

# City of San Antonio Board of Adjustment

## Regular Public Hearing Agenda

Monday, October 7, 2013

1:00 P.M.

Board Room, Cliff Morton Development and Business Services Center

Anytime during the public hearing, the Board of Adjustment may meet in Executive Session to consult on attorney-client matters (real estate, litigation, personnel and security matters), as well as to discuss any of the agenda items. This notice was posted on the Development Services Department website ([www.sanantonio.gov/dsd](http://www.sanantonio.gov/dsd)), and the City Hall kiosk, at least seventy-two (72) hours prior to this public hearing, in compliance with the Texas Open Meetings Act.

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1. **1:00 PM** - Public Hearing – Call to Order
2. Roll Call
3. Pledges of Allegiance
4. Presentation to the Board from Development Services Staff regarding fire rated walls and minimum fire separation distances.
5. **A-13-065:** The request of Edmund S. Beck for 1) a 10-foot variance from the 10-foot required front setback to allow a carport at the front property line, and 2) a 4-foot variance from the 5-foot required north side property line to allow a carport 1 foot from the north side property line, located at 124 City Street. (Council District 1)
6. **A-13-031:** The request of Charles Huizar for 1) a 3-foot variance from the minimum 5-foot side yard setback; 2) a 2-foot variance from the minimum 3-foot eave overhang setback and 3) a 1-foot variance from the 3-foot minimum rear yard setback to allow an accessory structure 2-feet from the side and rear property lines with a 1-foot eave overhang on the side, located at 2415 Greencrest. (Council District 1)
7. **A-13-071:** The request of Kathryn Ruckman for a 1.5-foot variance from the 6-foot maximum fence height to allow a 7-foot 6-inch fence in the rear and side yards, located at 203 Camargo Street. (Council District 1)
8. **A-13-077:** The request of Wesley A. Oliver for a 2-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 6 feet in height in the front yard, located at 1429 South Presa Street. (Council District 1)
9. **A-13-080:** The request of Robert Rivard for a 2-foot variance from the maximum 2-foot allowed projection for an eave overhang to allow a 4-foot eave to project into the side setback 1-foot from the property line, located at 310 East Arsenal. (Council District 1)
10. **A-13-078(Postponed):** The request of Michael Hayes for an appeal of the Director's administrative decision regarding building permits for construction at 151 Algerita. (Council District 9)

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### Board of Adjustment Membership

*Michael Gallagher, District 10, Chair    Andrew Ozuna, District 8, Vice Chair*  
*Frank Quijano, District 1 • Edward Hardemon, District 2 • Helen Dutmer, District 3 • George Britton, District 4*  
*Brian Smith, District 5 • Jesse Zuniga, District 6 • Mary Rogers, District 7 • John Kuderer, District 9 • Gene Camargo, Mayor*

### Alternate Members

*Harold O. Atkinson • Maria D. Cruz • Paul E. Klein • Henry Rodriguez • Steve G. Walkup*

11. Approval of the minutes – September 16, 2013

12. Announcements and Adjournment

**ACCESSIBILITY STATEMENT** - *This meeting site is accessible to persons with disabilities. Parking is available. Auxiliary aids and services, including Deaf interpreters, must be requested forty-eight [48] hours prior to the meeting. For assistance, call (210) 207-7245 or 711 (Texas Relay Service for the Deaf).*

**DECLARACIÓN DE ACCESIBILIDAD** – *Este lugar de la reunión es accesible a personas incapacitadas. Se hará disponible el estacionamiento. Ayudas auxiliares y servicios y interpretes para los sordos se deben pedir con cuarenta y ocho [48] horas de anticipación al la reunión. Para asistencia llamar a (210) 207-7245 o al 711 (servicio de transmitir para sordos).*

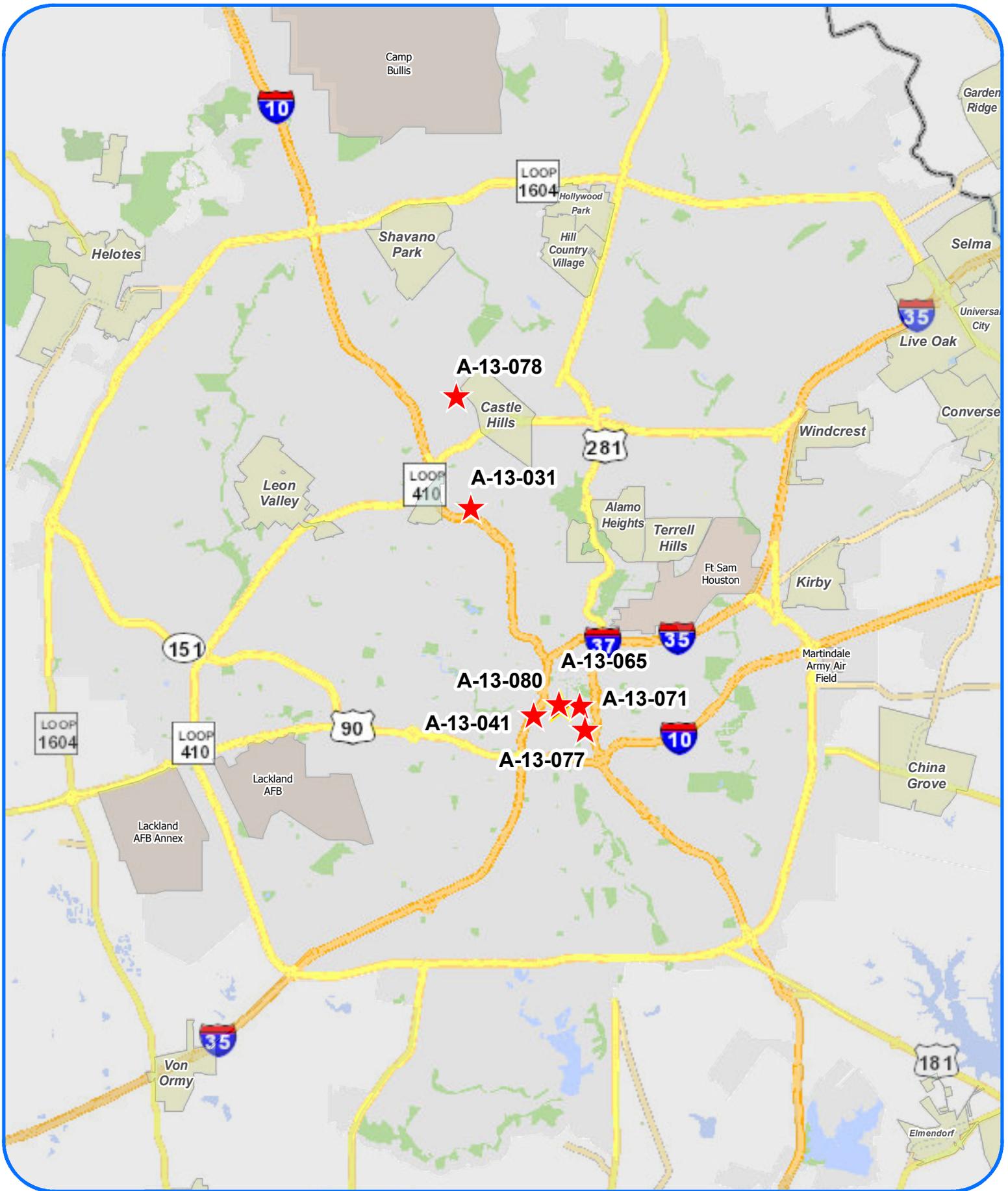
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**Board of Adjustment Membership**

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**Alternate Members**

*Harold O. Atkinson • Maria D. Cruz • Paul E. Klein • Henry Rodriguez • Steve G. Walkup*



# **Board of Adjustment**

**Subject Property Locations  
Cases for 7th October 2013**





## City of San Antonio Development Services Department Staff Report

To: Board of Adjustment  
Case No.: A-13-065  
Date: October 7, 2013 (Continued from September 16, 2013)  
Applicant: Edmund S. Beck  
Owner: Edmund S. Beck  
Location: 124 City Street  
Legal Description: Lot 2, Block 8, NCB 972  
Zoning: "RM-4 H HS RIO-4 AHOD" Residential Mixed King William Historic District Historic Significant River Improvement Overlay Airport Hazard Overlay District  
Prepared By: Tony Felts, Planner

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### **Request**

A request from Table 310-1 of the UDC, Lot and Building Dimensions Table, for 1) a 10-foot variance from the 10-foot required front setback to allow a carport at the front property line, and 2) a 4-foot variance from the 5-foot required by Section 35-370(b)(1) on the north side property line to allow a carport 1 foot from the north side property line.

### **Procedural Requirements**

A variance from the requirements of the zoning ordinance is a decision vested with the Board of Adjustment. State law prescribes specific factors that must be satisfied when deciding to grant a variance. The request was publicly noticed in accordance with Section 35-403 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 or before August 29, 2013. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation, on August 30, 2013. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before September 13, 2013, in accordance with Section 551.043(a) of the Texas Government Code.

### **Executive Summary**

The subject property is located on the east side of City Street, approximately 100 feet north of West Sheridan Street. Additionally, the property directly abuts the San Antonio River right-of-way to the East and is located within the King William Historic District. The property is currently developed as a single-family residence which was constructed, as per BCAD records, in 1903. The applicant is requesting to construct an open carport in the front yard. The applicant

has received a Certificate of Appropriateness from the San Antonio Historic and Design Review Commission (HDRC).

The carport is proposed to be situated within the required front setback, directly on the front property line, and within the required side yard setback, one foot from the north side property line. The proposed structure will be situated over an existing vehicular parking area composed of brick pavers. It should be noted that staff has not been able to identify an appropriate area on the site that would allow the construction of a carport either due to narrow side yards, setbacks, or existing easements along the San Antonio River. There is, however, no prohibition on the open-air parking situation that is currently in place, nor is there a prohibition upon on-street parking.

It should be noted that if the variance request is approved, fireproofing consistent with the International Residential Code (and any other applicable building or city code) will be required. The applicant has the option of submitting a code modification request to the Building Plans Examiner for a waiver of the firewall requirement if the variance is approved.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“RM-4 H HS RIO-4 AHOD” (Residential Mixed Historic River Improvement Overlay)	Single Family Residence

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 H RIO-4 AHOD” (Residential Mixed Historic River Improvement Overlay)	Single Family Residence
South	“RM-4 H HS RIO-4 AHOD” (Residential Mixed Historic River Improvement Overlay)	Single-Family Residence
East	San Antonio River Right-of-way	San Antonio River, Riverwalk
West	“RM-4 H HS RIO-4 AHOD” (Residential Mixed Historic River Improvement Overlay)	Single-Family Residence

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Downtown Neighborhood Plan (designated as Residential). The subject property is also located within the boundaries of the King William Neighborhood Association; as such, the neighborhood association was notified and asked to comment.

## **Criteria for Review**

According to Section 35-482(e) of the UDC, 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:*

Building setbacks are designed to maintain orderly and safe development, and ensure access to air and light. The UDC does not contemplate any situations where the front setback is covered by a structure. As such, the variance is contrary to the public interest. In this case, staff noted that front yard carports are not common in the immediate vicinity, and the front yard carport would be the only one on this block of City Street.

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

The building layout on the site, its orientation against the river, and existing easements on the site do present limitations in allowing the construction of a covered carport. That being stated, there is no requirement that off-street parking be covered. In fact, the applicant's current off street parking is uncovered. Because there is not a requirement to provide covered parking, no unnecessary hardship would result from not granting the variance.

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

The spirit of the ordinance will not be maintained by granting this variance as the UDC does not contemplate any situation where structures would be allowed to be placed within the front setback. As such, the spirit of the ordinance will not be observed.

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 requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the RM-4 (Residential Mixed) base 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.*

The requested variance, if approved, may injure adjacent properties and alter the character of the district. In this case, staff noted that front yard carports are not common in the immediate vicinity, and the front yard carport would be the only one on this block of City Street. By granting this variance, it may create a "domino effect" which could lead to more construction of this type on the street. Additionally, the proposed carport is only one foot from the side property line, which does not allow enough room for maintenance of the structure, and as such, may result in the deterioration of the structure.

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 unique circumstances existing on the property are a function of the site's age and location. While there is not room for the structure to be placed on the property, meet setbacks, and still be able to access it for its intended use as a carport, there is likewise no requirement for a carport to be constructed on the property; as such, the variance should not be granted.

### **Alternatives to Applicant's Request**

The alternative to the applicant's request is to not construct the carport and continue with the current parking situation.

### **Staff Recommendation**

Staff recommends **denial of A-13-065** because of the following reasons:

- The variance is contrary to the public interest in that there are no other front yard carports in the immediate vicinity
- There is no unnecessary hardship as there is no requirement for covered residential parking

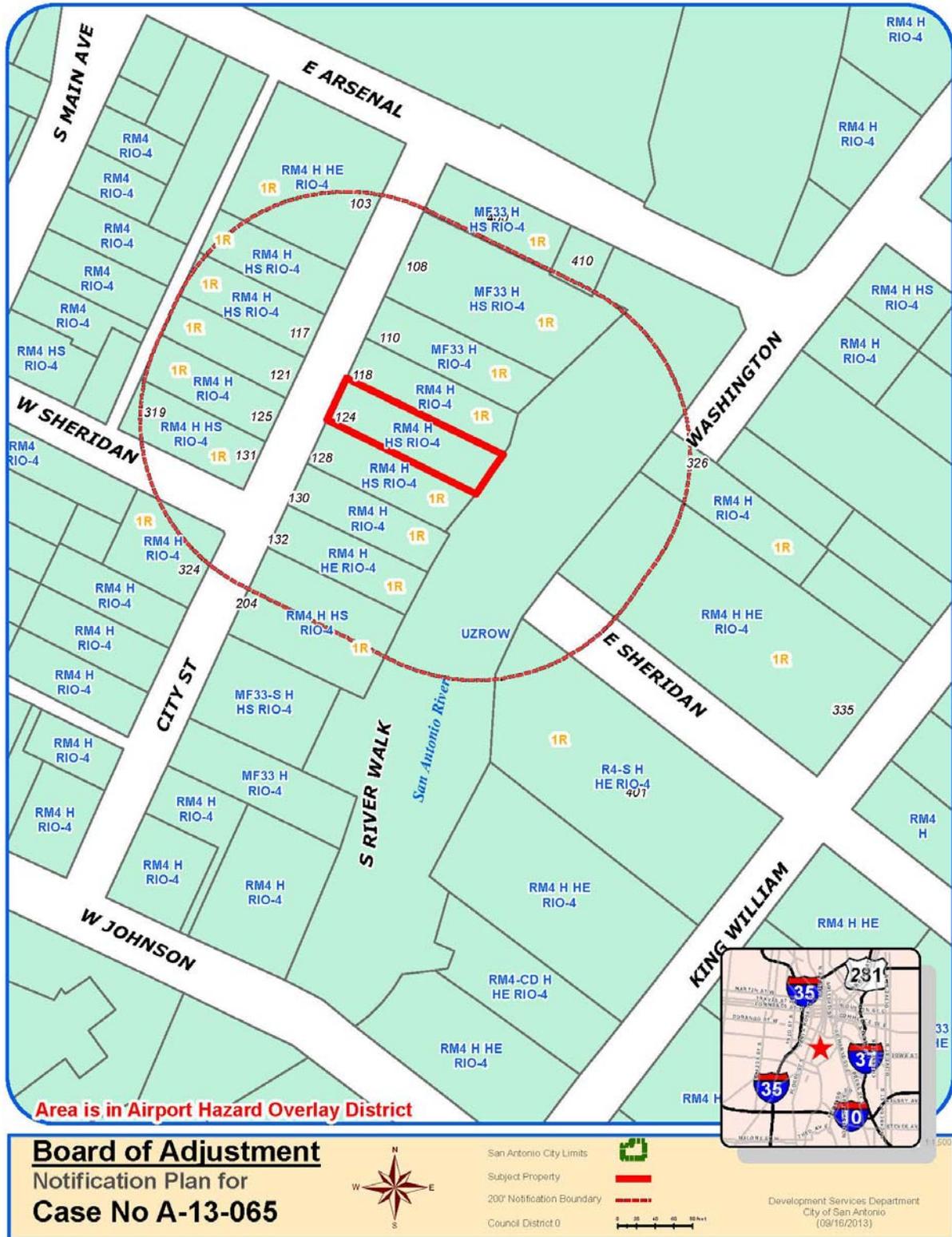
### **Attachments**

Attachment 1 – Notification Plan (Location Map)

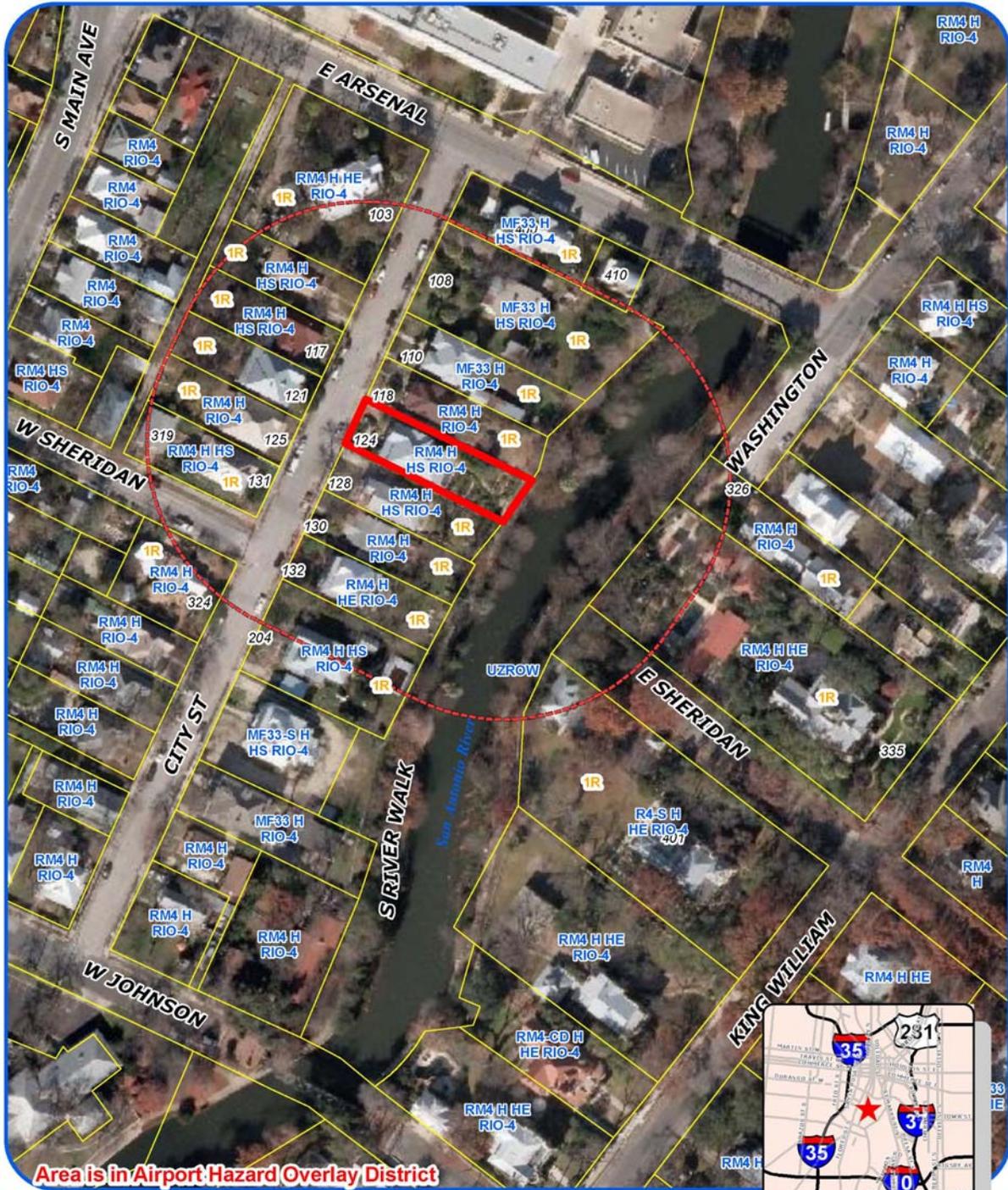
Attachment 2 – Plot Plan

Attachment 3 – Applicant's Rendering and Site Plan

# Attachment 1 Notification Plan



**Attachment 1 (Continued)  
Notification Plan**



**Area is in Airport Hazard Overlay District**

**Board of Adjustment  
Notification Plan for  
Case No A-13-065**

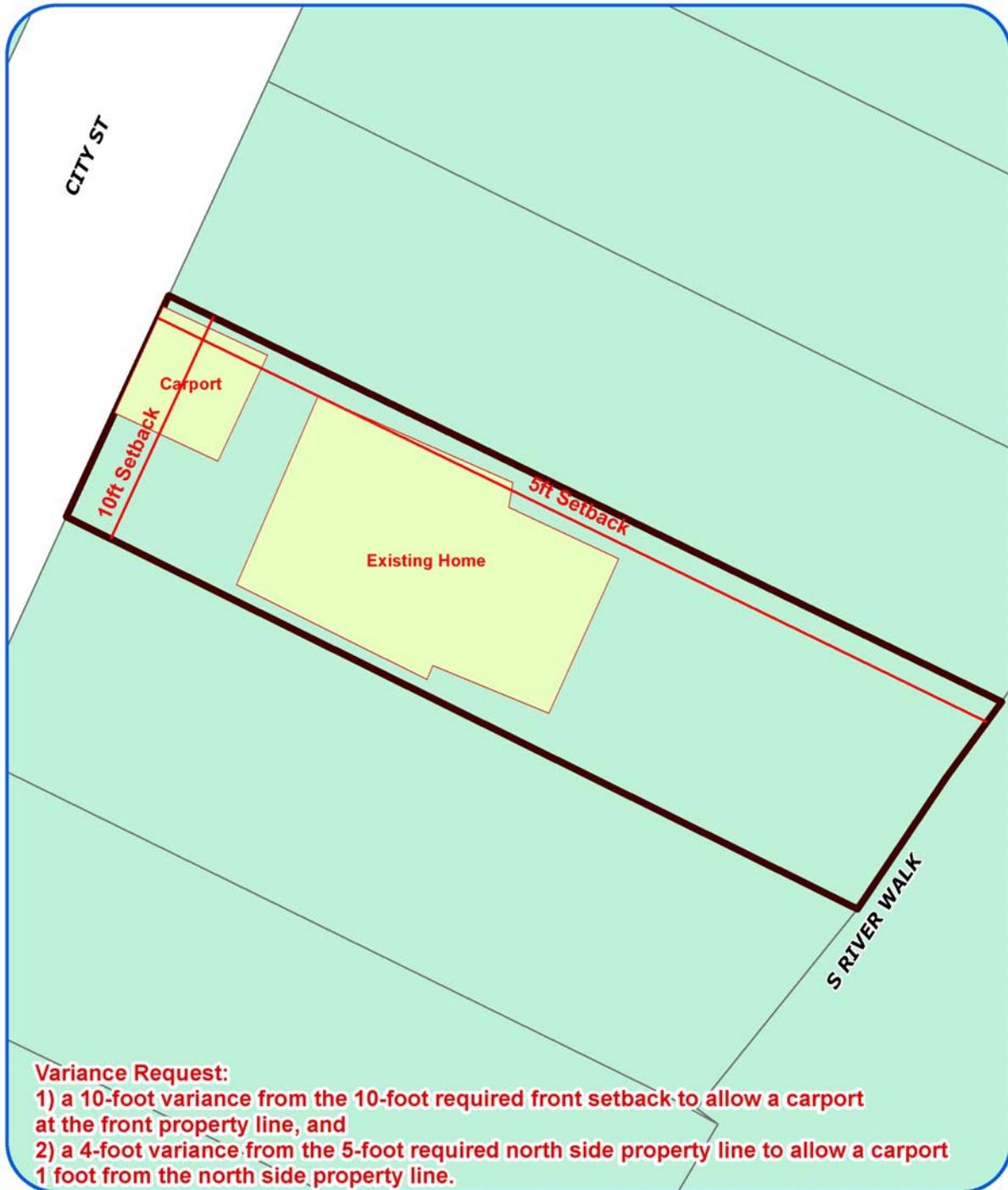


- San Antonio City Limits
- Subject Property
- 200' Notification Boundary
- Council District 0



Development Services Department  
City of San Antonio  
(09/16/2013)

**Attachment 2  
Plot Plan**



**Board of Adjustment**  
Plot Plan for  
**Case No A-13-065**



"NOT TO SCALE,  
FOR ILLUSTRATIVE PURPOSES ONLY"  
Council District 1

**124 City Street**

Development Services Department  
City of San Antonio  
(09/16/2013)

Attachment 2 (Continued)  
Plot Plan



**Board of Adjustment**  
Plot Plan for  
**Case No A-13-065**



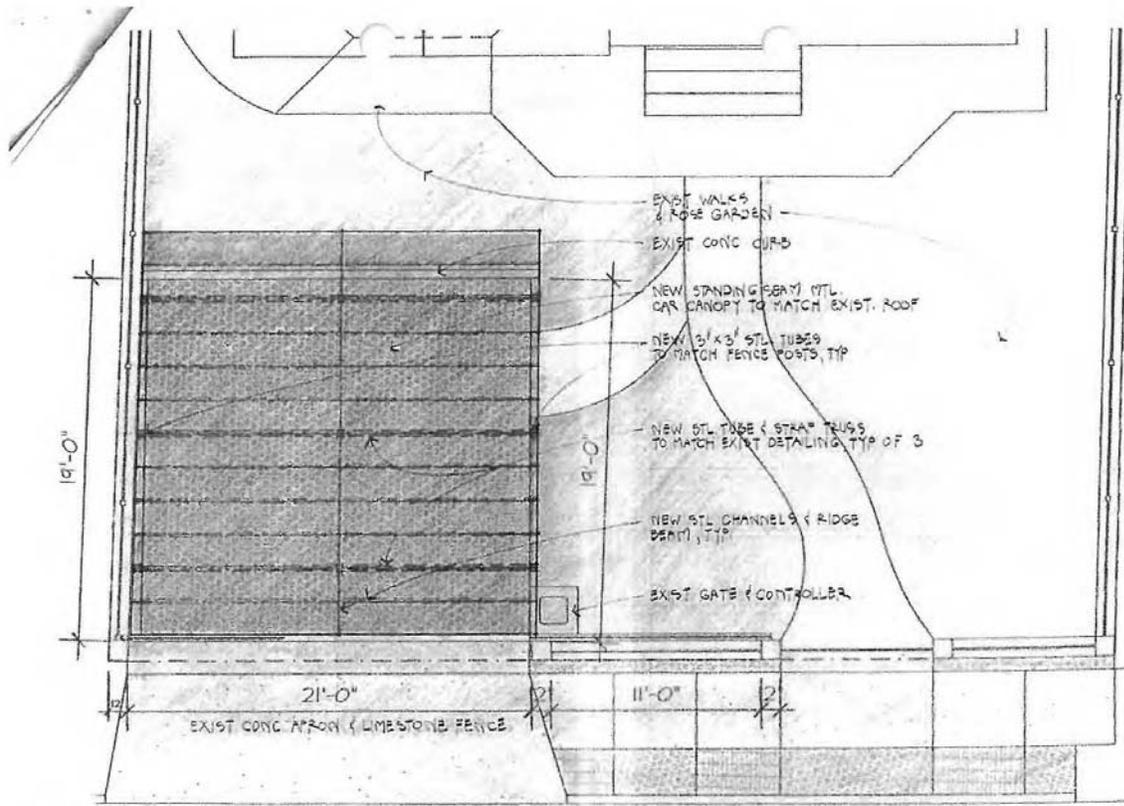
"NOT TO SCALE,  
FOR ILLUSTRATIVE PURPOSES ONLY"  
Council District 1

**124 City Street**

Development Services Department  
City of San Antonio  
(09/16/2013)

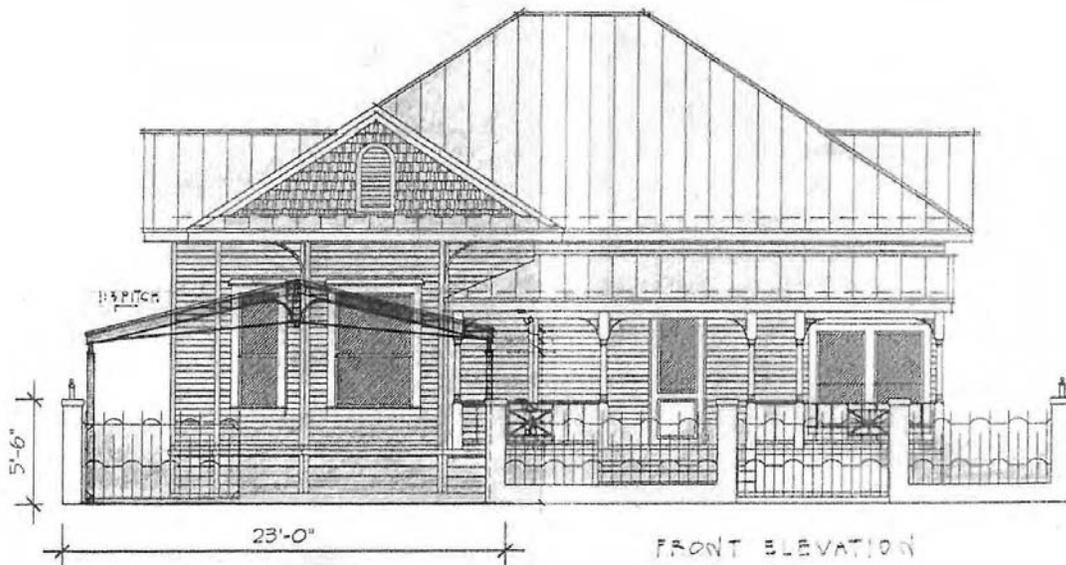
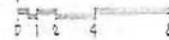
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### Attachment 3 Applicant's Rendering and Site Plan



124 CITY STREET  
SAN ANTONIO, TX

PARTIAL SITE PLAN





## **City of San Antonio Development Services Department Staff Report**

To: Board of Adjustment  
Case No.: A-13-031  
Date: April 15, 2013  
Applicant: Charles Huizar  
Owner: Charles Huizar  
Location: 2415 Greencrest Drive  
Legal Description: Lot 30, Block 2, NCB 12260  
Zoning: "R-5 AHOD" Single-Family Residential Airport Hazard Overlay District  
Prepared By: Margaret Pahl, AICP Senior Planner

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### **Request**

The applicant requests **1)** a 3-foot variance from the minimum 5-foot side yard setback; **2)** a 2-foot variance from the minimum 3-foot eave overhang setback and **3)** a 1-foot variance from the 3-foot minimum rear yard setback, as detailed in Section 35-370 (b) 1, to allow an accessory structure 2-feet from the side and rear property lines with a 1-foot eave overhang on the side.

### **Procedural Requirements**

A variance from the requirements of the zoning ordinance is a decision vested with the Board of Adjustment. State law prescribes specific factors that must be satisfied when deciding to grant a variance. The request was publicly noticed in accordance with Section 35-403 of the Unified Development Code ("UDC"). Notices were sent to property owners within two hundred (200) feet of the subject property on September 19, 2013. The application details were published in The Daily Commercial Recorder, an official newspaper of general circulation, on September 20, 2013. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before October 4, 2013, in accordance with Section 551.043(a) of the Texas Government Code.

### **Executive Summary**

The subject property was platted into an 8,000 square foot lot in 1959 and improved with a 1,700 square foot house the following year. According to Bexar County Appraisal District, a shed was added shortly afterward. Historic aerial photography confirms that a shed previously existed in the same approximate location as the recently constructed one. The applicant purchased the home in the summer of 2011 and removed the dilapidated sheds, with the intention to replace them with a single larger one. The applicant states that the old sheds were built directly on the property line. Though the applicant did not secure a building permit, he did relocate the shed

walls two feet from the side and rear property lines. In addition, the applicant has installed new 6-foot privacy fencing around entire rear and side yards.

It has been just a few years since building permits were even required to construct an accessory structure; this may explain why so many are found on the property line. An accessory building with up to 200 square feet was exempt from permitting. The exempt size was reduced to 120 square feet in a recent building code change, shifting many sheds into the permit category. Nevertheless, regardless of a permit requirement, owners are still charged with understanding and adhering to basic zoning setbacks.

Minimum setbacks were among the very first zoning regulations; fire separation is a more recent code initiative. In review of structures for fire separation however, the International Building Code treats all structures with less than 5 feet of separation from the property line the same. Each and every structure with less than 5-foot distance from the property line must provide a one hour fire rated assembly. Though the applicant asserts that this standard has been satisfied, a building permit will still be required to verify construction safety.

Existing Zoning	Existing Use
"R-5 AHOD" Single-Family Residential Airport Hazard Overlay Districts	Single-Family Residential

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	"R-5 AHOD" Single-Family Residential Airport Hazard Overlay Districts	Single-Family Residential
South	"R-5 AHOD" Single-Family Residential Airport Hazard Overlay Districts	Single-Family Residential
East	"R-5 AHOD" Single-Family Residential Airport Hazard Overlay Districts	Single-Family Residential
West	"R-5 AHOD" Single-Family Residential Airport Hazard Overlay Districts	Single-Family Residential

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Greater Dellview Area Community Plan, adopted by the City Council in September of 2005. The area is designated for low density residential uses. The subject property is also located within the boundaries of the Dellview Area Neighborhood Association, a registered neighborhood association recognized by the City of San Antonio. As such, it was notified of the request and asked to comment.

**Criteria for Review**

According to Section 35-482(e) of the UDC, 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.*

The public interest is defined as the general health, safety and welfare of the public at large. In this case, the public's interest is based on the air flow, light and fire safety protected by the minimum setbacks. The applicant states that the previous sheds were built on the property line, so the current setbacks are an improvement. According to the applicant, fire separation requirements have also been satisfied. The Board could determine that the variance would not conflict with the public's interest.

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

A literal enforcement of the ordinance would force the applicant to dismantle the shed and reconstruct it inside the two required setbacks approximately one foot over in each direction. The Board of Adjustment must evaluate if that hardship is unnecessary; the applicant has space available to provide the minimum setback distance. The applicant states that he is a disabled veteran on a fixed income and it would be very difficult for him to relocate the shed.

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

The "spirit" of the ordinance is understood by reviewing the impact of the "strict letter" of the law. In observing the spirit, the Board is directed to evaluate the intent of the ordinance and determine if the requested variance is honoring the intent. This is sometimes determined by the percentage of change requested. For example if an applicant is requesting a variance to eliminate all setbacks, thereby allowing a building on the property line, one could conclude that the spirit of the ordinance would not be observed. In this case, with two feet of separation and the fire-rated construction, the spirit of the ordinance would be observed.

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 requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-5 AHOD" 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.*

The applicant states that the property is not located in a historic district, nor influenced by an HOA. It was this additional measure of freedom that helped in his decision to purchase this particular home. According to the applicant, the existing setbacks allow the necessary space needed for his property maintenance. In addition, many accessory structures throughout the neighborhood remain built near the property lines.

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 unique circumstance on the subject parcel was the existence of a previous shed in the same proximate location. As a new home-owner, reconstruction of the dilapidated shed was an important priority to the applicant. He provided what he thought were adequate setbacks to allow routine maintenance. Other than the existing concrete slab, the parcel has no unique characteristics that differentiate it from others in the neighborhood.

### **Alternatives to Applicant's Request**

The alternative to the applicant's request is to reconstruct the shed in a location that is consistent with required setbacks.

### **Staff Recommendation**

Staff recommends **approval of A-13-031** based on the following findings:

1. The requested variance does not have a negative impact on the public interest.
2. The applicant has adequate setbacks to allow routine maintenance
3. The applicant used an existing concrete slab to reconstruct an accessory structure.

### **Attachments**

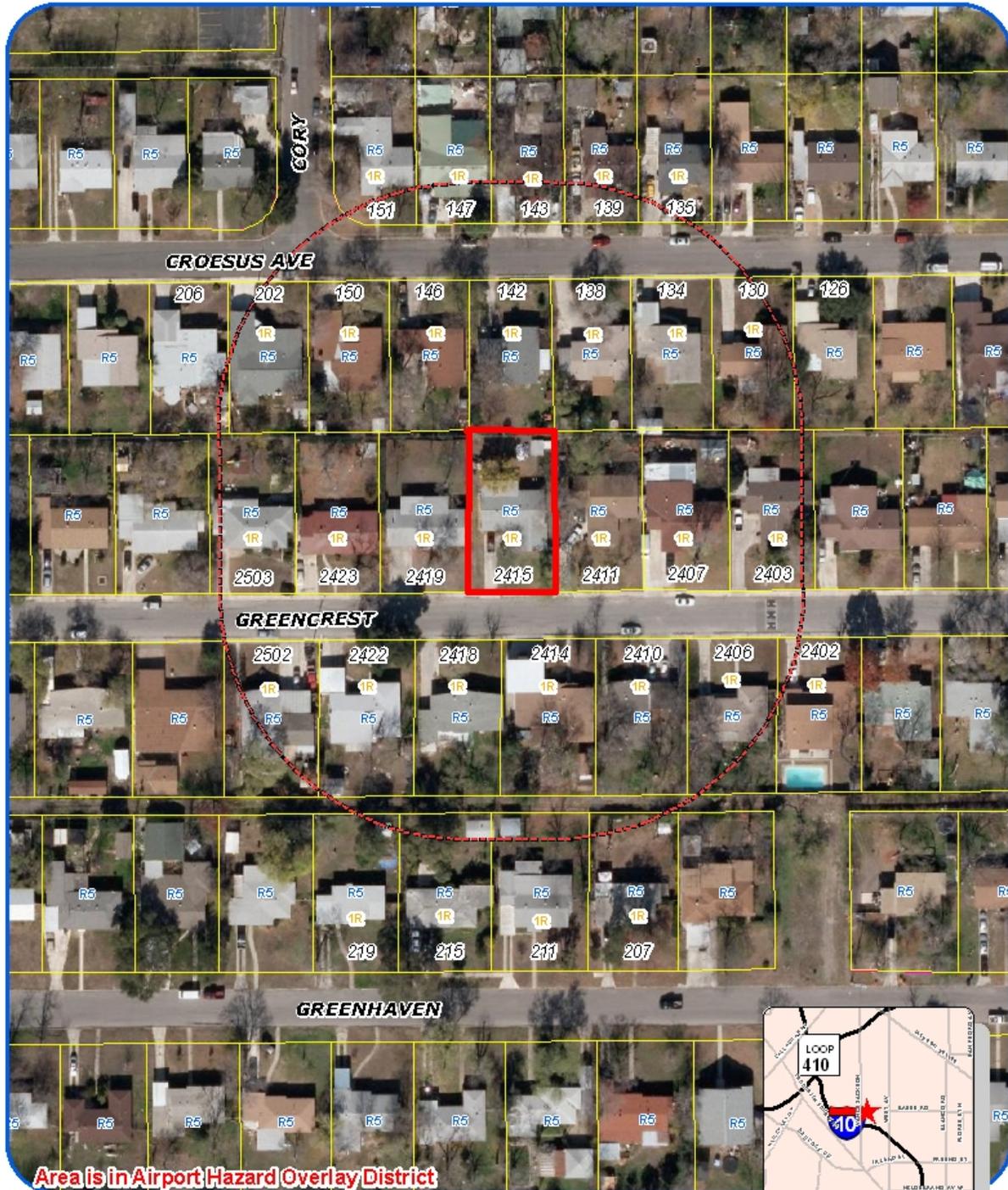
Attachment 1 – Notification Plan (Location Map)

Attachment 2 – Plot Plan

Attachment 3 – Applicant's Site Plan

Attachment 4 – Site Photos

# Attachment 1 Notification Plan



**Area is in Airport Hazard Overlay District**



**Board of Adjustment  
Notification Plan for  
Case No A-13-031**



- San Antonio City Limits
- Subject Property
- 200' Notification Boundary
- Council District 1

Development Services Department  
City of San Antonio  
(04/15/2013)

**Attachment 2  
Plot Plan**



**Board of Adjustment**  
Plot Plan for  
Case No A-13-031

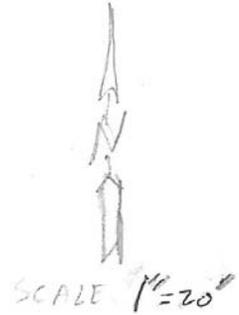
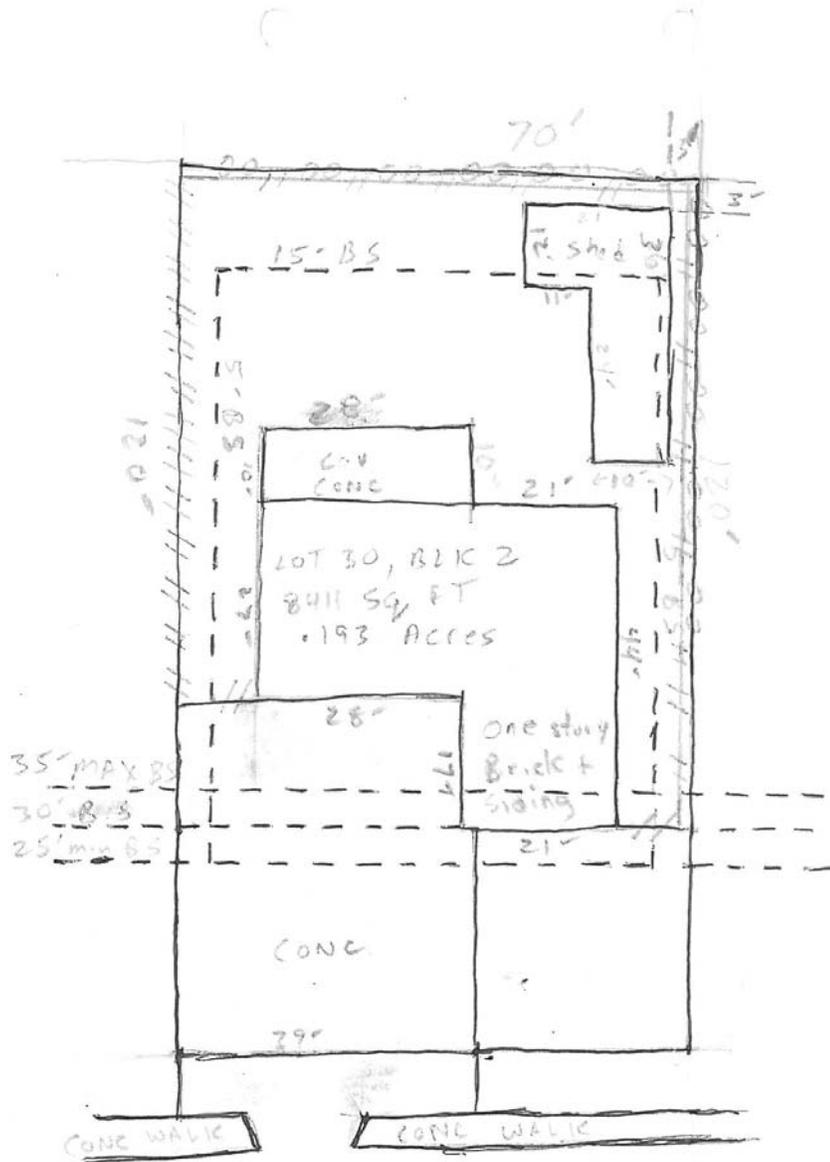


Council District 1

**2415 Greencrest**

Development Services Department  
City of San Antonio  
(94152013)

Attachment 3  
Applicant Site Plan



wanting to keep overhang  
overhang is 11"



**Attachment 4  
Site Photos**





## **City of San Antonio Development Services Department Staff Report**

To: Board of Adjustment  
Case No.: A-13-071  
Date: October 7, 2013  
Applicant: Kathryn Ruckman  
Owner: Kathryn Ruckman  
Location: 203 Camargo Street  
Legal Description: The East 69.23 feet of Lot 2, Block 2, NCB 717  
Zoning: "RM-4 H AHOD" Residential Mixed, Historic, Airport Hazard Overlay Districts  
Prepared By: Margaret Pahl, AICP Senior Planner

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### **Request**

A request for a 1.5-foot variance from the 6-foot maximum fence height, as detailed in Section 35-514 (d), to allow a 7-foot 6-inch fence in the rear and side yards.

### **Procedural Requirements**

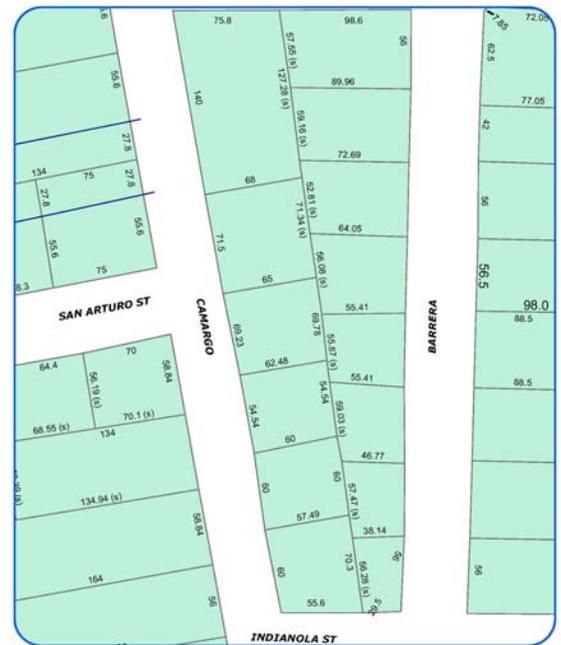
A variance from the requirements of the zoning ordinance is a decision vested with the Board of Adjustment. State law prescribes specific factors that must be satisfied when deciding to grant a variance. The request was publicly noticed in accordance with Section 35-403 of the Unified Development Code ("UDC"). Notices were sent to property owners within two hundred (200) feet of the subject property on September 19, 2013. The application details were published in The Daily Commercial Recorder, an official newspaper of general circulation, on September 20, 2013. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before October 4, 2013, in accordance with Section 551.043(a) of the Texas Government Code.

### **Executive Summary**

The subject property is located in the Lavaca Historic District, an area that was first subdivided in 1854. A few years ago, the applicant purchased the historic cottage built in 1910, and has restored it both inside and out. The work was reviewed and approved by the Office of Historic Preservation (OHP) and the Historic Design and Review Committee (HDRC). The subject property contains approximately 4,400 square-feet, and is only 62-feet deep. Though the house meets all minimum setbacks, this shallow depth results in small 10-foot front and rear yards. The streets on either side of this block are angling toward each other, so going southeast the lots become more shallow and most of the houses do not satisfy the minimum setbacks. According to

the applicant, the homes surrounding the subject property on two sides are only 2-3 feet from the property line.

The applicant first installed a 6-foot wooden fence around the side and rear yards, but soon determined that the height provided little privacy, given the proximity of the neighboring homes to the shared property lines. In addition, the homes are on elevated pier and beam foundations, so windows were above the top of the fence line. In touring other historic districts, the applicant elected to install a section of framed lattice to extend the fence height up to 7.5 feet. The lattice was installed without proper permits. Since that time, the applicant applied to OHP for a Certificate of Appropriateness. While the HDRC cannot approve the additional fence height, they have approved the applicant’s proposed design.



**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“RM-4 H AHOD” Residential Mixed Historic Airport Hazard Overlay Districts	Single-family dwelling

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 H AHOD” Residential Mixed Historic Airport Hazard Overlay Districts	Single-family dwelling
South	“RM-4 H AHOD” Residential Mixed Historic Airport Hazard Overlay Districts	Single-family dwelling
East	“RM-4 H AHOD” Residential Mixed Historic Airport Hazard Overlay Districts	Single-family dwelling
West	“RM-4 H AHOD” Residential Mixed Historic Airport Hazard Overlay Districts	Single-family dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Lavaca Neighborhood Plan, adopted by the City Council in September of 2001. The future land use plan designated this area for low-density residential land use. The subject property is located within the boundaries of the Lavaca

Neighborhood Association, a registered neighborhood association recognized by the City of San Antonio. As such, they were notified and asked to comment.

### **Criteria for Review**

According to Section 35-482(e) of the UDC, 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.*

The public interest is defined as the general health, safety and welfare of the public at large. The applicant is requesting additional fence height primarily because the neighboring homes have reduced setbacks. The added privacy will benefit both sides of the fence and therefore is in the public interest.

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

The applicant argues that both the shape of the subject property and that of the surrounding lots create a special condition that reduces privacy between owners. The 6-foot limitation results in less privacy than other property owners with larger setbacks enjoy. Therefore, the literal enforcement of the ordinance results in an unnecessary hardship.

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

The Board must determine the “spirit” of the ordinance as contrasted with the “strict letter” of the law for each unique case. In this case, the applicant asserts the spirit of the ordinance is the anticipated privacy provided by side and rear yard fencing.

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 requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “RM-4 H AHOD” 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.*

The historic district is very eclectic in character, with a wide variety of home and lot sizes. The applicant has selected a short picket fence for the front yard, and has eliminated the additional height on the north elevation where mature trees add to the screening. The fencing will not likely alter the character of the district or injure the adjacent property values.

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 unique circumstance existing on the property is the narrow lot depth characteristic of some of the lots on this block. The applicant is requesting approval for the additional height only where neighboring windows intrude on an expected and typical minimal amount of privacy afforded other properties in surrounding residential zoning districts.

### **Alternatives to Applicant's Request**

The alternative to the applicant's request is to reduce the fencing back to the 6-foot privacy fencing allowed for side and rear yards in residential zoning districts.

### **Staff Recommendation**

Staff recommends **approval of A-13-071** based on the following findings:

1. The neighboring homes, likely constructed prior to minimum required setbacks, are only 2-3 feet away from the property lines and are elevated on pier and beam footings. The 6-foot fencing allowed by right does not provide any privacy.

### **Attachments**

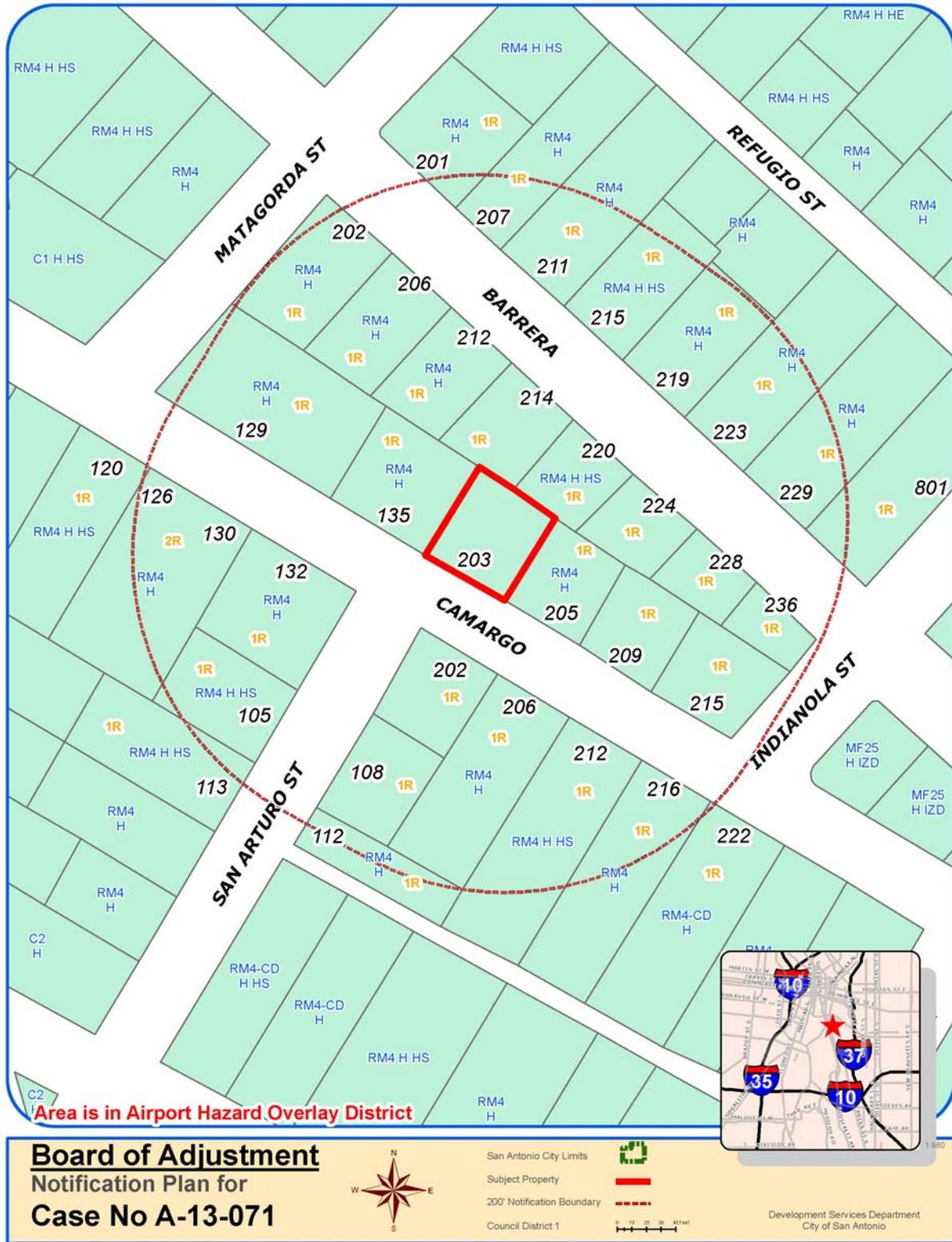
Attachment 1 – Notification Plan (Location Map)

Attachment 2 – Plot Plan

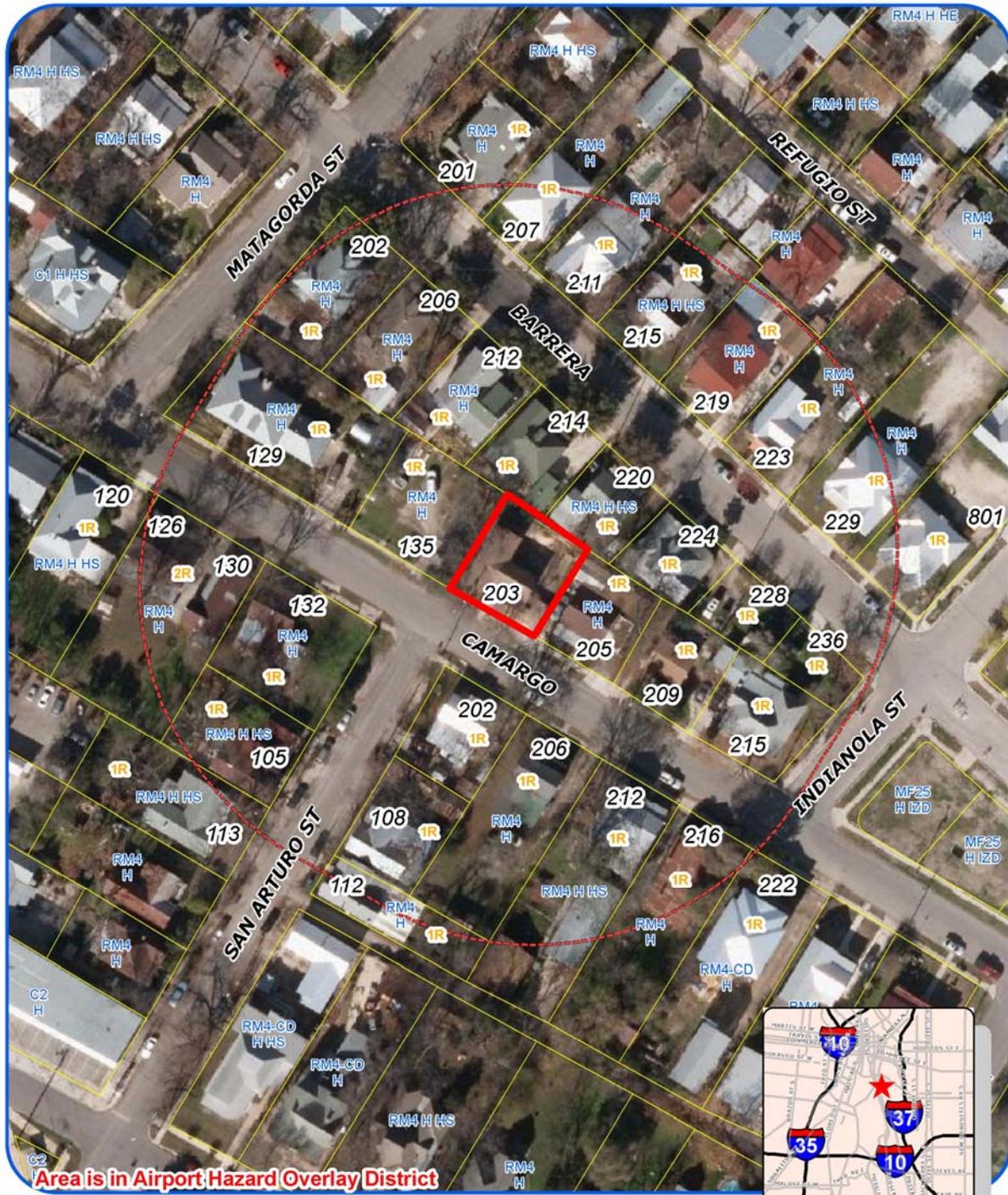
Attachment 3 – Applicant's Site Plan

Attachment 4 – Site Photos

# Attachment 1 Notification Plan



**Attachment 1  
Notification Plan (continued)**



**Area is in Airport Hazard Overlay District**

<p><b>Board of Adjustment</b> Notification Plan for <b>Case No A-13-071</b></p>		<p>San Antonio City Limits </p>	
	<p>Subject Property </p>	<p>200' Notification Boundary </p>	
	<p>Council District 1 </p>	<p>Development Services Department City of San Antonio</p>	

**Attachment 2  
Plot Plan**



**Board of Adjustment**  
Plot Plan for  
**Case No A-13-071**



"NOT TO SCALE,  
FOR ILLUSTRATIVE PURPOSES ONLY"  
Council District 1

**203 Camargo**

Development Services Department  
City of San Antonio  
(09/16/2013)

1:145

**Attachment 2  
Plot Plan (continued)**



**Variance Request:**  
A 1.5 foot variance from the maximum 6 foot fence height to allow a 7-foot 6-inch fence in the rear and side yards.

**Board of Adjustment**  
Plot Plan for  
**Case No A-13-071**



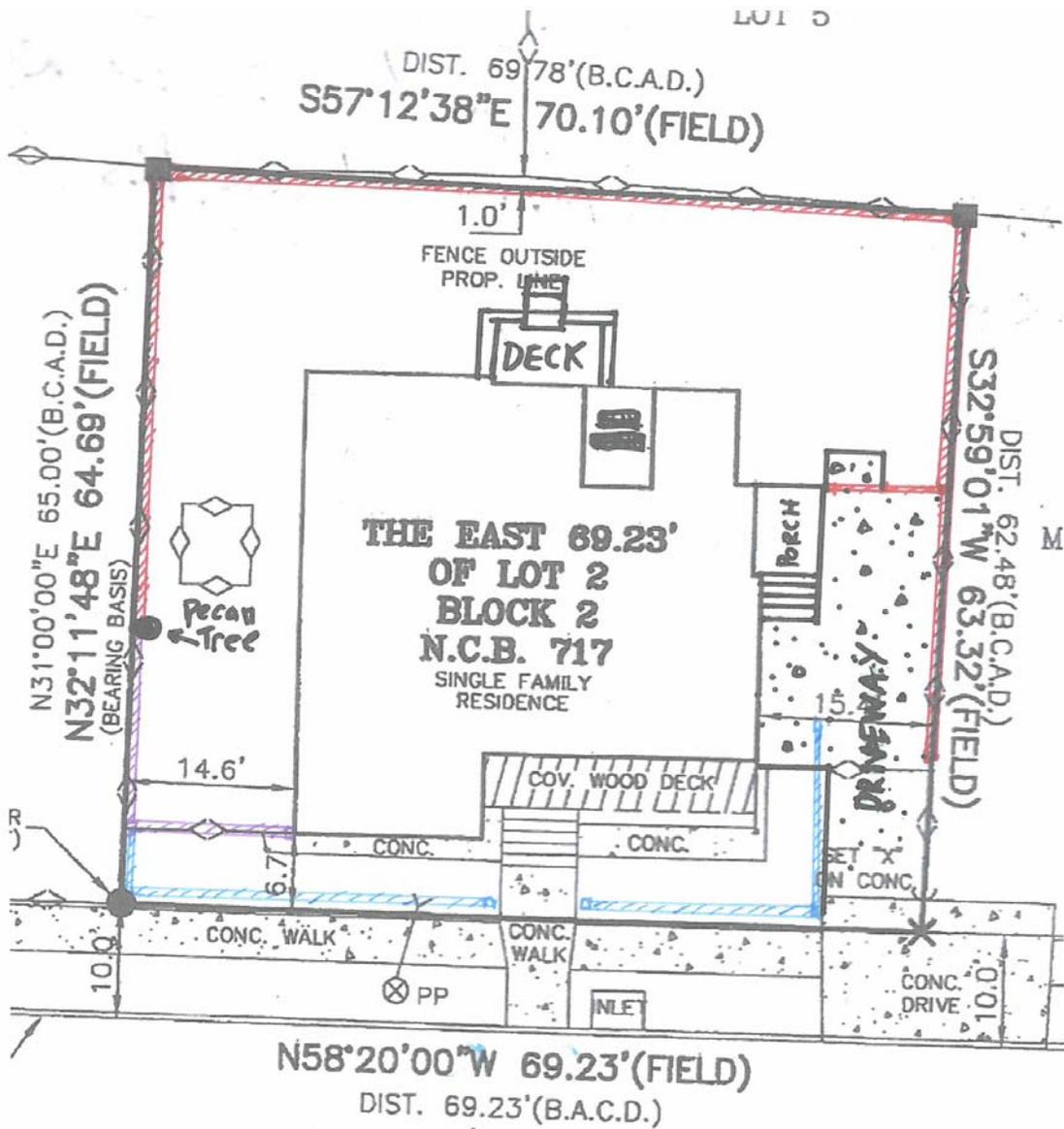
"NOT TO SCALE,  
FOR ILLUSTRATIVE PURPOSES ONLY"  
Council District 1

**203 Camargo**

1:145

Development Services Department  
City of San Antonio  
(09/16/2013)

**Attachment 3  
Applicant's Site Plan**



-  3' wood picket fence
  -  6' wood picket fence
  -  6' wood picket fence with decorative lattice panel (proposed)
- 203  
CAMARGO**  
(VARIABLE WIDTH R.O.W.)  
(B.C.A.D.: CAMARGO)  
(ST. SIGN: CAMARGO)
- NORTH**

**Attachment 4**  
**Site Photos**





## City of San Antonio Development Services Department Staff Report

To: Board of Adjustment  
Case No.: A-13-077  
Date: October 7, 2013  
Applicant: Wesley A. Oliver  
Owner: Wesley A. Oliver & Devi Norton  
Location: 1429 South Presa Street  
Legal Description: Lots 9, 10, & 11, NCB 3078  
Zoning: "C-3NA NCD-1 AHOD" General Commercial South Presa/South St. Mary's Streets Neighborhood Conservation Airport Hazard Overlay District  
Prepared By: Tony Felts, Planner

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### **Request**

A request from Section 35-514(d) for a 2-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 6 feet in height in the front yard.

### **Procedural Requirements**

A variance from the requirements of the zoning ordinance is a decision vested with the Board of Adjustment. State law prescribes specific factors that must be satisfied when deciding to grant a variance. The request was publicly noticed in accordance with Section 35-403 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 or before September 19, 2013. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation, on September 20, 2013. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before October 4, 2013, in accordance with Section 551.043(a) of the Texas Government Code.

### **Executive Summary**

The subject property is located on the northwest corner of South Presa Street and Biering Avenue. The property is currently developed with a commercial structure that is undergoing renovations (with proper permits) into a professional office for a graphic designer. The structure includes a caretaker's residence where the applicant resides.

Currently, the site has a 5-foot chain link fence installed and some portions of the fence have barbed wire on top. Additionally, portions of the existing fence are in disrepair. The applicant proposes to replace the current chain link fence with a 6-foot high fence composed of 4" x 4"

wire mesh panels. The applicant states that the goal is to beautify the property, and increase safety.

It should be noted that the site is within the NCD-1 overlay area, which does restrict certain design elements and fencing. Staff with the City Design Center have reviewed the application and noted that the fence materials are compatible with the design requirements of the NCD-1 overlay.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“C-3NA NCD-1 AHOD” (General Commercial South Presa/South St. Mary’s Streets Neighborhood Conservation Airport Hazard Overlay District)	Graphic design studio with caretaker’s residence

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“C-3 NCD-1 AHOD” (General Commercial South Presa/South St. Mary’s Streets Neighborhood Conservation Airport Hazard Overlay District)	Vacant building
South	“C-3NA NCD-1 AHOD” (General Commercial South Presa/South St. Mary’s Streets Neighborhood Conservation Airport Hazard Overlay District)	Retail
East	“C-3NA NCD-1 AHOD” (General Commercial South Presa/South St. Mary’s Streets Neighborhood Conservation Airport Hazard Overlay District)	Retail and Auto Repair
West	“RM-4 NCD-1 AHOD” (Residential Mixed South Presa/South St. Mary’s Streets Neighborhood Conservation Airport Hazard Overlay District)	Single Family Residence

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Lavaca Neighborhood Plan (designated as Mixed Use). The subject property is also located within the boundaries of the Lavaca Neighborhood

Association, a registered Neighborhood Association. As such, the neighborhood association was notified and asked to comment.

### **Criteria for Review**

According to Section 35-482(e) of the UDC, 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:*

Usually, fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. In this case, an existing predominantly open fence of non-conforming height already exists on the property and is dilapidated. Additionally, portions of the fence are topped with barbed wire. The existing fence is unsightly and potentially dangerous. The applicant wishes to simultaneously beautify and protect the property by reconstructing the fence with a new material. The openness of the fence material will present less of a visual distraction for passersby and will preserve airflow. The fence will also be sufficiently high to protect the structure from vandalism and crime issues. As such, the variance is not contrary to the public interest.

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

A review of the City of San Antonio's online crime tracking tool does reveal that there have been instances of burglary, theft, and vandalism in the immediate area of the subject property. Though the applicant did not submit copies of any police reports for the property, not allowing the extra fence height could be considered an unnecessary hardship.

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

The UDC contemplates that higher fences are sometimes required to protect properties. The city's online crime tracking tool reveals that there have been crime issues in the immediate vicinity. Additionally, an existing dilapidated chain-link fence of five feet is already in place, and the applicant is proposing to construct the new fence with a more open material. Because of this, the spirit of the ordinance will be observed and substantial justice done.

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 requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the General Commercial base 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.*

The requested variance, if approved, will not injure the appropriate use of adjacent conforming properties but rather the variance would likely have the effect of enhancing the quality of life along the South Presa Corridor by reducing an unsightly, dilapidated fence and removing barbed wire.

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 unique circumstances existing on the property were not caused by the applicant, but rather the circumstances result from crime in the area and the desire to replace a dilapidated non-conforming fence.

### **Alternatives to Applicant's Request**

The alternative to the applicant's request is to construct a fence of only 4 feet in height uniformly, which may be insufficient to accomplish the applicant's goal of protecting the property.

### **Staff Recommendation**

Staff recommends **approval of A-13-077** because of the following reasons:

- The proposed fence design utilizes a more open material which will not impede visibility.
- The proposed fence construction will result in the removal of a dilapidated chain link fence.

### **Attachments**

Attachment 1 – Notification Plan (Location Map)

Attachment 2 – Plot Plan

Attachment 3 – Applicant's Site Plan

Attachment 4 – Proposed Fence Plan

Attachment 5 – Existing Fence

# Attachment 1 Notification Plan



**Board of Adjustment**  
**Notification Plan for**  
**Case No A-13-077**



- San Antonio City Limits
- Subject Property
- 200' Notification Boundary
- Council District 1

Development Services Department  
 City of San Antonio

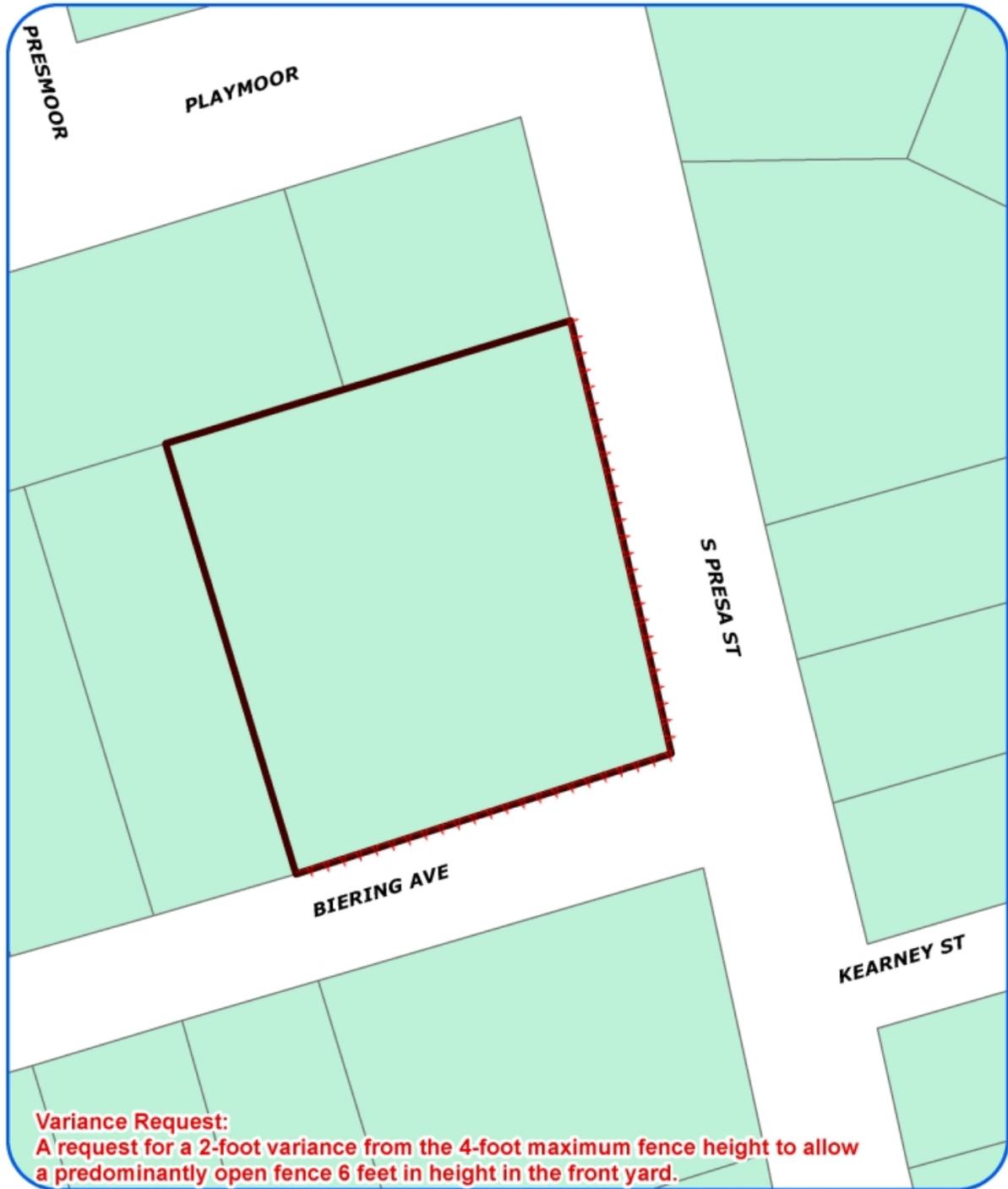
**Attachment 1 (Continued)  
Notification Plan**



**Area is in Airport Hazard Overlay District**

<p><b>Board of Adjustment Notification Plan for Case No A-13-077</b></p>		<p>San Antonio City Limits </p>
		<p>Subject Property </p>
		<p>200' Notification Boundary </p>
		<p>Council District 1 </p>
	<p>Development Services Department City of San Antonio</p>	

Attachment 2  
Plot Plan



**Board of Adjustment**  
Plot Plan for  
**Case No A-13-077**



Fence   
"NOT TO SCALE,  
FOR ILLUSTRATIVE PURPOSES ONLY"  
Council District 1

1425 & 1429 S. Presa

Development Services Department  
City of San Antonio

Attachment 2 (Continued)  
Plot Plan



**Board of Adjustment**  
Plot Plan for  
Case No A-13-077

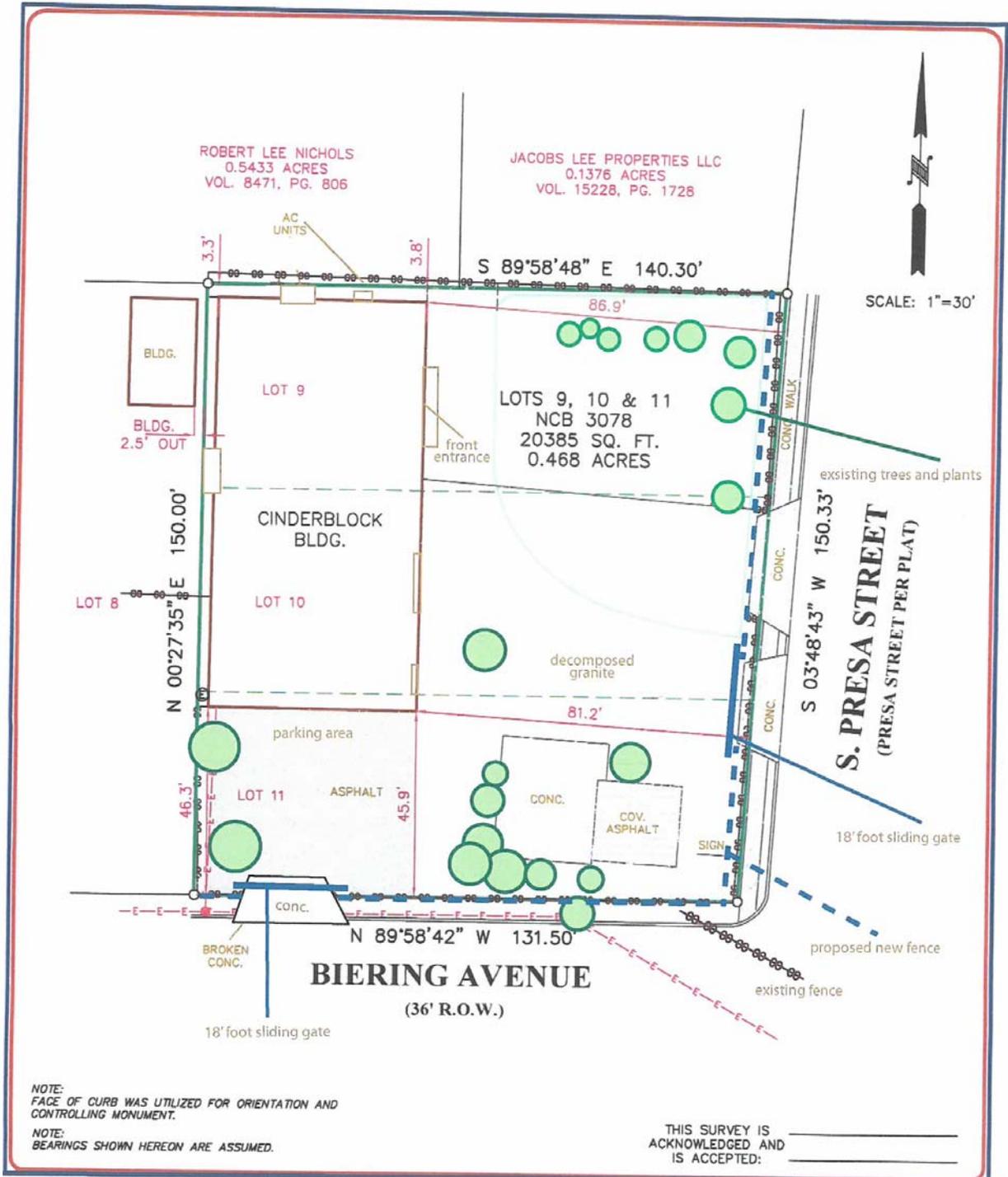


Fence   
"NOT TO SCALE,  
FOR ILLUSTRATIVE PURPOSES ONLY"  
Council District 1

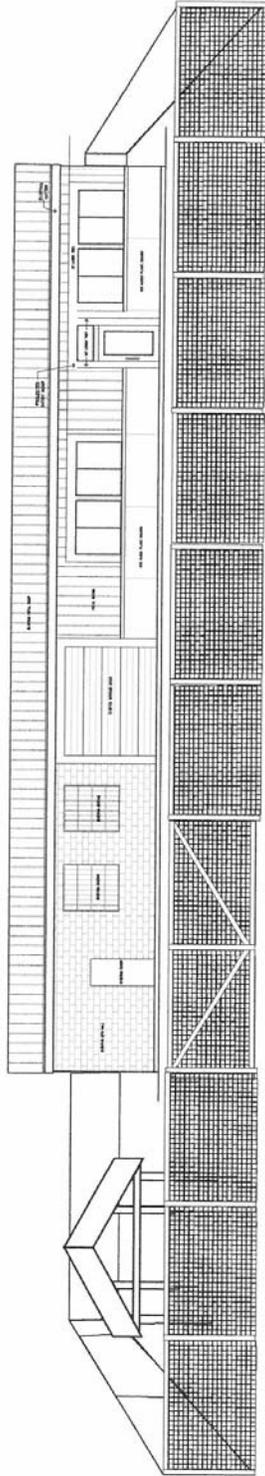
1425 & 1429 S. Presa

Development Services Department  
City of San Antonio

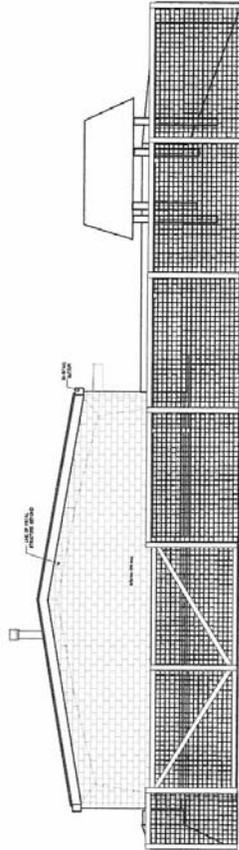
# Attachment 3 Applicant's Site Plan



# Attachment 4 Proposed Fence Material



FRONT ELEVATION



SIDE ELEVATION

1429 SOUTH PRESA  
WESLEY OLIVER & DEVI NORTON

**Attachment 5  
Existing Fence**





## **City of San Antonio Development Services Department Staff Report**

To: Board of Adjustment  
Case No.: A-13-080  
Date: October 7, 2013  
Applicant: Robert Rivard  
Owner: Monika & Robert Rivard  
Location: 310 E. Arsenal  
Legal Description: Lot 17, Block 5, NCB 971  
Zoning: "RM-4 RIO-4 AHOD" Residential Mixed, River Improvement Overlay,  
Airport Hazard Overlay Districts  
Prepared By: Margaret Pahl, AICP Senior Planner

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### **Request**

A request for a 2-foot variance from the maximum 2-foot allowed projection for an eave overhang as detailed in Section 35-516 (j) to allow a 4-foot eave to project into the side setback 1-foot from the property line.

### **Procedural Requirements**

A variance from the requirements of the zoning ordinance is a decision vested with the Board of Adjustment. State law prescribes specific factors that must be satisfied when deciding to grant a variance. The request was publicly noticed in accordance with Section 35-403 of the Unified Development Code ("UDC"). Notices were sent to property owners within two hundred (200) feet of the subject property on September 19, 2013. The application details were published in The Daily Commercial Recorder, an official newspaper of general circulation, on September 20, 2013. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before October 4, 2013, in accordance with Section 551.043(a) of the Texas Government Code.

### **Executive Summary**

The subject property is located within the King William neighborhood, but outside the boundaries of the historic district. The applicant explains that the site has lost two buildings to fires; one in 1937 and the last one in 1978. The lot has remained vacant for the last 35 years. The applicant recorded a one-lot subdivision plat in January of 2012 and received a building permit for construction in April of the same year. Construction has continued for over a year. It wasn't until a complaint from a neighbor was lodged that the applicant and the City realized the "eave overhang" encroached into the side yard setback more than was allowed. During the

original permit review, the plans examiner identified *an eave overhang encroachment* as a required correction. Unfortunately, the eave on the alley side was shortened rather than the eave on the west side. The permit was issued and construction proceeded, with the eave overhang encroachment. The applicant must acquire a variance to allow the encroachment or shorten the eave.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“RM-4 RIO-4 AHOD” Residential Mixed River Improvement & Airport Hazard Overlay Districts	Single-family dwelling

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 H AHOD” Residential Mixed Historic Airport Hazard Overlay Districts	Single-family dwelling
South	“RM-4 H AHOD” Residential Mixed Historic Airport Hazard Overlay Districts	Single-family dwelling
East	“RM-4 H HE AHOD” Residential Mixed Historic Airport Hazard Overlay Districts	Single-family dwelling
West	“RM-4 H HS AHOD” Residential Mixed Historic Airport Hazard Overlay Districts	Single-family dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Downtown Neighborhood Plan, adopted by the City Council in May of 1999. The future land use plan designated this area for low-rise mixed use. The subject property is located within the boundaries of the King Williams Neighborhood Association, a registered neighborhood association recognized by the City of San Antonio. As such, they were notified and asked to comment. The King William Association submitted a letter expressing their opposition to the variance, stating that the ability to control storm water runoff would be compromised.

**Criteria for Review**

According to Section 35-482(e) of the UDC, 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.*

The public interest is defined as the general health, safety and welfare of the public at large. The public interest in this case is based on the air flow, light and fire safety protected by the minimum setbacks. In this situation, the applicant will include a fire-rated assembly to provide fire safety and a gutter system to catch the roof run-off. As a result of the reduced distance from the property line, the applicant will be forced to clean the gutters from the roof. While the

situation may inconvenience the property owner, the impact to the public may be mitigated. The Board is charged with determining if the request is contrary to the public's interest.

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

The applicant argues that the encroachment is the result of an inadvertent error on the parts of the architect and the plan reviewer. A literal enforcement would require that the eave overhang be modified to provide a minimum 3-foot setback from the property line. The applicant asserts that with the eaves matching, shortening one would create an asymmetrical look from the street. In addition, as constructed, the eaves provide shade and shelter for sidewalks and staircases. The Board of Adjustment is asked to evaluate the situation and determine if the literal enforcement of the ordinance results in an unnecessary hardship.

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

The Board must evaluate the "spirit" of the ordinance as contrasted with the "strict letter" of the law for each unique case. Accordingly, the Board is asked to consider the intent of the requirement. In this case, the applicant asserts that the spirit of the ordinance is observed by the walls constructed at the minimum setbacks. The eave is elevated to approximately 18 feet above the ground, reducing its visual impact. A planned gutter system will funnel the storm water to the street. Even though projections are allowed to encroach into setbacks, the Board must decide if allowing an additional 2-foot encroachment observes the spirit.

- 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 requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "RM-4 H AHOD" 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.*

The eave projection into the setback is not immediately obvious; the home is setback from the street 37 feet. The house design is unique; it is two fairly separate buildings, connected by a courtyard, with a large outdoor living space. The inside eave is protecting an exterior staircase up to the sleeping quarters. The living portion of the home is within the single-story section on the alley side of the structure. Based on the assumption that all maintenance can and will be conducted within the boundaries of the subject property, then the variance may not injure the adjacent conforming property, or alter the character of the district.

- 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.*

According to the applicant, the unique circumstance existing on the property is the inadvertent error that occurred during the plan review process. The applicant had proceeded with construction based on the assumption that the plans were consistent with all required conditions. Though a stop work order was not issued, it appears that the work was discontinued when the issue was brought to the owner's attention.

### **Alternatives to Applicant's Request**

The alternative to the applicant's request is to reduce length of the eave from 4-feet to 2-feet on the West property line.

### **Staff Recommendation**

Staff recommends **approval of A-13-080** based on the following findings:

1. The applicant proceeded to construct the home with a valid building permit and the error may be mitigated for health, safety and welfare of the neighboring property owners.

### **Attachments**

Attachment 1 – Notification Plan (Location Map)

Attachment 2 – Plot Plan

Attachment 3 – Applicant's Site Plan & Elevations

Attachment 4 – Site Photos

# Attachment 1 Notification Plan

646  
RIO-4



Area is in Airport Hazard Overlay District



**Board of Adjustment**  
Notification Plan for  
**Case No A-13-080**

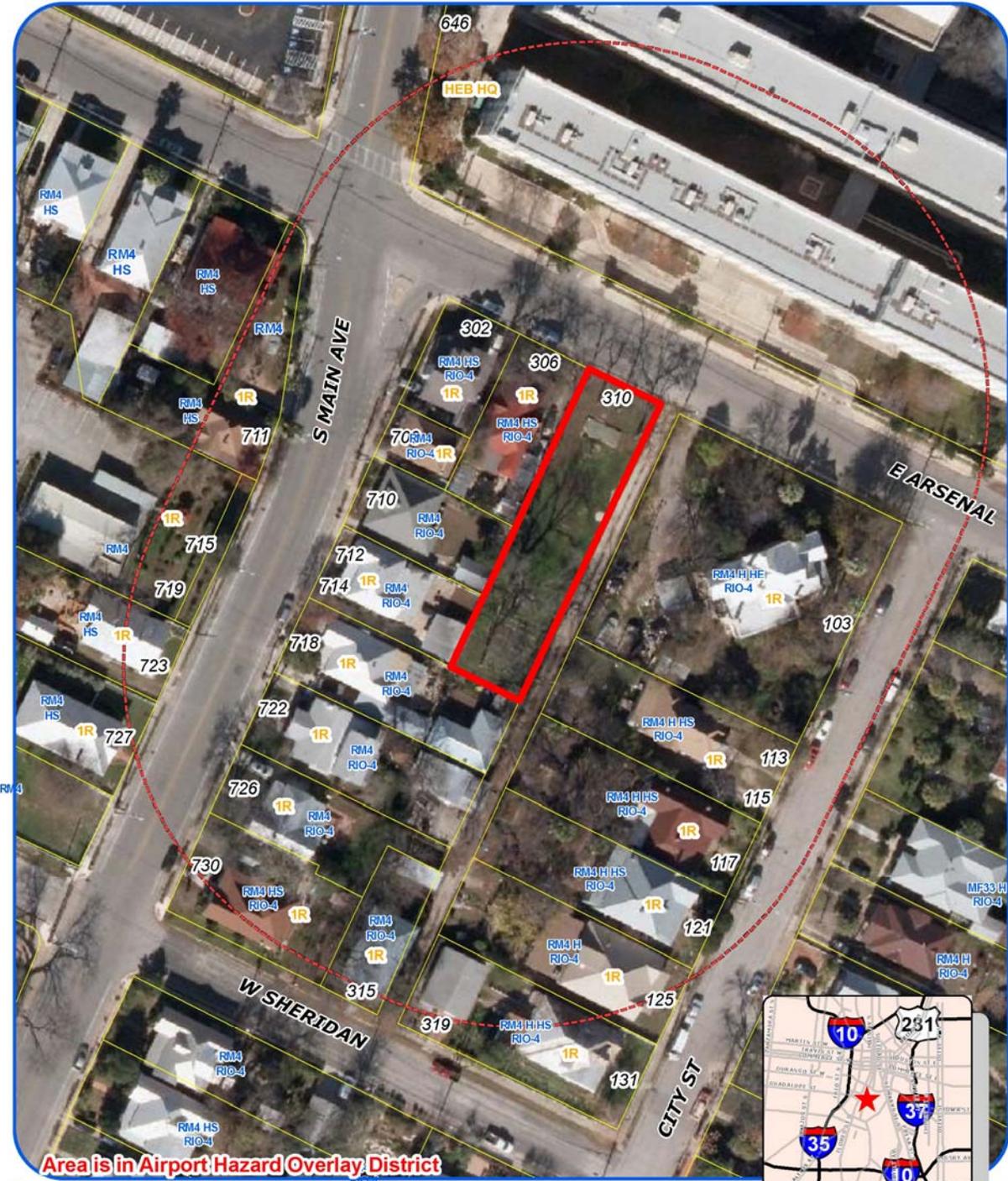
San Antonio City Limits   
 Subject Property   
 200' Notification Boundary   
 Council District 1 

Development Services Department  
City of San Antonio

0 10 20 30 40 feet

# Attachment 1 Notification Plan (continued)

RIO-4



Area is in Airport Hazard Overlay District

<p><b>Board of Adjustment</b> Notification Plan for <b>Case No A-13-080</b></p>		<p>San Antonio City Limits </p> <p>Subject Property </p> <p>200' Notification Boundary </p> <p>Council District 1 </p>		<p style="text-align: right;">Development Services Department City of San Antonio</p>
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**Attachment 2  
Plot Plan**



**Board of Adjustment**  
Plot Plan for  
**Case No A-13-080**



"NOT TO SCALE,  
FOR ILLUSTRATIVE PURPOSES ONLY"  
Council District 1

**310 Arsenal**

Development Services Department  
City of San Antonio

**Attachment 2  
Plot Plan (continued)**



**Board of Adjustment**  
Plot Plan for  
**Case No A-13-080**

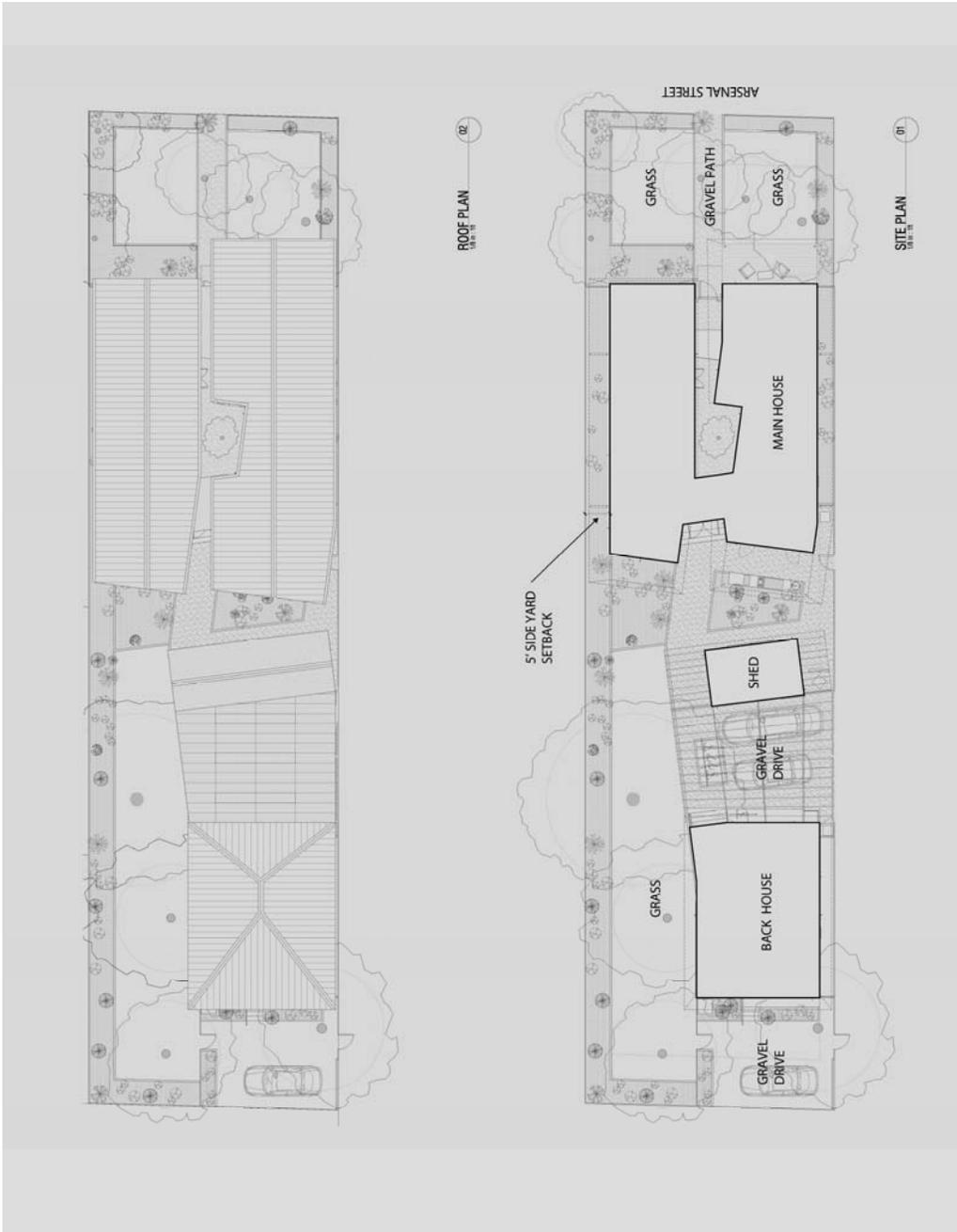


"NOT TO SCALE,  
FOR ILLUSTRATIVE PURPOSES ONLY"  
Council District 1

**310 Arsenal**

Development Services Department  
City of San Antonio

# Attachment 3 Applicant's Site Plan



Attachment 3 (continued)  
House Elevations



**Attachment 4  
Site Photos**



**From west property line on E. Arsenal**



**Looking toward E. Arsenal from Alley to east**