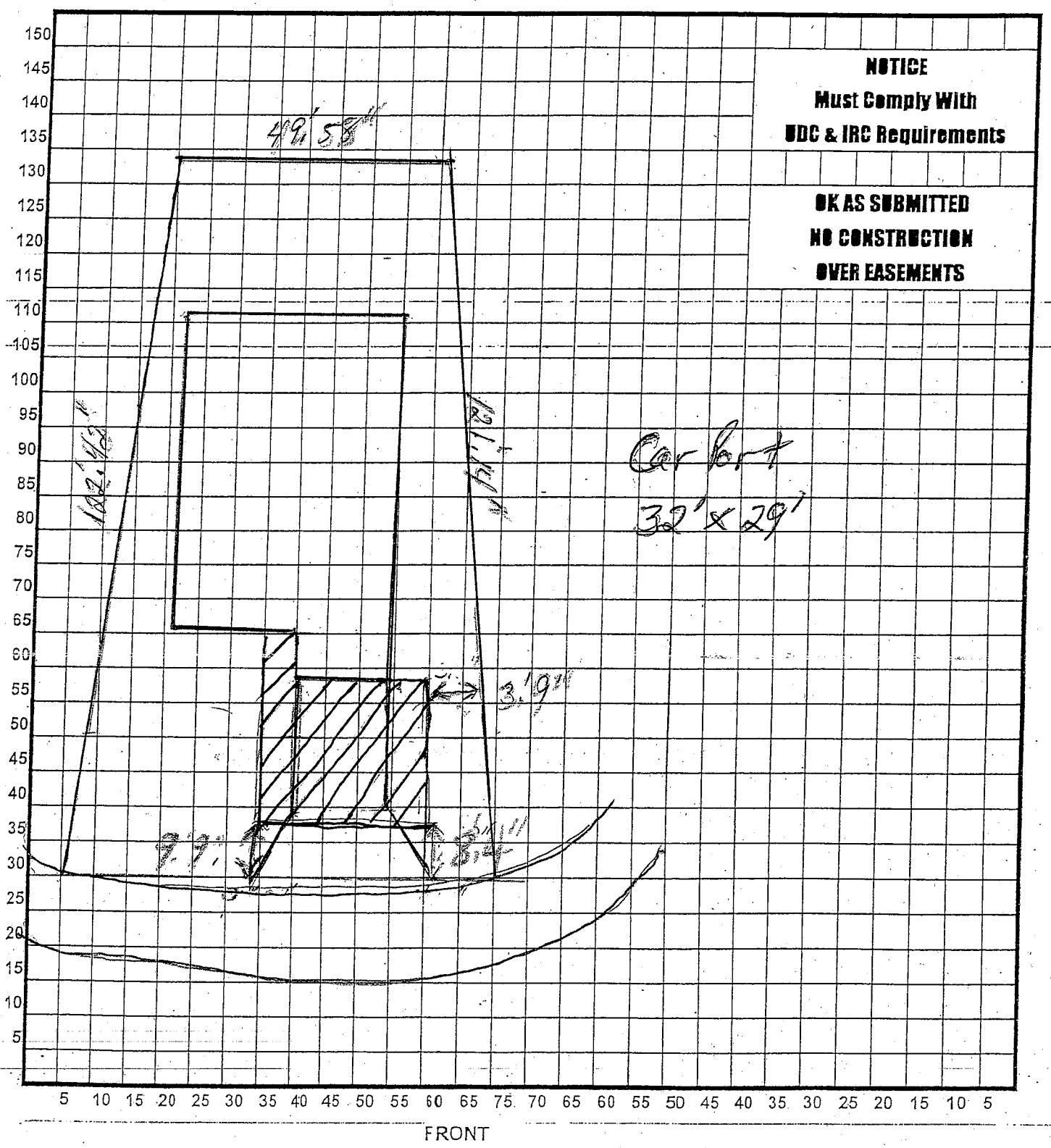
PLOT PLAN

FOR

BLDG PERMITS

Address 8919 Deer Park San Antonio TX 78251 Lot 15 Block 13 NCB _____

REAR



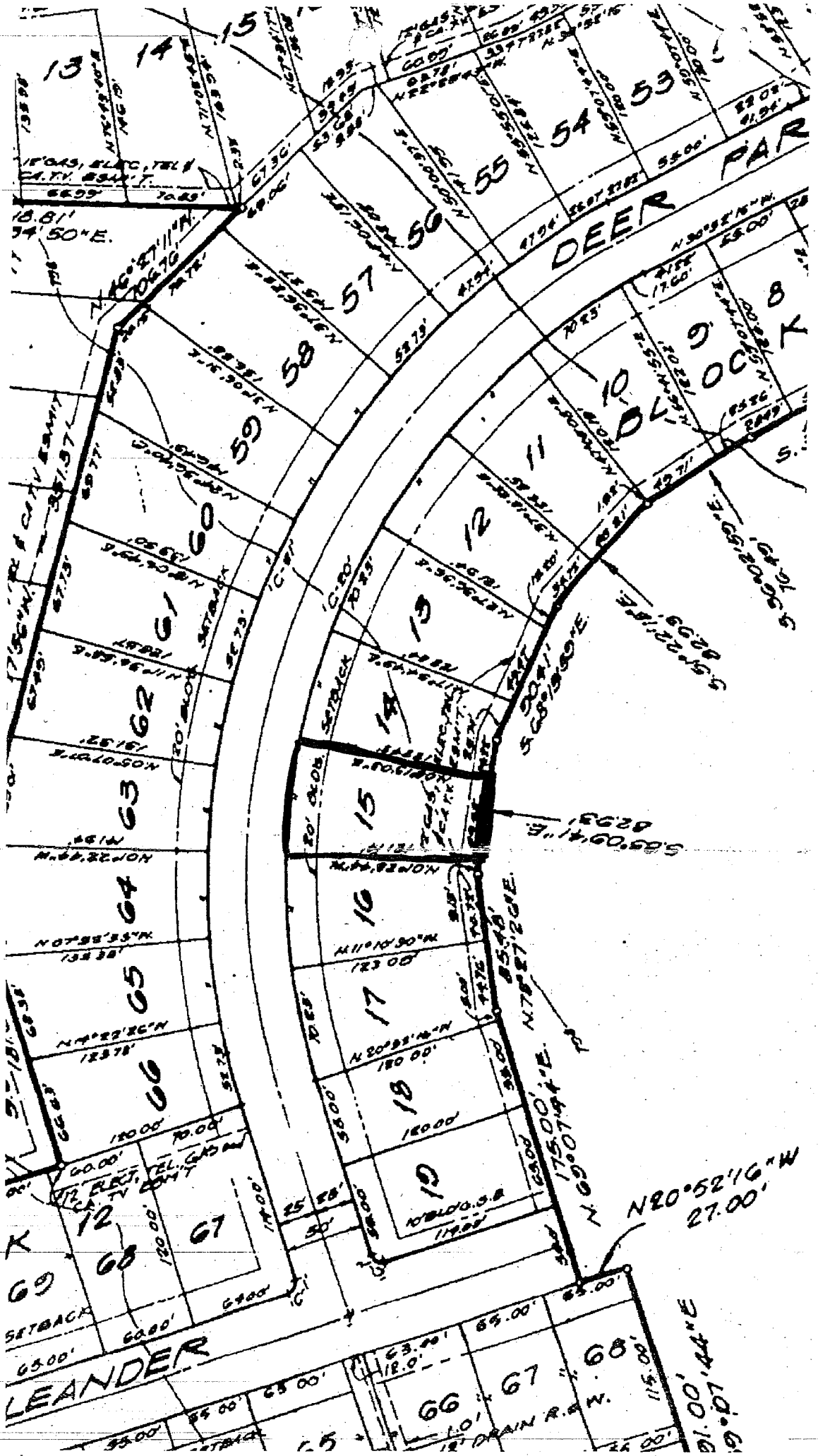
I certify that the above plot plan shows all improvements on this property

9-9-09

Date

Paul Hier

Signature of Applicant


DEER PAR
BLOCK
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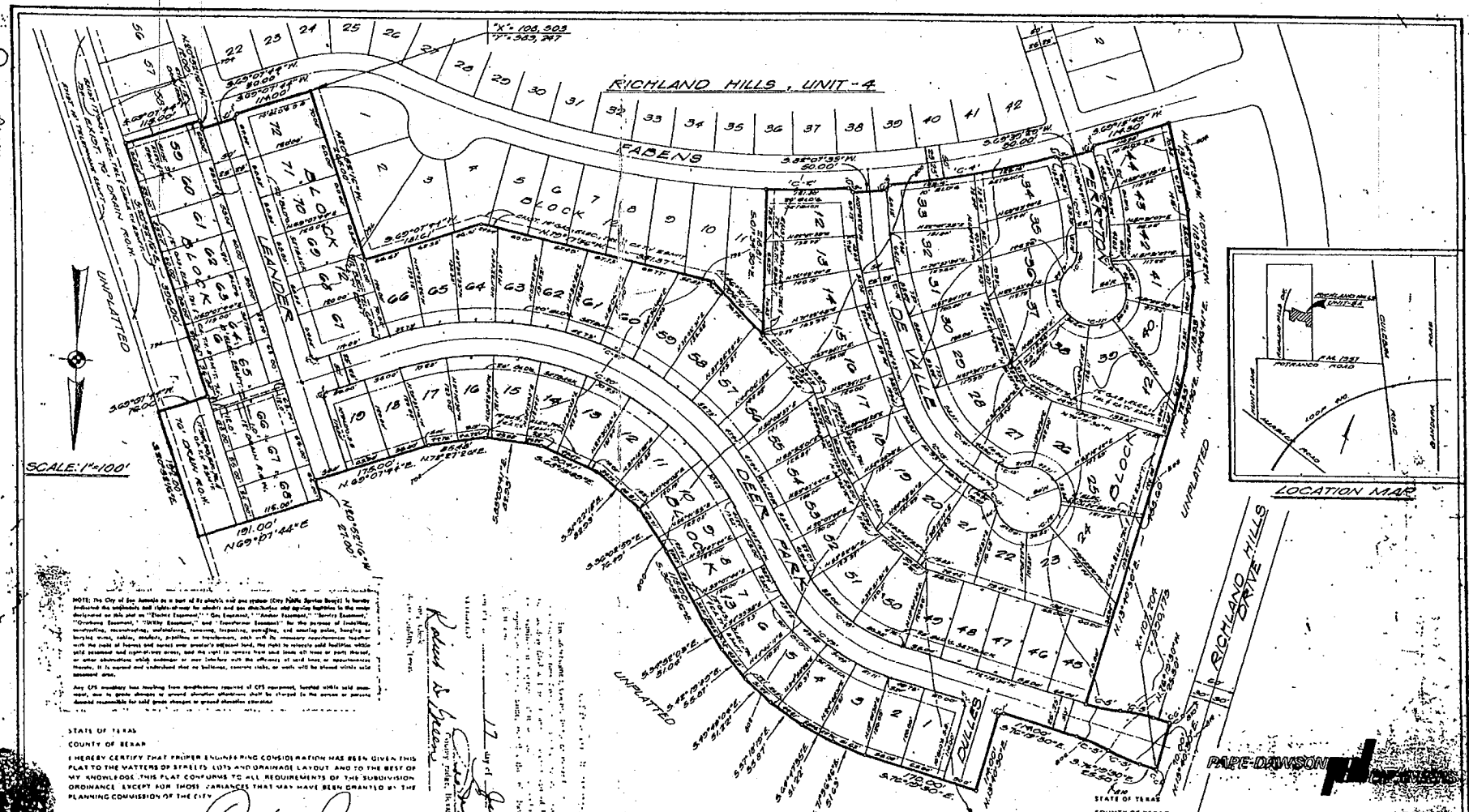
27.00'
SETBACK
DRAIN R.O.W.



NOTE: The City of San Antonio as a part of its electric and gas systems (City Public Service Board) is hereby dedicated the easements and rights-of-way for electric and gas distribution and lighting facilities in the areas designated on this plat as "Electric Easement," "Gas Easement," "Anchor Easement," "Service Easement," "Overhang Easement," "Utility Easement," and "Transformer Easement" for the purpose of installing, maintaining, reconstructing, modifications, removing, trimming, overhang, and securing poles, bracing or bracing wires, cables, conduits, pipelines or transformers, each with the necessary appurtenances together with the right of ingress and egress over grantor's adjacent land, the right to remove from and keep all trees or parts thereof, or other obstructions which endanger or may interfere with the efficiency of said lines or appurtenances thereto. It is agreed and understood that no buildings, concrete slabs, or walls will be placed within said easement area.

Any CPS mandatory loss resulting from modifications required of CPS equipment, located within said easement, due to grade changes or ground elevation alterations shall be charged to the person or persons deemed responsible for said grade changes or ground elevation alterations.

STATE OF TEXAS
COUNTY OF BEXAR

I HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN THIS PLAT TO THE MATTERS OF STREETS, LOTS AND DRAINAGE LAYOUT AND TO THE BEST OF MY KNOWLEDGE, THIS PLAT CONFORMS TO ALL REQUIREMENTS OF THE SUBDIVISION ORDINANCE EXCEPT FOR THOSE VARIANCES THAT MAY HAVE BEEN GRANTED BY THE PLANNING COMMISSION OF THE CITY.

REGISTERED PROFESSIONAL ENGINEER

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 17 DAY OF Oct
A.D. 19 85

NOTARY PUBLIC
BEXAR COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF BEXAR

THE OWNER OF THE LAND SHOWN ON THIS PLAT IN PERSON OR THROUGH A DULY AUTHORIZED AGENT, DEDICATES TO THE USE OF THE PUBLIC FOREVER ALL STREETS, ALLEYS, PARKS, WATER COURSES, DRAINS, EASEMENTS AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

JOHN D. FISCHER

DULY AUTHORIZED AGENT

STATE OF TEXAS
COUNTY OF BEXAR

BEFORE ME, THE UNDERSIGNED AUTHORITY ON THIS DAY PERSONALLY APPEARED JOHN D. FISCHER (OWNER) KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 17 DAY OF Oct
A.D. 85

NOTARY PUBLIC
BEXAR COUNTY, TEXAS

Robert D. Green
County Clerk, Bexar County, Texas
17 day of July 1984

REPLAT AND SUBDIVISION PLAT
ESTABLISHING
RICHLAND HILLS, UNIT-5A

BEING 20.137 ACRES OF LAND OUT OF A 488.602 ACRE TRACT OF LAND OUT OF THE S.L. COLLARD ORIGINAL SURVEY NO. 258 ABSTRACT 152, COUNTY BLOCK 4395, THE J.C. COLLARD ORIGINAL SURVEY NO 257, ABSTRACT 181, COUNTY BLOCK 4396, THE J.V. CIGALWITTY ORIGINAL SURVEY NO. 404, ABSTRACT 1035, COUNTY BLOCK 4397 AND THE B.B.B. AND C. RAILROAD COMPANY ORIGINAL SURVEY NO 403, ABSTRACT 100, COUNTY BLOCK 4410, BEXAR COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF BEXAR

I (WE) THE OWNER(S) OF THE LAND SHOWN ON THIS REPLAT HEREBY CERTIFY THAT THIS REPLAT DOES NOT ALTER OR REMOVE ANY COVENANT OR RESTRICTIONS. I (WE) FURTHER CERTIFY THAT ALL OR THE PROPOSED AREA SOUGHT TO BE REPLATTED, OR PROPOSED, HAS DESIGNATED OR RESERVED FOR USAGE OTHER THAN FOR SINGLE OR DUPLEX FAMILY RESIDENTIAL USAGE BY NOTATION ON THE LAST LEGALLY RECORDED PLAT OR IN THE LEGALLY RECORDED RESTRICTIONS APPLICABLE TO SUCH PLAT.

OWNER

THIS PLAT OF RICHLAND HILLS, UNIT-5A HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION OF THE CITY OF SAN ANTONIO, TEXAS AND IS HEREBY APPROVED BY SUCH COMMISSION.

DATED THIS 27 DAY OF JUNE A.D. 19 84

BY: CHAIRMAN

BY: SECRETARY

STATE OF TEXAS
COUNTY OF BEXAR

I HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND.

REGISTERED PUBLIC SURVEYOR

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 17 DAY OF Oct
A.D. 85

NOTARY PUBLIC
BEXAR COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF BEXAR

Robert D. Green COUNTY CLERK OF SAID COUNTY, DO HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN MY OFFICE, ON THE 18 DAY OF July A.D. 1984 AT 8:30 A.M. AND DULY RECORDED THE 18 DAY OF July A.D. 1984 AT 9:34 A.M. IN THE RECORDS OF Deed & Plat OF SAID COUNTY IN BOOK VOLUME 9506 ON PAGE 151

IN TESTIMONY WHEREOF, WITNESS MY HAND AND OFFICIAL SEAL OF OFFICE, THIS 18 DAY OF July A.D. 1984

COUNTY CLERK, BEXAR COUNTY, TEXAS

BY: [illegible]

SHEET 2 OF 2

VOL 9506 151

Board of Adjustment

Notification Plan for

Case A-10-017

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Legend

Subject Property

200' Notification Boundary

Scale: 1" approx. = 100'
Council District 2

Planning and Development Services Dept
City of San Antonio
(1/25/2010 - P. Trinkle)

City of San Antonio
Planning & Development Services Department
Staff Report

To:	Board of Adjustment
Case No.:	A-10-017
Date:	March 1, 2010
Applicant:	Esther Ponce
Owner:	Esther Ponce
Location:	1220 Wyoming Street
Legal Description:	The East 61.5 feet of Lot 16, Block 111, NCB 45
Zoning:	"MF-33 AHOD" Multi-Family Airport Hazard Overlay District
Subject:	One Operator Beauty/Barber Shop
Prepared By:	Mike Farber, Planner

Summary

The applicant is requesting a special exception to allow a one-operator beauty or barber shop.

Procedural Requirements

The request was publicly noticed in accordance with Section 403 of the Unified Development Code (UDC). Notices were sent to property owners and registered neighborhood associations within two hundred (200) feet of the subject property on February 11. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation on February 12. Additionally, notice of this meeting was posted at city hall and on the city's internet website on February 26, in accordance with Section 551.043(a) of the Texas Government Code.

Surrounding Zoning/Land Use

North	RM-4 AHOD	Single-Family Residence
South	RM-4 HS AHOD	Single-Family Residence
East	MF-33 AHOD	Vacant
West	MF-33 AHOD	Duplex

Project Description

The applicant is requesting this special exception to operate a one operator barber or beauty shop. This special exception request may be approved for a two-year period only, as this is the applicant's initial application.

The applicant has proposed hours of operation to be 9:00 am to 7:00 pm, Tuesday through Saturday. Weekly proposed hours of operation total 50 hours.

Comprehensive Plan Consistency/Neighborhood Association

The subject property is located within the boundaries of the Downtown Neighborhood Plan. The property is located within the boundaries of the Denver Heights Neighborhood Association. As of February 23, staff has not received a response from the neighborhood association.

Criteria for Review

According to Section 482(h) of the Unified Development Code, in order for a special exception to be granted, the Board of Adjustment must find that the request meets each of the following conditions (in addition to the requirements of Section 35-399.01):

1. The special exception will be in harmony with the spirit and purpose of the chapter:

   The requested special exception is in harmony with the spirit and purpose of this chapter in that the proposed one-operator beauty/barbershop will follow the specified criteria established in Section 35-399.01 of the Unified Development Code.

2. The public welfare and convenience will be substantially served:

   The requested special exception will further serve the public welfare in that this beauty/barbershop will operate within the parameters set forth by Section 35-399.01 and will serve as a public convenience within a residential area.

3. The neighboring property will not be substantially injured by such proposed use:

   The granting of the special exception will not alter the use of the property for which the special exception is sought. The primary use of the subject property will remain a multi-family residence.

4. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought:

   It does not appear that the granting of the special exception will alter the essential character of the district in which the subject property is located in that the proposed beauty/barbershop has and will remain confined to 25% or less of the gross floor area of the primary residence.

5. The special exception will not weaken the general purpose of the district or the regulations herein established for the specified district:

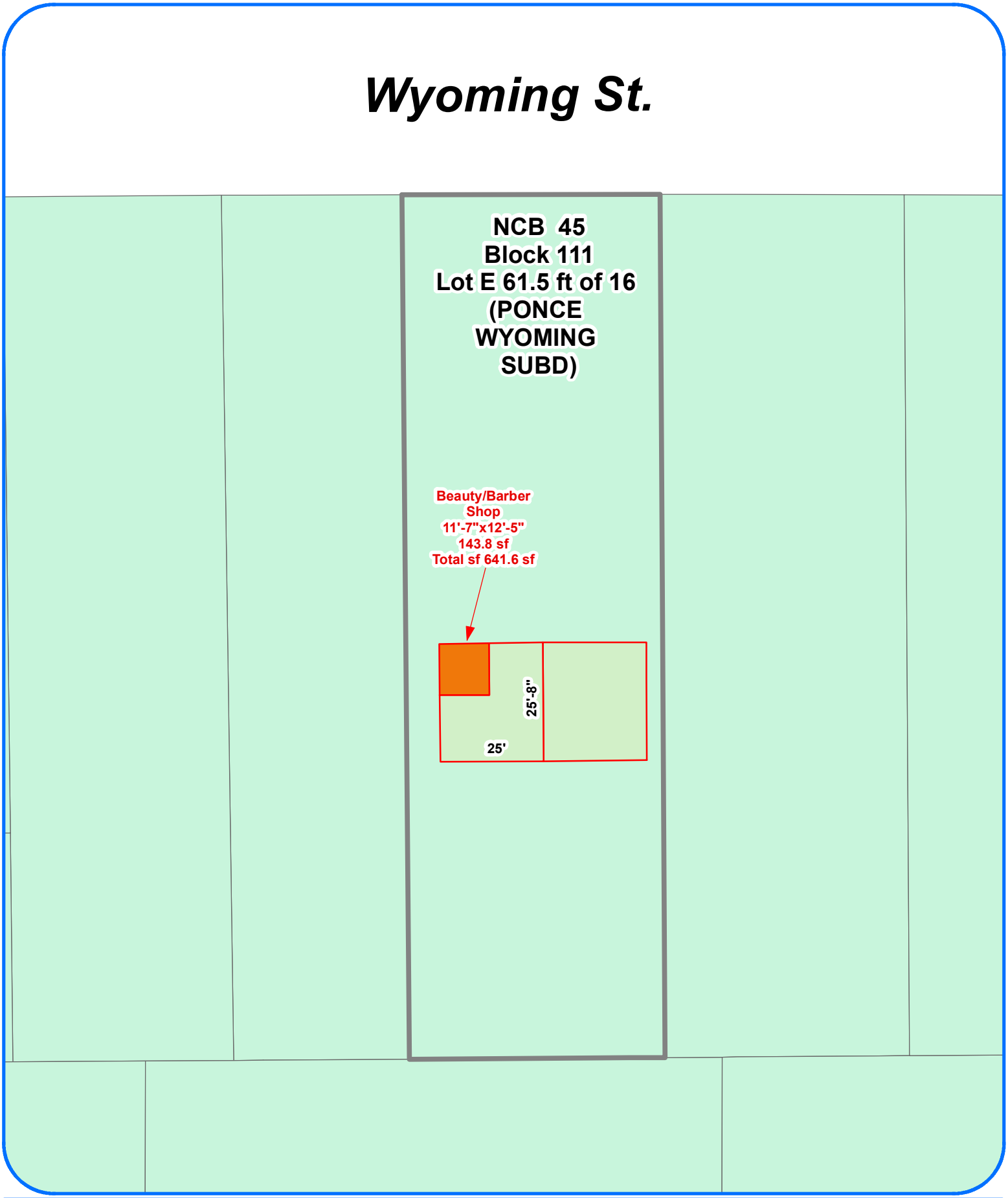
   The purpose of the district is to promote the public health, safety, morals, or general welfare. The granting of this special exception will not weaken this purpose, nor will it weaken the regulations established for this district.

Staff Recommendation

The applicant has indicated she will meet all of the limitations, conditions and restrictions set forth in Section 35-399.01 of the UDC (a copy of the application indicating this is attached with this packet). It appears that granting this special exception will allow the use of a portion of this property as a beauty shop without altering the residential character of the neighborhood. Staff recommends that **A-10-017, 1220 Wyoming Street, be approved for a two-year period** with hours of operation not to exceed 50 hours.

Attachments

Attachment 1 – Location Map
Attachment 2 – Plot Plan
Attachment 3 – Applicant's Submitted Site Plan



Board of Adjustment

Plot Plan for

Case A-10-017

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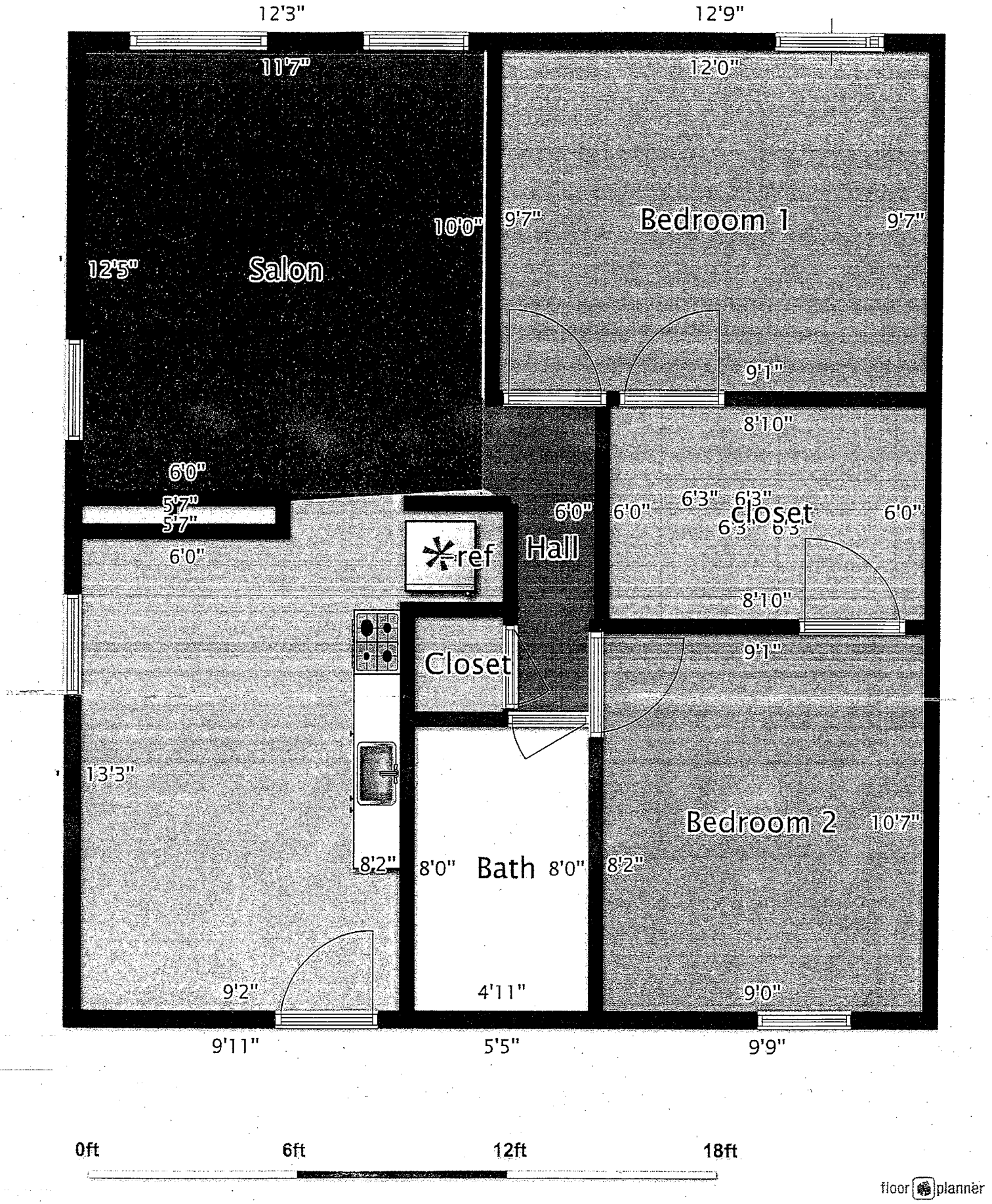
Legend

Scale: 1" approx. = 30'
Council District 2

1220 Wyoming St

Planning and Development Services Dept
City of San Antonio
(1/28/2010 - P. Trinkle)


12'3"
12'9"
11'7"
12'0"
10'0"
9'7"
Bedroom 1
9'7"
12'5"
Salon
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8'10"
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6'0"
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closet
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6'3"
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ref
Hall
8'10"
Closet
9'1"
13'3"
Bedroom 2
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8'2"
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4'11"
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9'9"
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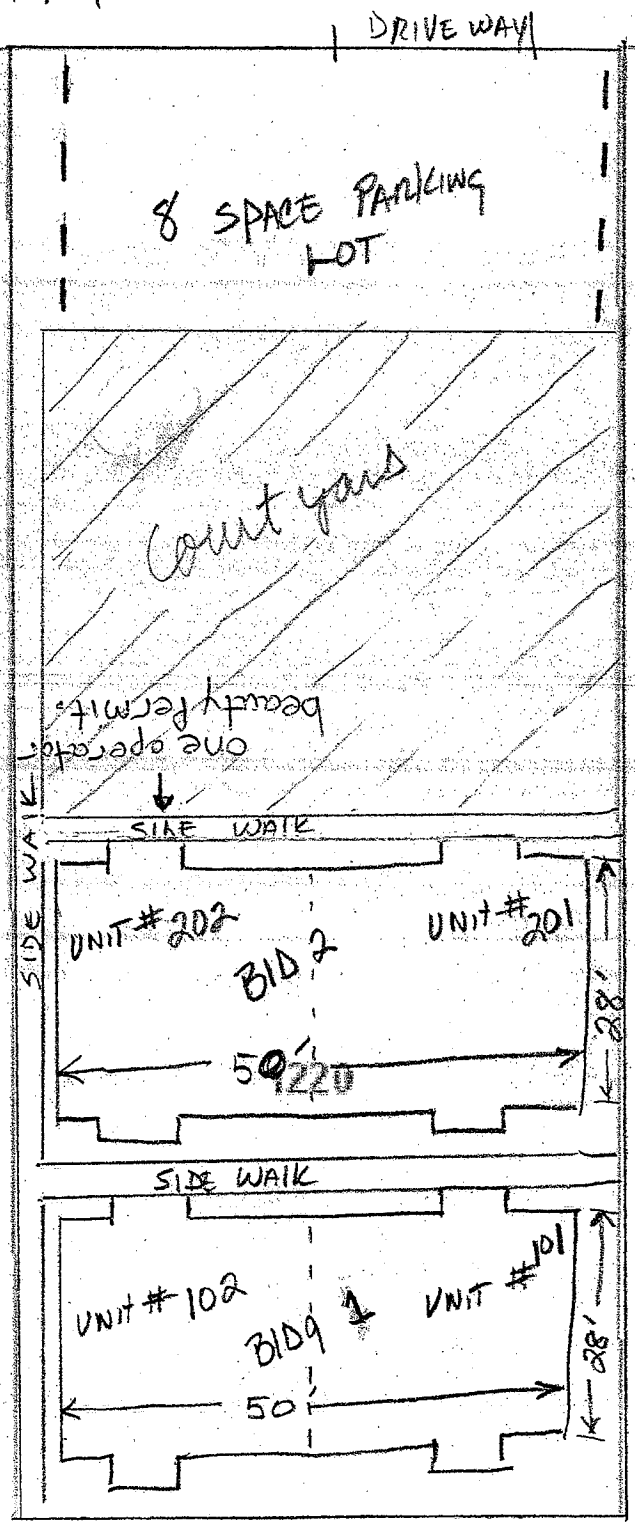
6ft
12ft
18ft
floor planner

1220 WYOMING ST.



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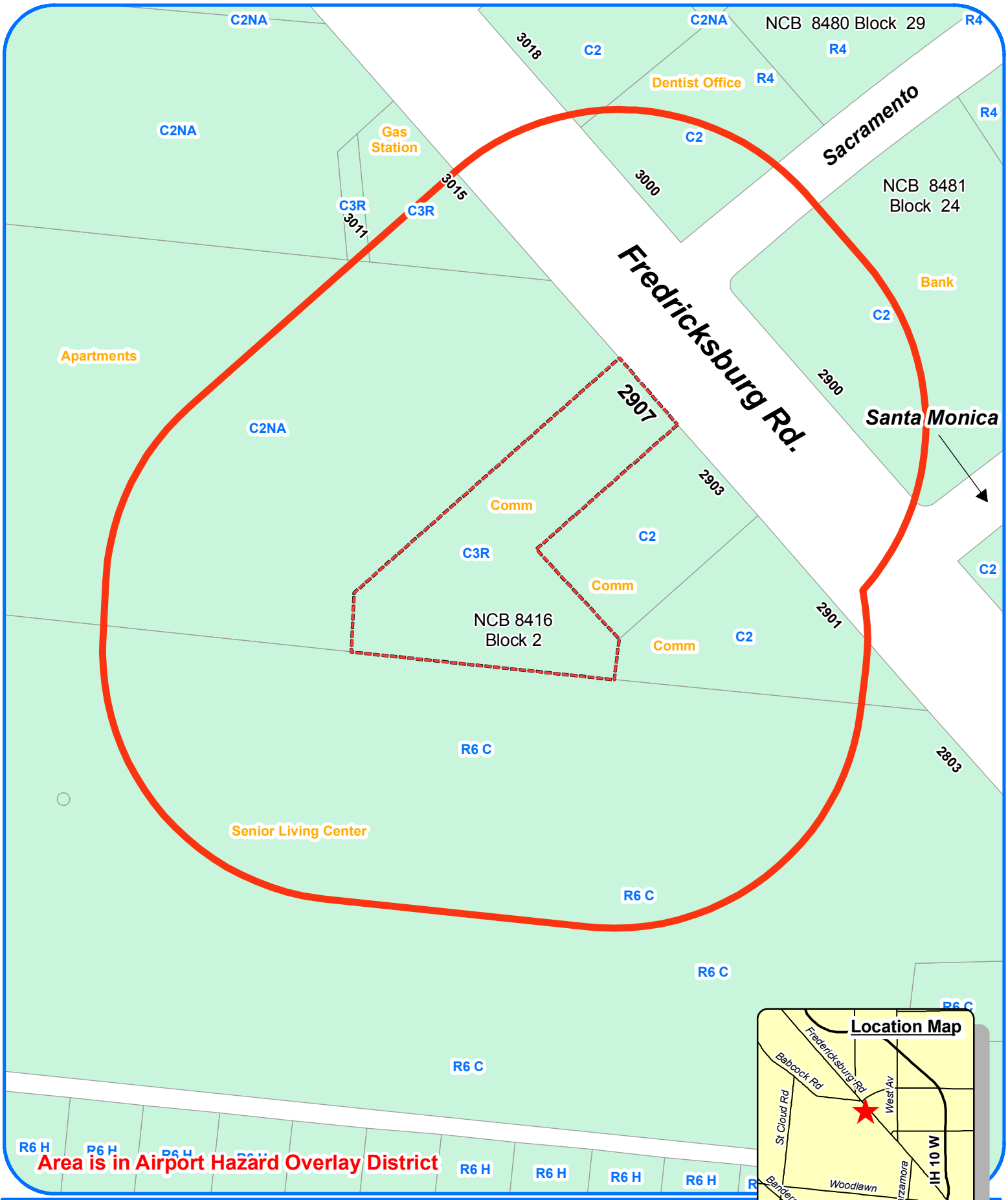

Board of Adjustment

Notification Plan for

Case A-10-018

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Legend

Subject Property

200' Notification Boundary

Scale: 1" approx. = 100'
Council District 7

Planning and Development Services Dept
City of San Antonio
(1/4/2010 - P. Trinkle)

City of San Antonio
Planning & Development Services Department
Staff Report

To:	Board of Adjustment
Case No.:	A-10-018
Date:	March 1, 2010
Applicant:	Brown & Ortiz, P.C.
Owner:	MTZ Properties, LLC
Location:	2907 Fredericksburg Road
Legal Description:	Lot 27, Block 2, NCB 8416
Zoning:	"C-3 R" General Commercial Restrictive Alcoholic Sales District
Subject:	Appeal of an Administrative Official
Prepared By:	Mike Farber, Planner

Summary

The applicant is appealing the decision of the Director of the Planning and Development Services Department to deny the registration of non-conforming use for a nightclub for the property at 2907 Fredericksburg Road.

Procedural Requirements

The request was publicly noticed in accordance with Section 403 of the Unified Development Code (UDC). Notices were sent to property owners and registered neighborhood associations within two hundred (200) feet of the subject property on February 11. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation on February 12. Additionally, notice of this meeting was posted at city hall and on the city's internet website on February 26, in accordance with Section 551.043(a) of the Texas Government Code.

Surrounding Zoning/Land Use

North	C-2 NA	Apartments
South	R-6 CD	Senior Living Center
East	C-2	Commercial Use
West	C-2 NA	Apartments

Project Description

The applicant is appealing the decision of the Director to deny the registration of a non-conforming use for the property at 2907 Fredericksburg Road. The subject property is zoned "C-3 R", which is a high-intensity commercial district that allows a tavern or nightclub by-right, however, the "R" suffix to the base zoning prohibits the sale of alcoholic beverages for on-premise consumption. Therefore, a customary tavern or nightclub where a customer may consume alcohol on premises is not allowed by-right on this property. The City of San Antonio rezoned this property on November 5, 2009 in order to restrict the sale of alcohol at this location. The property owner believes that they are entitled to non-conforming use rights since they allege they intended to open a nightclub at this location, though one was never established.

The applicant maintains that non-conforming use rights were established by means of obtaining a lease and applying for a TABC license. However, the anticipated use was never indicated on the aforementioned lease. Additionally, according to a time stamp on the applicant's TABC application, the application was completed on August 7, 2009. The zoning case that rezoned the subject property was initiated on June 3, 2009 by a Council Consideration Request. A use, as defined in the UDC, is *the purpose for which land or structures thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented or leased.* Because it appears that there was not, and is not currently, an established use on the property, and that the commercial lease does not indicate a use, the Planning and Development Services Department denied the registration of a non-conforming use on December 21, 2009. Additionally, the TABC application was completed and submitted after the CCR was initiated; therefore the use was not established prior to the initiation of the rezoning case.

Comprehensive Plan Consistency/Neighborhood Association

The subject property is located within the boundaries of the Near Northwest Neighborhood Plan. The property is located within the boundaries of the Jefferson Neighborhood Association. As of February 23, staff has received no response from the neighborhood association.

Criteria for Review

According to Section 211.009 (a)(1) of the Texas Local Government Code, The Board of Adjustment may hear and decide an appeal that alleges error in an order, requirement, decision or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter.

The applicant has not provided sufficient documentation to support the assertion that the Director made an error in the interpretation of the code. The code is clear in its definition that a use is the purpose for which land or structures thereon is designed, arranged or intended to be occupied or used, or for which it is occupied, maintained, rented or leased. The documentation provided in the application does not show that a use was either legally established or defined prior to the initiation of the rezoning case.

Staff Recommendation

A tavern/nightclub use was not established at this location prior to the rezoning case being initiated. The use was not in existence on the subject property prior to the rezoning case initiation, and the use was not defined through the previously mentioned lease agreement. Furthermore, a use was not established through the completion of the TABC application. Staff recommends that the Board uphold the Director's decision to deny the registration of a non-conforming use for the property at 2907 Fredericksburg Road.

Attachments

Attachment 1 – Location Map
Attachment 2 – City Attorney's Legal Opinion
Atatchment 3 - Application Cover Letter

CITY OF SAN ANTONIO
CITY ATTORNEY'S OFFICE

Interdepartmental Correspondence

TO: Michael Bernard, City Attorney

FROM: Norbert Hart, Deputy City Attorney, Development Services

SUBJECT: Non-conforming use - 2907 Fredricksburg Road

DATE: November 4, 2009

Issue: Has the owner or tenant of the property located at 2907 Fredricksburg Road established a non-conforming use for a Tavern/Nightclub?

Answer: No. A non-conforming use is a use which was lawfully operated prior to the government action which made the use a use not permitted in the district in which the use is located.

Background: The first permit was an electrical permit for demolition issued June 5, 2009. Subsequently, there were two plumbing permits issued. An application for a Certificate of Occupancy was received July 9 2009 under the name Pulse, but was not finalized because inspections remain to be conducted. It appears that the Certificate of Occupancy inspections caused building permits to be pulled to correct code deficiencies. The first building permit was applied for July 17, with the name "unknown tenant", but was never issued as a building permit. Two building permits under the name Club Pulse were applied for October 23 and Oct 29 respectively as walk through permits. Both have inspections remaining. There are no closed permits and a valid Certificate of Occupancy has not been issued. For all three building permits, including the unknown tenant permit that was never issued, the Planning and Development Department's Hansen computer system has the permits listed as no Alcohol and no SOB.

The applicant asserts that the mere act of obtaining a lease and applying for a TABC license creates a non-conforming use for a Tavern/Nightclub. The lease contains no provision relating to a particular use. In fact, the lease provision that would indicate a particular use of the leased space is left blank. Additionally, the lease provisions regarding zoning and non-conforming rights is simply superfluous without an intended use being identified in the lease. The permit applications indicate no alcohol and no sexually oriented business use. The application for non-conforming use rights does not indicate that the application for a TABC license was ever submitted and if it was ever submitted, the date when it was submitted. The TABC application does have one date stamp. The date stamp by the TABC indicates that the application was complete on August 7, 2009 when the surety bond was submitted. The zoning case was initiated on June 3, 2009 by a CCR initiated by Councilman Rodriguez.

Summary: The use was not in existence at the time of the initiation of the zoning case. And even if a use could be established by signing a lease, submitting a TABC application, or the issuance of a permit by the city, none of these actions occurred prior to the initiation of the zoning case. Accordingly, the property does not have non-conforming rights to a Tavern/Nightclub use.

KENNETH W. BROWN, AICP
DANIEL ORTIZ
PATRICK W. CHRISTENSEN
JAMES B. GRIFFIN

BROWN & ORTIZ, P.C.
ATTORNEYS AT LAW

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TELEPHONE: 210.299.3704
FAX: 210.299.4731

January 20, 2010

Mr. Mike Gallagher
Chairman, Board of Adjustment
City of San Antonio
1901 S. Alamo
San Antonio, Texas 78204

Via Hand Delivery

Mr. Roderick Sanchez
Director
Planning and Development Services Department
City of San Antonio
1901 S. Alamo, 2nd Floor
San Antonio, Texas 78204

Via Hand Delivery

Re: Appeal of the Decision of the Planning and Development Services Department Regarding the Registration of Nonconforming Use Rights for a 0.7226-Acre Tract of Land Located at 2907 Fredericksburg Road, San Antonio, Bexar County, Texas (the "Subject Property"); *Our File No. 9349.001*

Dear Messrs. Gallagher and Sanchez:

The purpose of this correspondence is to formally appeal the decision of the City of San Antonio (COSA) Planning and Development Services Department (PDSD) regarding the registration of Nonconforming Use Rights for the Subject Property. Specifically, this is an appeal of the Director of PDSD's decision to deny the registration of Nonconforming Use Rights for a nightclub on the Subject Property. This appeal is made pursuant to Sections 35-481 and 35-705 of the COSA Unified Development Code (the "UDC"), and Section 211.010 of the Texas Local Government Code (the "State Code"), which specifically provide an appellate process for reversing a PDSD decision.

Background

The structure located on the Subject Property was constructed in 1975 and has been continuously used for commercial purposes since that time pursuant to its commercial zoning designation (the property was "C-3", or a prior equivalent, until a COSA-initiated rezoning removed such zoning designation in December 2009). On March 10, 2009 a commercial lease was executed between the owner of the Subject Property and RRCA, Inc.

for the use of suite 101[1] as a nightclub referred to as "Club Pulse." As discussed in further detail below, multiple building permit applications necessary for the operation of a nightclub were submitted to COSA before the COSA-initiated rezoning was commenced. In addition, an application for a Mixed Beverage License was submitted to the Texas Alcoholic Beverage Commission (TABC) for the operation a nightclub prior to the start of the COSA-initiated rezoning. On June 25, 2009 the City Council approved a resolution directing PDSD to initiate a rezoning of the Subject Property from "C-3" (General Commercial") zoning district to "C-2" ("Commercial") zoning district. On October 29, 2009 an application for registration of Nonconforming Use Rights for a nightclub on the Subject Property was submitted to PDSD (prior to the City Council's final action on the then-proposed rezoning). On December 3, 2009 the City Council approved an Ordinance rezoning the Subject Property from "C-3" zoning district to "C-3R" (General Commercial Restrictive Alcohol Sales) zoning district. On December 21, 2009 PDSD notified our Firm that the registration of nonconforming use rights for a nightclub on the Subject Property was denied.

Grounds for Appeal

Section 35-705 of the UDC ("Certificate of Nonconforming Use") allows for an applicant to appeal a determination by the PDSD Director regarding the denial of Nonconforming Use Rights. Section 35-481 ("Appeals to Board of Adjustment"), in turn, outlines the process for the appeal itself. In accordance with Section 35-481 of the UDC, this appeal is submitted within thirty (30) days of the PDSD Director's decision to deny the registration of Nonconforming Use Rights for the Subject Property.

As stated above, an application for registration of Nonconforming Use Rights was submitted to PDSD on October 29, 2009 requesting registration of a nightclub use on the Subject Property. The request was made pursuant to Article VII and Appendix D of the UDC, which outline the process and criteria for registration of nonconforming uses.

The UDC defines the word "use" as "the purpose for which land or structures thereon is designed, arranged or *intended to be occupied or used*, or for which it is occupied, maintained, rented or leased" (emphasis added).[2] The UDC defines the phrase "nonconforming use" as "any use which on or after the effective date of the ordinance from which this chapter is derived was lawfully operated in accordance with the provisions of said ordinance but which use, by reason of amendment to said ordinance, or other governmental action, is not a permitted use in the district in which it is located."[3] The Texas Supreme Court has ruled that the applicable portion of the definition of the word "use" in the UDC *must be inserted* into the definition of "nonconforming use" in order to

[1] The structure on the Subject Property is currently divided into three suites numbered 101, 105, and 109. This appeal (and the underlying request) for Nonconforming Use Rights applies only to suite 101.
[2] CITY OF SAN ANTONIO UNIFIED DEVELOPMENT CODE APPENDIX A.
[3] *Id.* At § 35-702(a)(2).

ascertain its true meaning.[4] In other words, the UDC phrase of "nonconforming use" must be interpreted – *as mandated by the Texas Supreme Court* – to protect a purpose for which land or structures are "intended to be occupied or used."

The phrase "lawfully operated" found in the definition of "nonconforming use" is not defined in the UDC itself. Although the term is not defined in the UDC, the Texas Supreme Court and Court of Appeals have both issued opinions regarding when a use must be considered "lawfully operating" for the recognition of Nonconforming Use Rights. In 1960, the Texas Court Appeals ruled that an "existing use" should mean the "utilization of the premises so that they may be known in the neighborhood as being employed for a given purpose."[5] The Court of Appeals later ruled, in 1966, that *beginning construction* before passage of a rezoning ordinance can be sufficient to establish Nonconforming Use Rights.[6] Most recently (and, perhaps most importantly), in 2002, the Texas Supreme Court expanded on establishing Nonconforming Use Rights in the *Board of Adjustment of the City of San Antonio v. Wende* (92 S.W.3d 424 (Tex. 2002)) by ruling that *a lease* for quarry operations, executed before the property was annexed and zoned for residential use, established Nonconforming Use Rights, even though quarrying had not begun prior to the property being zoned for non-quarry uses.[7]

Thus, the UDC and case law (*all the way up to the Texas Supreme Court*) collectively confirm that for purposes of determining a nonconforming use, a use need not be physically operating, but instead merely *intended to be used along with sufficient preparation undertaken for such use* (e.g. executing a lease for a certain use or beginning construction in preparation for the proposed use, both of which occurred in this instance!). To be clear, if the intent and sufficient preparation for a use was in place for a property, prior to the adoption of an ordinance or other governmental action (such as a COSA-initiated rezoning), such intent and preparation shall establish a nonconforming use in accordance with Article VII of the UDC. Moreover, in this instance, there is no doubt that the surrounding neighborhood was aware of the intended use since it was neighborhood leaders that prompted the COSA-initiated zoning (as noted above, case law explains the fact that the surrounding neighborhood is aware of a certain use further supports the establishment of a nonconforming use).

In the end, the commercial structure located on the Subject Property was constructed in 1975 and has been used for commercial purposes since that date pursuant to the "C-3" zoning district (or prior equivalent) for the Subject Property. More recently, a portion of the commercial structure on the Subject Property ("Suite 101") began being used – as defined in the UDC and outlined in case law – for a nightclub referred to as "Club Pulse." The nightclub use began when a commercial lease was executed between the Subject Property's owner and

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[4] *Board of Adjustment of the City of San Antonio v. Wende*, 92 S.W. 3d 424, 431 (Tex. 2002) and *Huguley v. Board of Adjustment of City of Dallas*, 341 S.W. 2d 212 (Tex. Civ. App., Dallas 19060, no writ).
[5] *Huguley*, 341 S.W. 2d 212 at 218. See also *City of Silsbee v. Herron*, 484 S.W. 2d 154 (Tex. Civ. App., Beaumont 1972, ref. n.r.e.).
[6] *Gala Homes, Inc. v. Board of Adjustment or City of Killeen*, 405 SW2d 165 (Tex. Civ. App., Austin, 1966, error ref. n.r.e.).
[7] See *Wende*, 92 S.W. 3d 424.

RRCA, Inc. for a nightclub (Club Pulse). To further advance the nightclub use on the Subject Property, RRCA, Inc. submitted an application for a Mixed Beverage License for Club Pulse to the TABC. The intent and preparation/advancement for a nightclub continued as a Certificate of Occupancy for a nightclub was applied for with the COSA and multiple building permits were applied for in preparation for the nightclub use. As these building permits were applied for *and issued* by the COSA, construction began on the Subject Property and COSA inspections took place to advance the nightclub use. In addition to the intent and preparation for the nightclub evidenced by the lease, TABC license, building permits, construction on the Subject Property, and COSA inspections, the surrounding neighborhood showed on multiple occasions that they knew what the given purpose for the Subject Property was. This is evidenced by the multiple newsletters published by the surrounding neighborhood discussing the nightclub (Club Pulse) on the Subject Property, as well as the filing of a challenge to the TABC license and the circulation of a petition opposing the nightclub.

The specific items and dates associated with the intent and preparation described above are as follows:

1. **1975:** Commercial zoning adopted;

2. **February 2009:** Subject Property purchased by current owner, MTZ Properties, LLC., for the purpose of leasing the property for commercial uses;

3. **March 3, 2009:** Commercial lease entered into between MTZ Properties, LLC. ("Landlord") and April Villalobos, Ruben Villalobos, Roshanak Castillo, and Carlos Perez, doing business as "RRCA, Inc" and "Club Pulse" ("Tenant") for the operation of a nightclub on the Subject Property referred to as Club Pulse (*see* **Exhibit "A"**);

4. **March 12, 2009:** Notice of intent to apply for a mixed beverage permit with the TABC posted by Tenant on the Subject Property;

5. **April 15, 2009:** Letter received from representative of Apartments Northwest (located adjacent to the Subject Property) informing Landlord of the neighborhood's knowledge of the plans for a nightclub at the Subject Property (*see* **Exhibit "B"**).

6. **May 19, 2009:** Application for a mixed beverage permit for a nightclub on the Subject Property submitted to TABC by Tenant (*see* **Exhibit "C"**).

7. **May 29, 2009:** Council Consideration Request ("CCR") submitted to the City Council by Councilman Justin Rodriguez requesting the initiation of a rezoning of the Subject Property from "C-3" to a lower density district (*see* **Exhibit "D"**).

8. **June 25, 2009:** City Council passes resolution directing PDSD staff to initiate a rezoning of the Subject Property from "C-3" to a "zoning district compatible with existing and surrounding land use" (*see* **Exhibit "E"**).

9. **July 9, 2009:** Application for a Certificate of Occupancy submitted to COSA by Tenant for a nightclub use on the subject property (*see* **Exhibit "F"**).
    a. **July 9, 2009 through December 23, 2009:** COSA inspections are continuously conducted on the Subject Property in connection with the approval of the Certificate of Occupancy (*see* **Exhibit "F"**).

10. **July 16, 2009:** Application for a commercial plumbing permit submitted to COSA in order to update existing plumbing in preparation for a nightclub use on the Subject Property (*see* **Exhibit "G"**).
    a. **July 20, 2009 through July 23, 2009:** COSA inspections conducted on the Subject Property in connection with the approval of the above plumbing permit (*see* **Exhibit "G"**).
    b. **January 12, 2010:** Above plumbing permit closed (i.e. approved/finalized) in COSA permit database (*see* **Exhibit "H"**).

11. **July 2009 through August 2009:** Monticello Park Neighborhood Association discusses the Club Pulse nightclub in various newsletters, including circulating a petition to over 200 residents who are aware of the nightclub use on the Subject Property (*see* **Exhibit "I"**).

12. **July 2009 through August 2009:** Tenant circulates petition in support of nightclub use to approximately 80 neighbors who are aware of the nightclub use on the Subject Property (*see* **Exhibit "J"**).

13. **September 1, 2009:** COSA Zoning Commission recommends approval of rezoning from "C-3" to "C-2" on the Subject Property (*see* **Exhibit "K"**).

14. **September 2, 2009:** Public hearing held on TABC mixed beverage permit application by the State Office of Administrative Hearings ("SOAH"). The adjacent apartment community and Monticello Neighborhood Association are both listed as protestants and represented at the public hearing (*see* **Exhibit "L"**).

15. **October 14, 2009:** Decision to approve TABC Mixed Beverage Permit issued by SOAH (*see* **Exhibit "M"**).

16. **October 23, 2009:** Application for a commercial building permit submitted to COSA to allow for additional preparation work for a nightclub (*see* **Exhibit "N"**).
    a. **November 9, 2009 through December 3, 2009:** COSA inspections conducted on Subject Property in connection with approval of the above commercial building permit (*see* **Exhibit "N"**).
    b. **December 3, 2009:** Above commercial building permit closed (i.e. approved/finalized) in COSA permit database (*see* **Exhibit "H"**).

17. **October 29, 2009:** Application for a commercial plumbing permit submitted to COSA in order to allow for further preparation work for a nightclub on the Subject Property (*see* **Exhibit "O"**).
    a. **November 2, 2009 through November 3, 2009:** COSA inspections conducted on Subject Property in connection with the above plumbing permit (*see* **Exhibit "O"**).
    b. **December 3, 2009:** Above plumbing permit closed (i.e. approved/finalized) in COSA permit database (*see* **Exhibit "H"**).

18. **October 29, 2009:** Application for a commercial building permit submitted to COSA in order to allow for further preparation work for a nightclub on the Subject Property (*see* **Exhibit "P"**).
    a. **November 9, 2009 through December 2, 2009:** COSA inspections conducted on Subject Property in connection with the above commercial building permit (*see* **Exhibit "P"**).
    b. **December 3, 2009:** Above commercial building permit closed (i.e. approved/finalized) in COSA permit database (*see* **Exhibit "H"**).

19. **October 29, 2009:** Application for Registration of Nonconforming Use submitted to PDSD for registration of a nightclub use on the Subject Property (*see* **Exhibit "Q"**).

20. **November 16, 2009:** Application for a commercial electrical permit submitted to COSA in order to allow for further preparation work for a nightclub on the Subject Property (*see* **Exhibit "R"**).
    a. **November 18, 2009 through November 19, 2009:** COSA inspections conducted on Subject Property in connection with the above commercial electrical permit (*see* **Exhibit "R"**).
    b. **December 3, 2009:** Above commercial electrical permit closed (i.e. approved/finalized) in COSA permit database (*see* **Exhibit "H"**).

21. **December 3, 2009:** City Council approves rezoning of the Subject Property from "C-3" to "C-3R" (*see* **Exhibit "S"**).

22. **December 21, 2009:** PDSD notifies our Firm of decision to deny request for registration of nonconforming uses on the Subject Property (*see* **Exhibit "T"**).

Conclusion

On October 26, 2009 an application for registration of Nonconforming Use Rights was submitted to COSA requesting registration of a nightclub use for the Subject Property. The registration was requested pursuant to the UDC and case law definitions of nonconforming use as a use intended to be undertaken along with sufficient preparation/advancement for such use. The commercial lease, TABC License, building permits, construction, COSA inspections, and notice to the neighborhood in connection with a nightclub clearly establish that a nonconforming use for a nightclub *must be* recognized for the Subject Property. Therefore, pursuant to our own local definitions in the COSA UDC, laws adopted by the Texas Legislature in the Texas Local Government Code, and case law issued all the way up to the Texas Supreme Court, the denial of registration of nonconforming uses is hereby appealed and such denial must be reversed by the Board of Adjustment.

If you have any questions with regard to this matter, please do not hesitate to contact me.

Very truly yours,

Brown & Ortiz, P.C.

BY: _____
Daniel Ortiz

Board of Adjustment

Notification Plan for

Case A-10-020

Legend

Subject Property

200' Notification Boundary

Scale: 1" approx. = 100'
Council District 9

Planning and Development Services Dept
City of San Antonio
(1/25/2010 - P. Trinkle)

City of San Antonio
Planning & Development Services Department
Staff Report

To:	Board of Adjustment
Case No.:	A-10-020
Date:	March 1, 2010
Applicant:	Trudy E. Hamilton
Owner:	Trudy E. Hamilton
Location:	13115 Brook Arbor
Legal Description:	Lot 35, Block 2, NCB 17238
Zoning:	"PUD RM-4 AHOD MLOD-1" Residential Mixed Planned Unit Development Airport Hazard Overlay Military Lighting Overlay District
Subject:	Variance from PUD perimeter setback requirement.
Prepared By:	Jacob Floyd, Planner

Summary

The applicant is requesting an 18-foot variance from the requirement that a 20-foot perimeter setback be maintained for residential uses in a Planned Unit Development (PUD). Existing deck structure is located approximately 2 feet from the perimeter of the PUD.

Procedural Requirements

The request was publicly noticed in accordance with Section 403 of the Unified Development Code (UDC). Notices were sent to property owners and registered neighborhood associations within two hundred (200) feet of the subject property on February 11, 2010. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation on February 12. Additionally, notice of this meeting was posted at city hall and on the city's internet website on February 26, in accordance with Section 551.043(a) of the Texas Government Code.

Surrounding Zoning/Land Use

North	PUD RM-4	Single-Family Residential (Townhouse)
South	PUD RM-4	Single-Family Residential
East	PUD RM-4	Single-Family Residential
West	PUD RM-4	Single-Family Residential

Project Description

The applicant is requesting variance from requirement that a perimeter setback be maintained in a PUD to keep an existing deck as it is currently located, approximately 2 feet from rear property line which is also the perimeter of the PUD. Construction began prior to a permit being sought, though one was later issued with the statement "to comply with UDC and IRC codes." The applicant also states that permission to build over the drainage easement was granted by the Public Works Department.

Comprehensive Plan Consistency/Neighborhood Association

The subject property is not located within a neighborhood or community plan. The property is not located within the boundaries of a neighborhood association.

Criteria for Review

According to Section 482(e) of the Unified Development Code, in order for a variance to be granted, the applicant must demonstrate all of the following:

1. The variance is not contrary to the public interest:

   It does appear that the granting of the variance would be contrary to the public interest. The intent of the required setback is to ensure a reasonable amount of open space is provided to allow the flow of air and light penetration. The scale of the structure in question appears to be of such magnitude as to negatively affect these environmental amenities on adjacent properties.

2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.

   It does not appear that the literal enforcement of the ordinance would result in unnecessary hardship. The subject property does not appear to be characterized by any unique conditions not similarly experienced by other properties in the area.

3. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.

   It does not appear that the spirit of the ordinance can be observed only through the granting of this variance, nor does staff believe that substantial justice will be done. The reasonable use of the subject property will not be denied in the absence of a variance.

4. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.

   The granting of the variance will not authorize the operation of a use other than those uses specifically permitted in the "PUD RM-4" zoning district.

5. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.

   It does not appear that the granting of the variance will injure the appropriate use of adjacent conforming property. However, it does appear that the essential character of the district could be altered by such a variance, as the district is characterized by a uniform quantity of open space in the rear-yard area.

6. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.

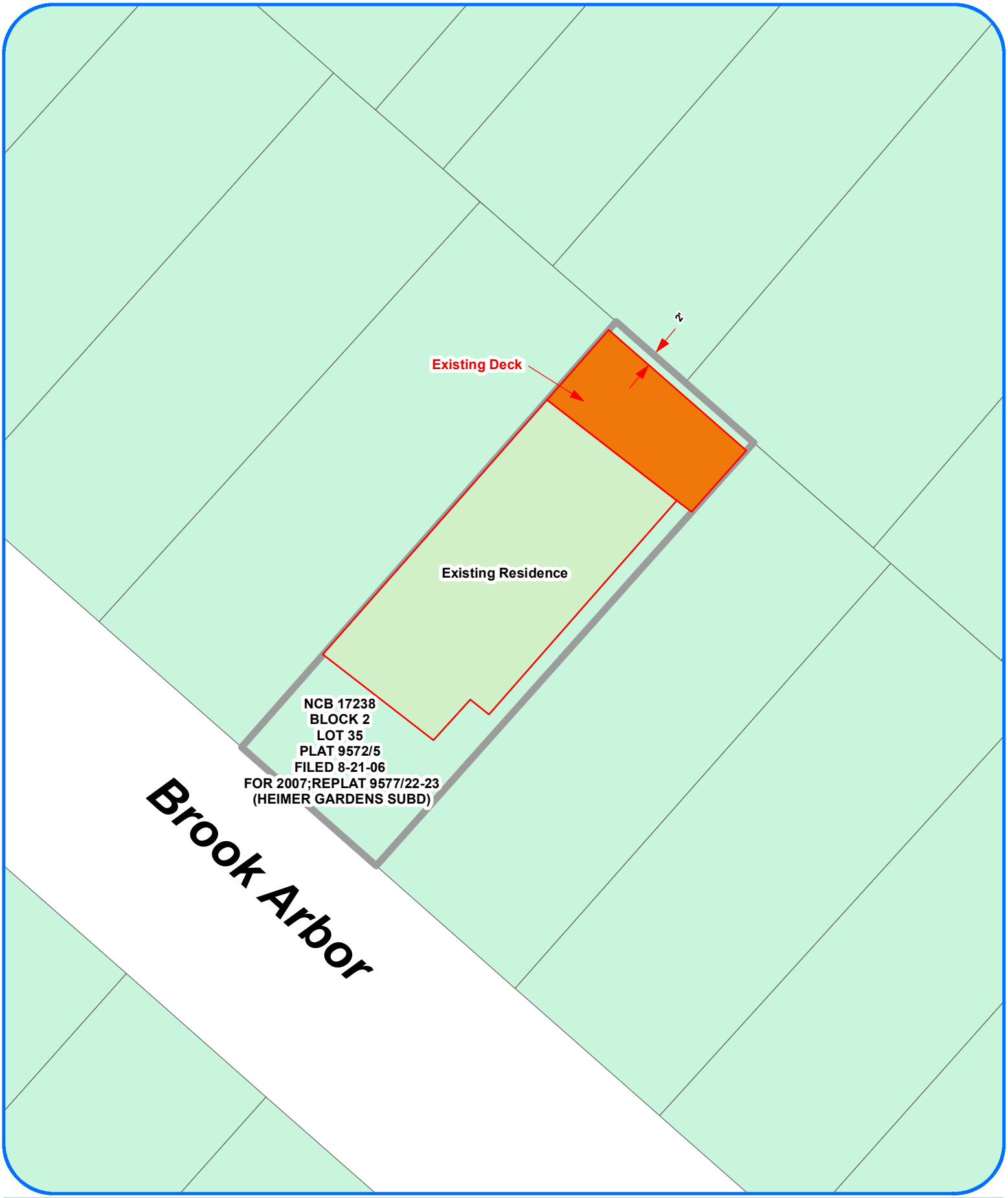
   The 20-foot PUD perimeter setback is a condition generally experienced by all properties similarly situated in the "PUD RM-4" district and is not a circumstance unique to the subject property. The plight of the owner of the subject property is not due to unique circumstances existing on the property.

Staff Recommendation

Staff recommends that **A-10-020, 13115 Brook Arbor, be denied** because the findings of fact have not been satisfied as presented above. The plight of the owner appears to be self-created and not due to any unique physical characteristic of the property.

Attachments

Attachment 1 – Location Map
Attachment 2 – Plot Plan
Attachment 3 – Applicant's Survey
Attachment 4 – Subdivision Plat



Board of Adjustment

Plot Plan for

Case A-10-020

N
W E
S

Legend

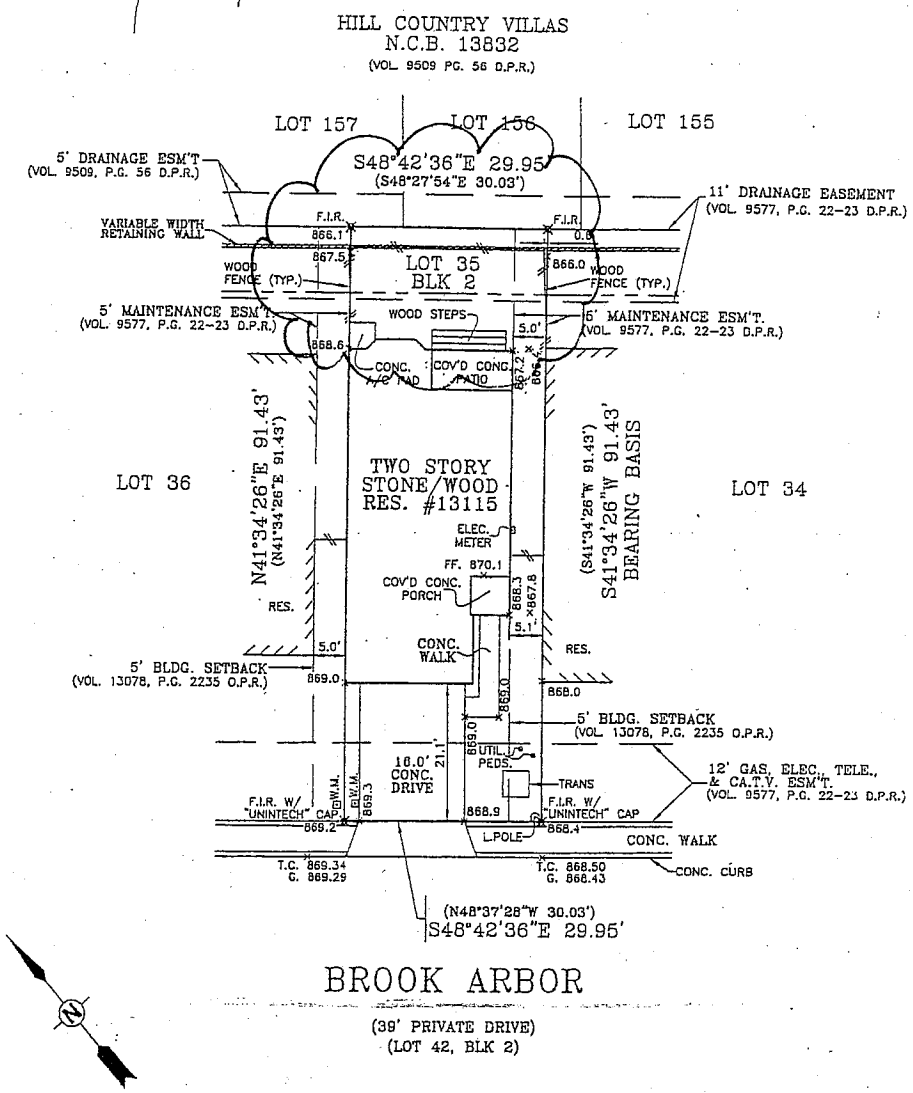
Scale: 1" approx. = 50'
Council District 9

13115 Brook Arbor

Planning and Development Services Dept
City of San Antonio
(2/3/2010 - P. Trinkle)

\\Server02\Jobs - Residencial\TOUCHMARK HOMES\GF Subdivision\Final\13115BROOKARBOR.dwg, 1/26/2009 4:47:32 PM, HP Nopier 320 PCL 6_27, C.Matches

Trudy E. Hamilton



LOT 35, BLOCK 2, N.C.B. 17238
SUBDIVISION HEIMER GARDENS SUBDIVISION, REPLAT (PLANNED UNIT DEVELOPMENT)
VOL. 9577, PAGE(S) 22-23
STREET ADDRESS 13115 BROOK ARBOR
CITY SAN ANTONIO, BEXAR COUNTY, TEXAS
SURVEYED FOR CHICAGO TITLE COMPANY
BUYER(S)

NOTE:

1. ACCORDING TO SCALING FROM THE F.E.M.A. FLOOD INSURANCE RATE MAP NO. 48029C0278 F, DATED JANUARY 4, 20 02, THIS TRACT LIES WITHIN ZONE X (AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN.)
2. RECORD BEARINGS SHOWN HEREON ARE BASED ON THE RECORDED PLAT.
3. BEARINGS, DISTANCES AND AREAS IN PARENTHESES ARE FROM RECORD INFORMATION.
4. THIS SURVEYOR DID NOT RESEARCH THE DEED RECORDS FOR PREVIOUS CONFLICTS IN TITLE OR EASEMENT, THEREFORE CERTAIN EASEMENTS MAY HAVE BEEN GRANTED WHICH ARE NOT REFLECTED HEREON.

THIS PROPERTY IS SUBJECT TO RESTRICTIVE COVENANTS RECORDED IN:
VOL. 9572, PG. 5, VOL. 9573, PG. 65-66
VOL. 12337, PG. 1, VOL. 13078, PG. 2231
VOL. 13078, PG. 2235

UNINTECH CONSULTING ENGINEERS, INC.
2431 EAST EVANS ROAD
SAN ANTONIO, TEXAS 78259
(210) 641-6000XX; (210) 641-8279
WWW.UNINTECH.COM

STATE OF TEXAS
REGISTERED
RANDY G. SCHULTE, JR.
5671
PROFESSIONAL
LAND SURVEYOR

LEGEND
F.I.R. : FOUND 1/2" IRON REBAR UNLESS OTHERWISE NOTED
S.I.R. : SET 1/2" IRON REBAR W/CAP STAMPED "UNINTECH"
D.P.R. : DEED & PLAT RECORDS, BEXAR COUNTY, TEXAS
R.P.R. : REAL PROPERTY RECORDS, BEXAR COUNTY, TEXAS
O.P.R. : OFFICIAL PUBLIC RECORDS OF REAL PROPERTY, BEXAR COUNTY, TEXAS

I HEREBY CERTIFY THAT THE ABOVE PLAT IS AN ACCURATE REPRESENTATION OF THE PROPERTY ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY SUPERVISION.

THIS 20TH DAY OF JANUARY, 20 09 A.D.

Randy G. Schulte Jr.

SCALE: 1"=20' DWN BY: CJM CHK BY: DV
REV./ UPDATED:

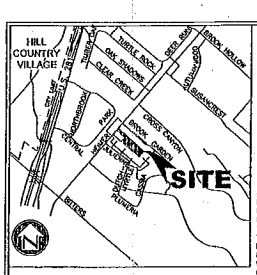
070448

VACATING AND RESUBDIVISION PLAT ESTABLISHING

HEIMER GARDENS SUBDIVISION

PLANNED UNIT DEVELOPMENT

BEING A VACATE AND RESUBDIVISION PLAT OF LOTS 1 THROUGH 22 AND 24 THROUGH 41, BLOCK 2, OF THE OF SUBDIVISION AS RECORDED IN VOLUME 9572, PAGE 5, DEED AND PLAT RECORDS, BEXAR COUNTY, TEXAS



LOCATION MAP

NOT TO SCALE

NOTES:

1. FINISHED FLOOR ELEVATION MUST BE A MINIMUM OF EIGHT INCHES (8") ABOVE FINAL ADJACENT GRADE, PER UDC 35-504(a)(3), PAGES 5-40
2. NO BUILDING PERMIT WILL BE ISSUED FOR THIS SITE UNTIL A STREETSCAPE PLAN HAS BEEN APPROVED IN ACCORDANCE WITH UDC 35-512
3. THE VALUES OF THE GPS COORDINATES SHOWN ON THIS PLAT WERE OBTAINED WITH GLOBAL POSITIONING RECEIVERS WITH REFERENCE TO STATION SAN ANTONIO RRP PID AW2157
   DATUM IS NAD83 (ADJUSTMENT 1993) CONVERTED TO FEET
   STATE PLANE COORDINATES ARE GRID
   SCALE FACTOR IS 0.999966
   ROTATION GRID TO PLAT IS -00°00'05"
4. THE BEARING REFERENCE SOURCE IS THE NORTH LINE OF OF SUBDIVISION RECORDED IN VOLUME 9572, PAGE 5, DEED AND PLAT RECORDS, BEXAR COUNTY, TEXAS.
5. D.P.R. = DEED AND PLAT RECORDS, BEXAR COUNTY, TEXAS

DRAINAGE EASEMENT NOTE:

NO STRUCTURE, FENCES, WALLS, OR OTHER OBSTRUCTIONS THAT IMPEDE DRAINAGE SHALL BE PLACED WITHIN THE LIMITS OF THE DRAINAGE EASEMENTS SHOWN ON THIS PLAT. NO LANDSCAPING OR OTHER TYPE OF MODIFICATIONS, WHICH ALTER THE CROSS-SECTIONS OF THE DRAINAGE EASEMENTS, AS APPROVED, SHALL BE ALLOWED WITHOUT THE APPROVAL OF THE DIRECTOR OF PUBLIC WORKS. THE CITY OF SAN ANTONIO AND BEXAR COUNTY SHALL HAVE THE RIGHT OF INGRESS AND EGRESS OVER GRANTORS ADJACENT PROPERTY TO REMOVE ANY IMPEDING OBSTRUCTIONS PLACED WITHIN THE LIMITS OF SAID DRAINAGE EASEMENTS AND TO MAKE ANY MODIFICATIONS OR IMPROVEMENTS WITHIN SAID DRAINAGE EASEMENTS

WASTEWATER EDU NOTE:

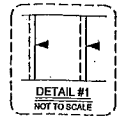
THE NUMBER OF WASTEWATER EQUIVALENT DWELLING UNITS (EDUS) PAID FOR THIS SUBDIVISION PLAT ARE KEPT ON FILE AT THE SAN ANTONIO WATER SYSTEM UNDER THE PLAT NUMBER ISSUED BY THE DEVELOPMENT SERVICES DEPARTMENT.

CPS NOTES:

1. THE CITY OF SAN ANTONIO AS A PART OF ITS ELECTRIC AND GAS SYSTEM (CITY PUBLIC SERVICE BOARD) IS HEREBY DEDICATED THE EASEMENTS AND RIGHTS-OF-WAY FOR ELECTRIC AND GAS DISTRIBUTION AND SERVICE FACILITIES IN THE AREAS DESIGNATED ON THIS PLAT AS "ELECTRIC EASEMENT," "GAS EASEMENT," "ANCHOR EASEMENT," "SERVICE EASEMENT," "OVERHANG EASEMENT," "OVERHANG EASEMENT," "UTILITY EASEMENT," AND "TRANSFORMER EASEMENT" FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, RECONSTRUCTING, MAINTAINING, REMOVING, INSPECTING, PATROLLING, AND ERECTING POLES, HANGING OR BURYING WIRES, CABLES, CONDUITS, PIPELINES OR TRANSFORMERS, EACH WITH ITS NECESSARY APPURTENANCES, TOGEHTER WITH THE RIGHT OF INGRESS AND EGRESS OVER GRANTOR'S ADJACENT LAND, THE RIGHT TO RELOCATE SAID FACILITIES WITHIN SAID EASEMENT AND RIGHT-OF-WAY AREAS, AND THE RIGHT TO REMOVE FROM SAID LANDS ALL TREES OR PARTS THEREOF, OR OTHER OBSTRUCTIONS WHICH ENDANGER OR MAY INTERFERE WITH THE EFFICIENCY OF SAID LINES OR APPURTENANCES THERETO. IT IS AGREED AND UNDERSTOOD THAT NO BUILDINGS, CONCRETE SLABS, OR WALLS WILL BE PLACED WITHIN SAID EASEMENT AREAS
2. ANY CPS MONETARY LOSS RESULTING FROM MODIFICATIONS REQUIRED OF CPS EQUIPMENT, LOCATED WITHIN SAID EASEMENT, DUE TO GRADE CHANGES OR GROUND ELEVATION ALTERATION SHALL BE CHARGED TO THE PERSON(S) DEEMED RESPONSIBLE FOR SAID GRADE CHANGES OR GROUND ELEVATION ALTERATION
3. THIS PLAT DOES NOT AMEND, ALTER, RELEASE, OR OTHERWISE AFFECT ANY EXISTING ELECTRIC, GAS, WATER, SEWER, DRAINAGE, TELEPHONE, CABLE EASEMENTS OR ANY OTHER EASEMENTS FOR UTILITIES UNLESS THE CHANGES TO SUCH EASEMENTS ARE DESCRIBED BELOW
4. CONCRETE DRIVEWAY APPROACHES ARE ALLOWED WITHIN THE FIVE FEET (5') WIDE ELECTRIC AND GAS EASEMENTS WHEN LOTS ARE SERVED ONLY BY REAR LOT UNDERGROUND ELECTRIC
5. ROOF OVERHANGS ARE ALLOWED WITHIN FIVE FOOT (5') WIDE ELECTRIC AND GAS EASEMENTS WHEN ONLY UNDERGROUND ELECTRIC AND GAS FACILITIES ARE PROPOSED TO EXIST WITHIN THOSE FIVE FOOT (5') WIDE EASEMENTS.

IMPACT FEE PAYMENT DUE:

THE OWNER HAS DEFERRED ALL IMPACT FEES. ALL APPLICABLE IMPACT FEES MUST BE PAID PRIOR TO WATER METER SET AND/OR WASTEWATER SERVICE CONNECTION.

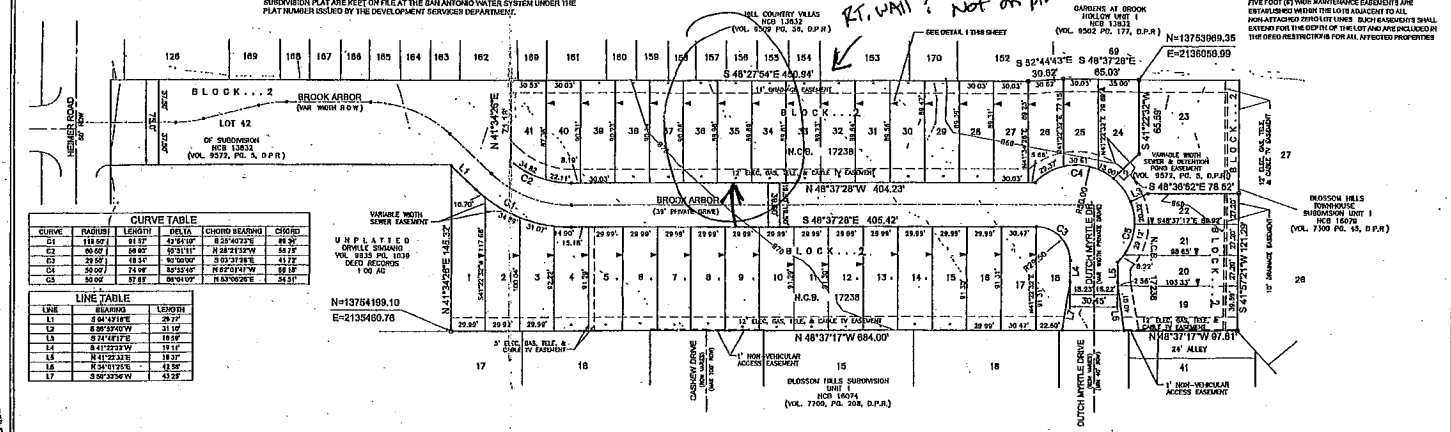


DETAIL #1

NOT TO SCALE

TYPICAL EASEMENT FOR ALL LOTS

FIVE FOOT (5') WIDE MAINTENANCE EASEMENTS ARE ESTABLISHED WITHIN THE LOTS ADJACENT TO ALL NON-ATTACHED ZERO LOT LINES. SUCH EASEMENTS SHALL EXTEND FOR THE DEPTH OF THE LOT AND ARE INCLUDED IN THE DEED RESTRICTIONS FOR ALL AFFECTED PROPERTIES



CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	CHORD
C1	118.00'	81.57'	42°54'10"	S 25°40'22"E	80.36'
C2	60.00'	56.60'	90°31'11"	N 38°31'53"W	54.73'
C3	29.00'	46.24'	90°00'00"	S 03°37'28"E	41.72'
C4	50.00'	74.99'	85°55'49"	N 82°01'41"W	68.18'
C5	50.00'	57.87'	66°01'07"	N 63°06'26"E	54.31'

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 04°43'18"E	29.27'
L2	S 86°53'00"W	31.18'
L3	S 74°48'17"E	18.59'
L4	S 41°22'33"W	19.13'
L5	N 41°22'33"E	18.37'
L6	N 54°01'25"E	43.56'
L7	S 56°33'56"W	43.28'

STATE OF TEXAS)
COUNTY OF BEXAR)

THE OWNER OF THE LAND SHOWN ON THIS PLAT, IN PERSON OR THROUGH A DULY AUTHORIZED AGENT, DEDICATES TO THE USE OF THE PUBLIC, EXCEPT AREAS IDENTIFIED AS PRIVATE, FOREVER ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, EASEMENTS, AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSE AND CONSIDERATION THEREIN EXPRESSED.

OWNER

DULY AUTHORIZED AGENT

UNDER MY SUPERVISION, SWORN TO & SUBSCRIBED BEFORE ME THIS THE 9th DAY OF July, A.D. 2007.

NOTARY PUBLIC, BEXAR COUNTY, TEXAS

COLLEEN O. SHADE
Notary Public, State of Texas
My Commission Expires
April 14, 2010

STATE OF TEXAS
DAVID G. BROWN
53783
REGISTERED
PROFESSIONAL ENGINEER

STATE OF TEXAS)
COUNTY OF BEXAR)

I HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN TO THIS PLAT TO THE MATTERS OF STREETS, LOTS, AND DRAINAGE LAYOUT TO THE BEST OF MY KNOWLEDGE THIS PLAT CONFORMS TO ALL REQUIREMENTS OF THE UNIFIED DEVELOPMENT CODE, EXCEPT FOR THOSE VARIANCES THAT HAVE BEEN GRANTED BY THE SAN ANTONIO PLANNING COMMISSION.

REGISTERED PROFESSIONAL ENGINEER

STATE OF TEXAS
EMILIO R. MOLINA, JR.
5722
REGISTERED
PROFESSIONAL
LAND SURVEYOR

STATE OF TEXAS)
COUNTY OF BEXAR)

I HEREBY CERTIFY THAT THE ABOVE PLAT CONFORMS TO THE MINIMUM STANDARD SET FORTH BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYING ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND BY UNINTECH CONSULTING ENGINEERS, INC.

REGISTERED PROFESSIONAL LAND SURVEYOR

STATE OF TEXAS)
COUNTY OF BEXAR)

THIS PLAT OF HEIMER GARDENS SUBDIVISION HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION OF THE CITY OF SAN ANTONIO, TEXAS AND IS HEREBY APPROVED BY SUCH COMMISSION.

DATED THIS 22nd DAY OF August, A.D. 20 07

THE PLANNING COMMISSION OF SAN ANTONIO, TEXAS

BY: _____ CHAIRMAN

BY: _____ SECRETARY

STATE OF TEXAS)
COUNTY OF BEXAR)

I, Gerard Rickhoff COUNTY CLERK OF SAID COUNTY DO HEREBY CERTIFY THT THIS PLAT WAS FILED FOR RECORD IN MY OFFICE, ON THE 24th DAY OF August, A.D. 2007 AT 3:15 P M, AND DULY RECORDED THE 27th DAY OF August A.D. 2007 AT 10:03 A.M, IN THE RECORDS OF Deed + Plat Records OF SAID COUNTY, IN BOOK VOLUME 9577 ON PAGE 23.

IN TESTIMONY WHEREOF, WITNESS MY HAND AND OFFICIAL SEAL OF OFFICE THIS 27 DAY OF August A.D. 2007

COUNTY CLERK, BEXAR COUNTY, TEXAS

BY: _____ DEPUTY

COUNTY CLERK
BEXAR COUNTY, TEXAS

UNINTECH CONSULTING ENGINEERS, INC.

3031 E. EVANS ROAD
SAN ANTONIO, TEXAS 78260
(210) 41-0601 FAX (210) 641-4579

WWW.UNINTECH.COM
DEVELOPER@UTI.COM
SAN ANTONIO - AUSTIN

OWNER/DEVELOPER:
TOUCH MAGIC HOMES
MARK FISHER, PRESIDENT
13309 OLD BLANCO RD SUITE 320
SAN ANTONIO, TX 78216

DRAWN BY: JMO/RR JOB NO.: 07-060-V DATE: 05/03/07

SCALE: 1"=60'

SHEET 2 OF 2

Book 9577
Page 23
2007127132 Page 2 of 2
Filed for Record in:
BEXAR COUNTY
On 08/27/2007 10:03:00 AM
Record Number: 2007127132
Fee: 1.00
BEXAR COUNTY
GERARD RICKHOFF COUNTY CLERK
RECORDER'S MEMORANDUM
AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST REPRODUCTION DUE TO THE DEPTH AND QUALITY OF THE ORIGINAL TYPE, PRINTED, OR WRITTEN MATERIAL. PHOTOCOPY, ELECTRONIC REPRODUCTION.

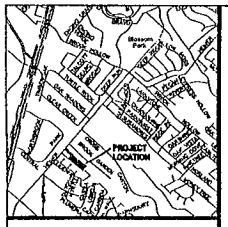
GF SUBDIVISION

THE AREA BEING SUBDIVIDED AND PLATTED WAS PREVIOUSLY SHOWN AS A 3.997 ACRE TRACT OF LAND OUT OF THE W.H. HARRISON SURVEY NO. 80, ABSTRACT 335, COUNTY BLOCK 5002, BEXAR COUNTY, TEXAS OUT OF A 3.00 ACRE TRACT OF LAND CONVEYED IN VOLUME 4273, PAGE 9, DEED RECORDS, BEXAR COUNTY, TEXAS.

BASIS OF BEARINGS FOR THIS PLAT: GF SUBDIVISION VOLUME 4273 PG 9 DEED RECORDS

PARK DEDICATION: THE OWNER HAS ELECTED TO PAY A FEE IN LIEU OF PARKLAND DEDICATION REQUIREMENT.

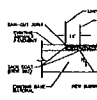
SIDEWALKS: SIDEWALKS WILL BE INSTALLED IN THE PUBLIC ROW PER UDC ARTICLE 8, DIVISION 2, 35-506 (b)



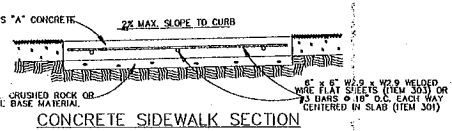
LOCATION MAP
(NOT TO SCALE)

LAND OWNER/DEVELOPER:
GUY FLUHR
1115 N. MACHNANY
SAN ANTONIO, TX. 78202

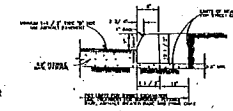
ENGINEER/SURVEYOR:
STEVEN G. COOK ENGINEERING
15000 STAHCHEST, SUITE 107
SAN ANTONIO, TX 78247



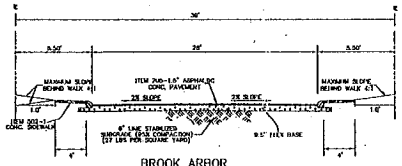
DUTCH MYRTLE DRIVE
PAVEMENT JUNCTION DETAIL
N.T.S



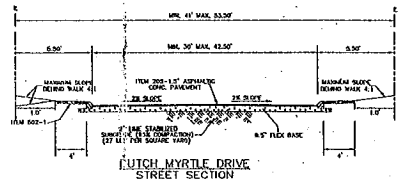
CONCRETE SIDEWALK SECTION
ITEM 502.1
N.T.S



MACHINE LAID CURB

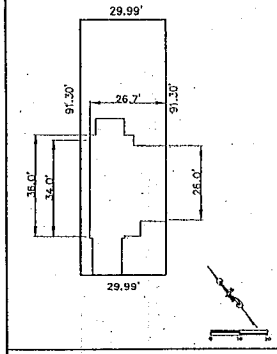


BROOK ARBOR
STREET SECTION
SCALE : NTS

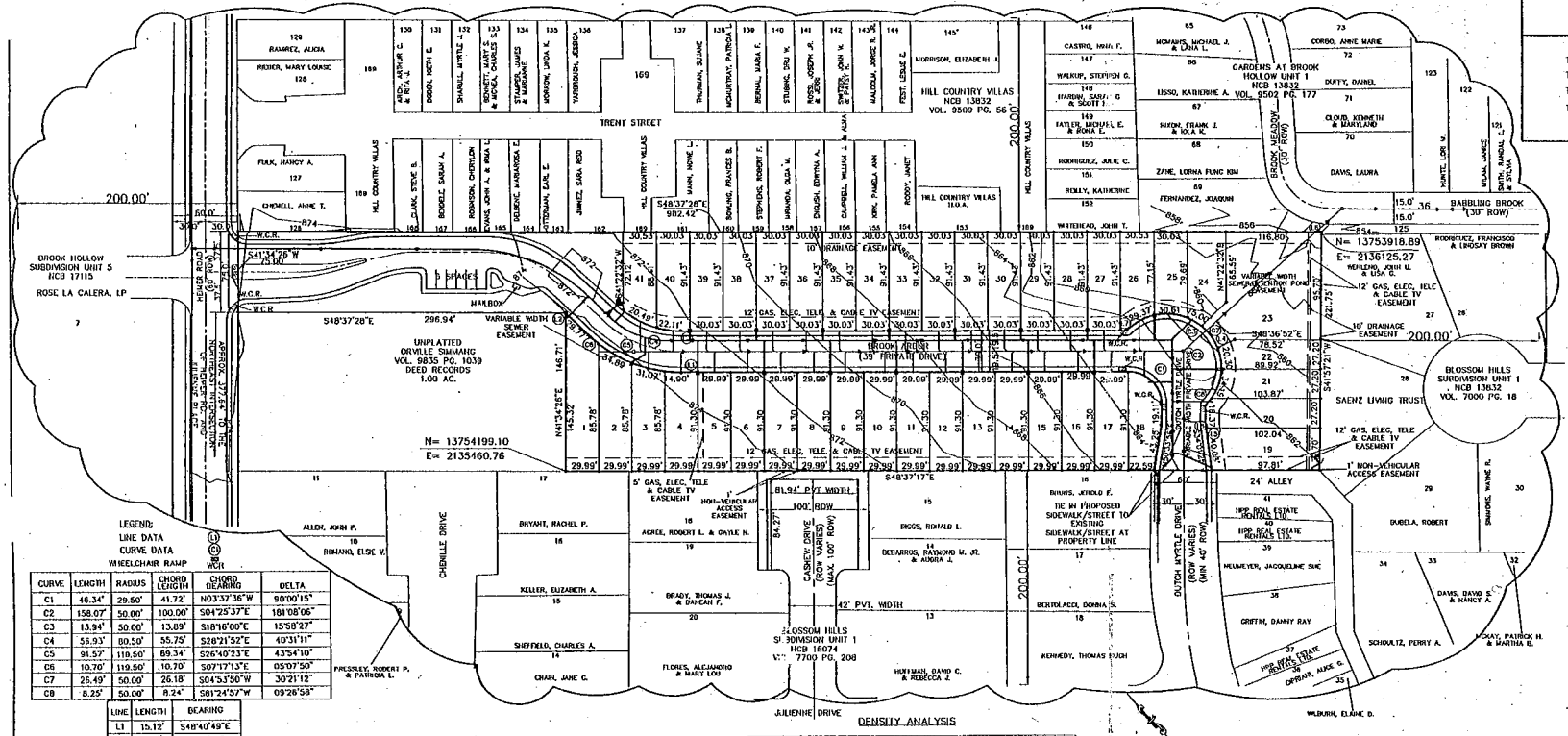


DUTCH MYRTLE DRIVE
STREET SECTION
SCALE : NTS

TYPICAL LOT COVERAGE EXHIBIT



TOTAL TYPICAL LOT AREA: 2737 SQ.FT.
TOTAL COVERED SQ. FT. PER LOT : 1,064
TOTAL UNCOVERED (OPEN) SQ. FT. PER LOT : 1,673
TOTAL OPEN/COVERED AREA PER LOT:
61.13% / 38.87%



CURVE	LENGTH	RADIUS	CHORD LENGTH	CHORD BEARING	DELTA
C1	46.34'	29.50'	41.72'	N03°37'36"W	90°00'15"
C2	158.07'	50.00'	100.00'	S04°25'37"E	181°08'06"
C3	13.94'	50.00'	13.89'	S18°16'00"E	15°58'27"
C4	56.93'	80.50'	55.75'	S28°21'52"E	40°31'11"
C5	91.57'	119.50'	89.34'	S26°40'23"E	43°54'10"
C6	10.70'	119.50'	10.70'	S07°17'13"E	05°07'50"
C7	26.49'	50.00'	26.18'	S04°53'50"W	30°21'12"
C8	8.25'	50.00'	8.24'	S81°24'57"W	09°26'58"

LINE	LENGTH	BEARING
L1	15.12'	S48°40'49"E
L2	1.38'	N41°34'26"E
L3	8.21'	S48°37'28"E
L4	16.59'	S74°48'17"E
L5	11.97'	N34°01'25"E
L6	5.18'	S48°37'28"E
L7	5.66'	S48°37'28"E
L8	2.56'	N34°01'25"E

PARKING SPACE SUMMARY

REGULAR SPACES = 6
HANDICAPPED SPACES = 0
TOTAL SPACES =6

DENSITY ANALYSIS

LOT	AREA	UNITS	EDU 1 EDU/196 SQ FT	DENSITY UNITS/ACRE	OPEN SPACE ACREAGE
1-42	3.997	40	13.44	10.01	0.216

NOTE:
NUMBER OF PHASES=1
NUMBER OF LOTS=42
NUMBER OF UNITS=40
TOTAL ACREAGE=3.997
MAX DENSITY=10.01 UNITS/ACRE
PROPOSED USE: SINGLE FAMILY ATTACHED

NOTE:
A REQUEST FOR ADMINISTRATIVE EXCEPTION AND/OR VARIANCE FOR NON-COMPLIANCE WITH UDC SECTION 35-506(a)(2) PROJECTING STREETS. WHERE THIS PROJECT DOES NOT MAKE A CONNECTION TO CASHEW DRIVE, SHALL BE SUBMITTED AT THE TIME OF PLATTING AS A CONDITION OF APPROVAL FOR THIS PUD

THIS PLAT OF SUBDIVISION HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING COMMISSION OF THE CITY OF SAN ANTONIO, TEXAS, AND IS HEREBY APPROVED BY SUCH COMMISSION.

DATED THIS 26 DAY OF June A.D. 2005

BY: Susan Wright
CHAIRMAN

BY: Robert Ryan
SECRETARY

#05-010

STEPHEN GEORGE COOK ENGINEERING, INC.
REGISTERED LAND SURVEYORS
15000 STAHCHEST, SUITE 107
SAN ANTONIO, TEXAS 78247-4117
210/481-2533 • FAX:210/481-2550
1-888-382-SGCE • WWW.SGCENET

SGC

NO.	DATE	COMMENTS
1	10/17/04	FIL. REDLINES
2	10/18/04	PARKS REDLINES
3	10/29/04	DISABILITY COMMENTS
4	11/17/04	CPS COMMENTS
5	1/7/05	RESIDENTIAL

PROJECT NAME: GF SUBDIVISION 05-010
SCALE: 1" = 50'
SHEET 1 OF 1
P.U.D PLAN
ENG: TAR
DWG: KDR
JOB # 523-001
DATE 03/15/2004