# City of San Antonio Board of Adjustment

Regular Public Hearing Agenda

Monday, February 3, 2014

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), and the City Hall kiosk, at least seventy-two (72) hours prior to this public hearing, in complaince 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. Election of Chair and Vice Chair

5. **A-14-017:** The request of Robert D. Lawrence for a 5-foot variance from the required 5-foot side yard setback to allow several accessory structures encroaching into the 5-foot required side yard setback, located at 7939 Viking Trail. (Council District 7)

6. **A-14-018:** The request of Jesus Salazar for a 3-foot variance from the 5-foot minimum side yard to allow a carport 2 feet from the west side property line, located at 654 West Pyron Avenue. (Council District 3)

7. **A-14-020:** The request of Celso Cuellar Jr. for 1) a variance to allow barbed wire on a predominantly open fence at a residential property, 2) a 3-foot height variance from the 4-foot maximum height to allow a predominantly open fence 7 feet in height in the front yard, and 3) a 1-foot height variance from the 6-foot maximum height to allow a predominantly open fence 7 feet in height in the rear and side yard, located at 202 Porter Street. (Council District 2)

8. **A-14-022:** The request of Saul Audel Para Condejas and Maribel Magana for a 1) an 18-foot variance from the 20-foot required rear yard setback to allow a structure 2 feet from the rear property line; and 2) a 4-foot variance from the 5-foot required side yard to allow a structure 1-foot from the side property line, located at 2211 Santiago Street. (Council District 5)

9. **A-14-023:** The request of Virginia Losoya for a special exception to allow a one-operator beauty/barber shop in a single-family residence, located at 248 West Cheryl Drive. (Council District 7)

10. **A-14-024:** The request of Robert Vetter for a 114-foot variance from the maximum 40-foot front setback to allow a new building 154 feet from the front property line, located at 2619 Austin Highway. (Council District 2)

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**Board of Adjustment Membership**

*Vacancy, Chair* *Andrew Ozuna, District 8, Vice Chair*

*Frank Quijano, District 1 ● Edward Hardemon, District 2 ● Gabriel Velasquez, District 3 ● George Britton, District 4*

*Maria Cruz, District 5 ● Jesse Zuniga, District 6 ● Mary Rogers, District 7 ● John Kuderer, District 9 Vacant, Distict 10*

*Gene Camargo, Mayor*

**Alternate Members**

*Harold O. Atkinson ● Paul E. Klein ● Henry Rodriguez ● Vacancy ● Vacancy ● Vacancy*

11. **A-14-025:** The request of Xavier Gonzalez for a 2-foot variance from the maximum 4-foot fence height to allow a 6 foot ornamental iron fence in the front yard, located at 104 Bushnell. (Council District 1)

12. Approval of the minutes – January 13, 2014

13. Briefing and Discussion on possible Rules of Procedures amendments

14. Announcements and Adjournment – District Court Appeals

***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 lareunión. Para asistencia llamar a (210) 207-7245 o al 711 (servicio de transmitir para sordos).***

**Board of Adjustment Membership**

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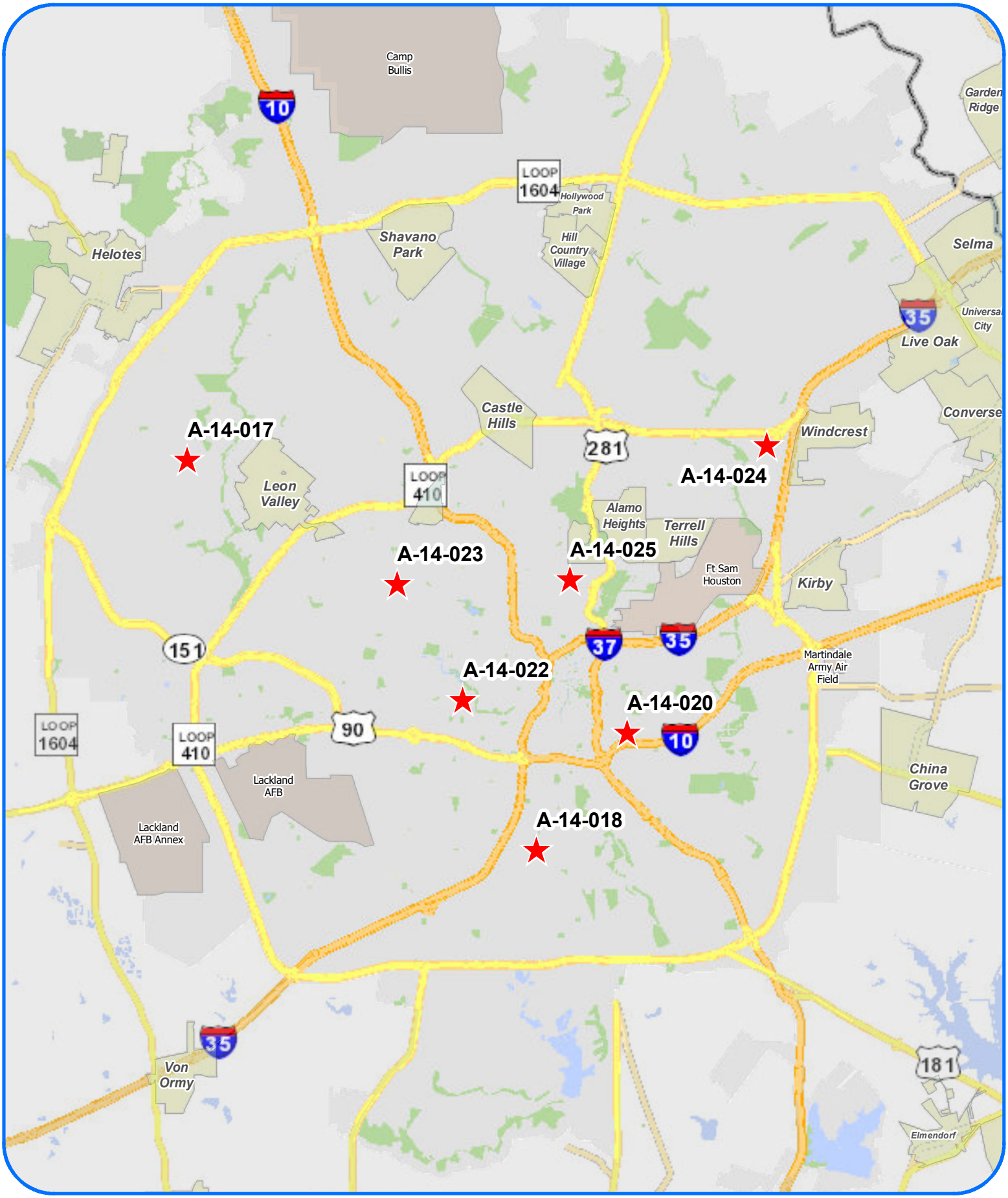
*Harold O. Atkinson ● Paul E. Klein ● Henry Rodriguez ● Vacancy ● Vacancy ● Vacancy*




# Board of Adjustment

**Subject Property Locations**
**Cases for 3rd February 2014**

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Development Services Dept.
City of San Antonio

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

| | |
|---|---|
| To: | Board of Adjustment |
| Case No.: | A-14-017 |
| Date: | February 3, 2014 |
| Applicant: | Robert D. Lawrence |
| Owner: | Robert D. Lawrence |
| Location: | 7939 Viking Trail |
| Legal Description: | Lot 1, Block 3, NCB 18666 |
| Zoning: | "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District |
| Prepared By: | Osniel Leon, Planner |

**Request**

A request for a 5-foot variance from the required 5-foot side yard setback, as detailed in Table 35-310-1, to allow several accessory structures encroaching into the east side yard setback.

**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 January 16, 2014. The application details were published in The Daily Commercial Recorder, an official newspaper of general circulation, on January 17, 2014. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on January 31, 2014, in accordance with Section 551.043(a) of the Texas Government Code.

**Executive Summary**

The subject property is located on the north side of Viking Trail, between Mirabella Drive and Gaslamp Lane. The property is currently developed as single-family residence measuring approximately 1,666 square feet, constructed in 1993 per BCAD records. The applicant built a carport, wood shed and an elevated patio deck encroaching into the east side yard setback without first obtaining the required permits and approval from the City.

Pursuant to Table 310-1 of the UDC, buildings in the "R-6" Residential Single-Family zoning district shall be set back a minimum of ten (10) feet from the front property line, and five (5) feet from the side property line. Furthermore, per Section 35-516(g) of the UDC, carports may be erected behind the minimum front setback required, so long as twenty (20) feet of total parking area depth is maintained within the lot.

The UDC regulates carports and garages under the identical provisions, calling them accessory structures. Accordingly, Section 35-370 (b) identifies the provisions including the required 5-foot setback from both side and rear property lines. Without any eaves or similar projections, the setback may be reduced to 3 feet.

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. Furthermore, the applicant submitted a signed letter from the adjacent property owner in favor of the requested variance.

**Subject Property Zoning/Land Use**

| Existing Zoning | Existing Use |
|---|---|
| "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District | Single-Family Residential |

**Surrounding Zoning/Land Use**

| Orientation | Existing Zoning District(s) | Existing Use |
|---|---|---|
| North | "RM-4 AHOD" Residential Mixed Airport Hazard Overlay District | Multi-Family Residential |
| South | "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District | Single-Family Residential |
| East | "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District | Single-Family Residential |
| West | "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District | Single-Family Residential |

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Northwest Community Plan. The property is not located within the 200-foot radius of any registered neighborhood association.

**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 side setback is covered by a structure. The public interest in this case is represented by minimum setbacks established to ensure activities on individual properties do not impact the rights of a neighboring property owner. Setbacks also allow property maintenance.

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

The subject property is not subjected to special conditions that create unnecessary hardship through the literal enforcement of the setback requirements. A literal enforcement of the side setback requirement will require the applicant to relocate the accessory structures five (5) feet from the property line.

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

The variance request is neither in keeping with the spirit of the ordinance nor would granting it do substantial justice. The UDC does not contemplate any situation where structures would be allowed to be placed within the side setback. The subject property is not uniquely influenced by oppressive conditions, and its reasonable use is not contingent upon accessory structures at the side property line. The subject property has ample space on the lot to comply with the required five (5) feet from the east side property line. The existing single-family residential structure complies with the minimum setback requirements of this district with an approximately 20-foot side yard setback and a 30-foot front setback.

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-6" 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. By granting this variance, it will set a precedent to more construction of this type in the neighborhood. There is another nonconforming carport on the same block which was cited by Code Compliance on January 9, 2014.

*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.*

No unique conditions or circumstances exist on the property that prevents the applicant from using the property as intended and complying with the minimum requirements of the UDC. Had the applicant obtained permits prior to construction, the applicant would have been notified about the minimum required development standards including fire rated materials and this variance request would not be necessary. The result of the applicant's action to build accessory structures within the required side yard caused the violation on the property, thus self-imposing hardship.

**<u>Alternatives to Applicant's Request</u>**

The alternative to the applicant's request is to comply with the UDC setback requirements, or remove the accessory structures, which were constructed without permits.

## Staff Recommendation

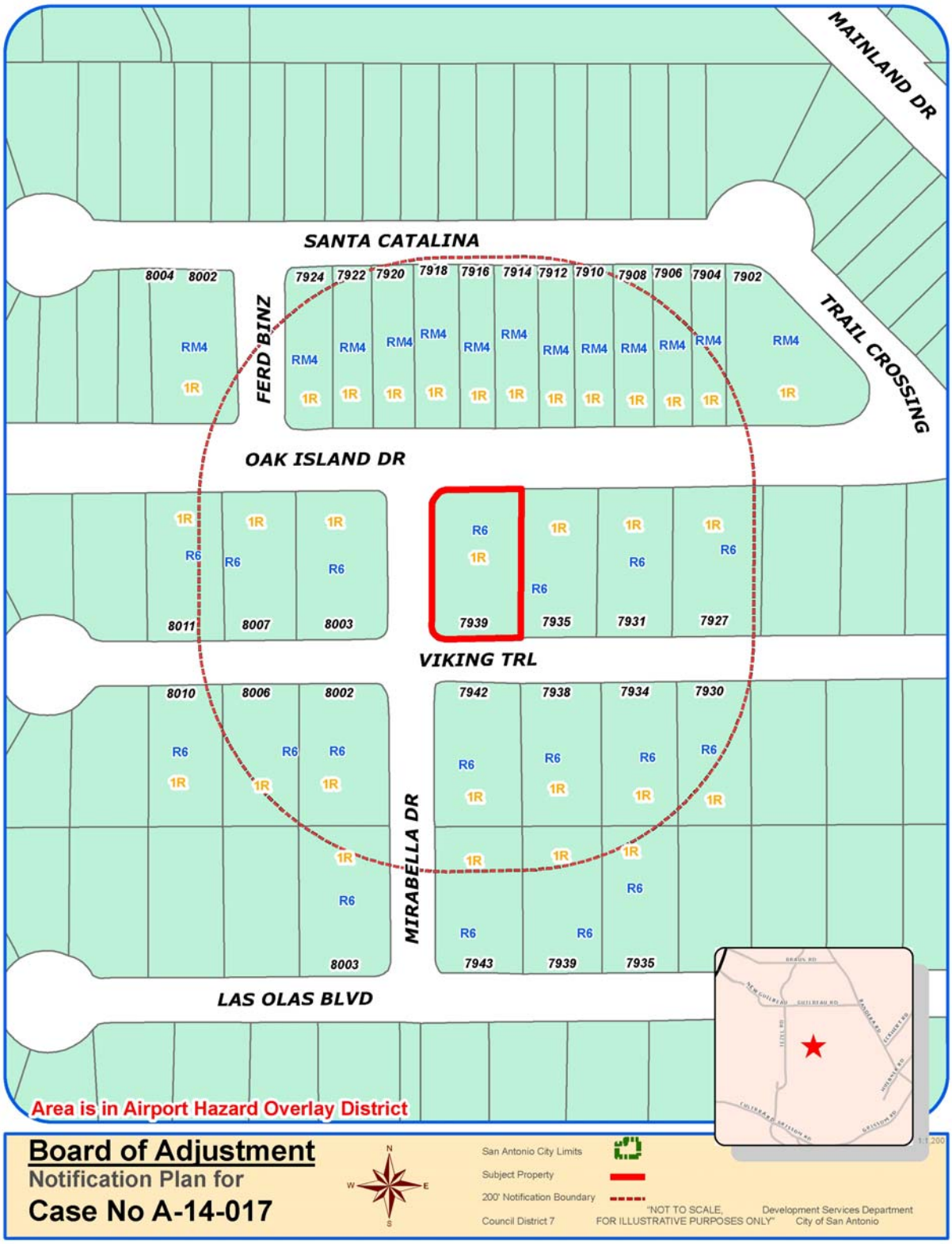
Staff recommends **denial of A-14-017,** based on the following findings:

1. There are no special conditions or circumstances on the property that warrant the granting of the requested variance.

## Attachments

Attachment 1 – Notification Plan (Location Map)
Attachment 2 – Plot Plan
Attachment 3 –Applicant's Site Plan
Attachment 4 – Photos

**Attachment 1**
**Notification Plan**



**Attachment 2**
**Plot Plan**

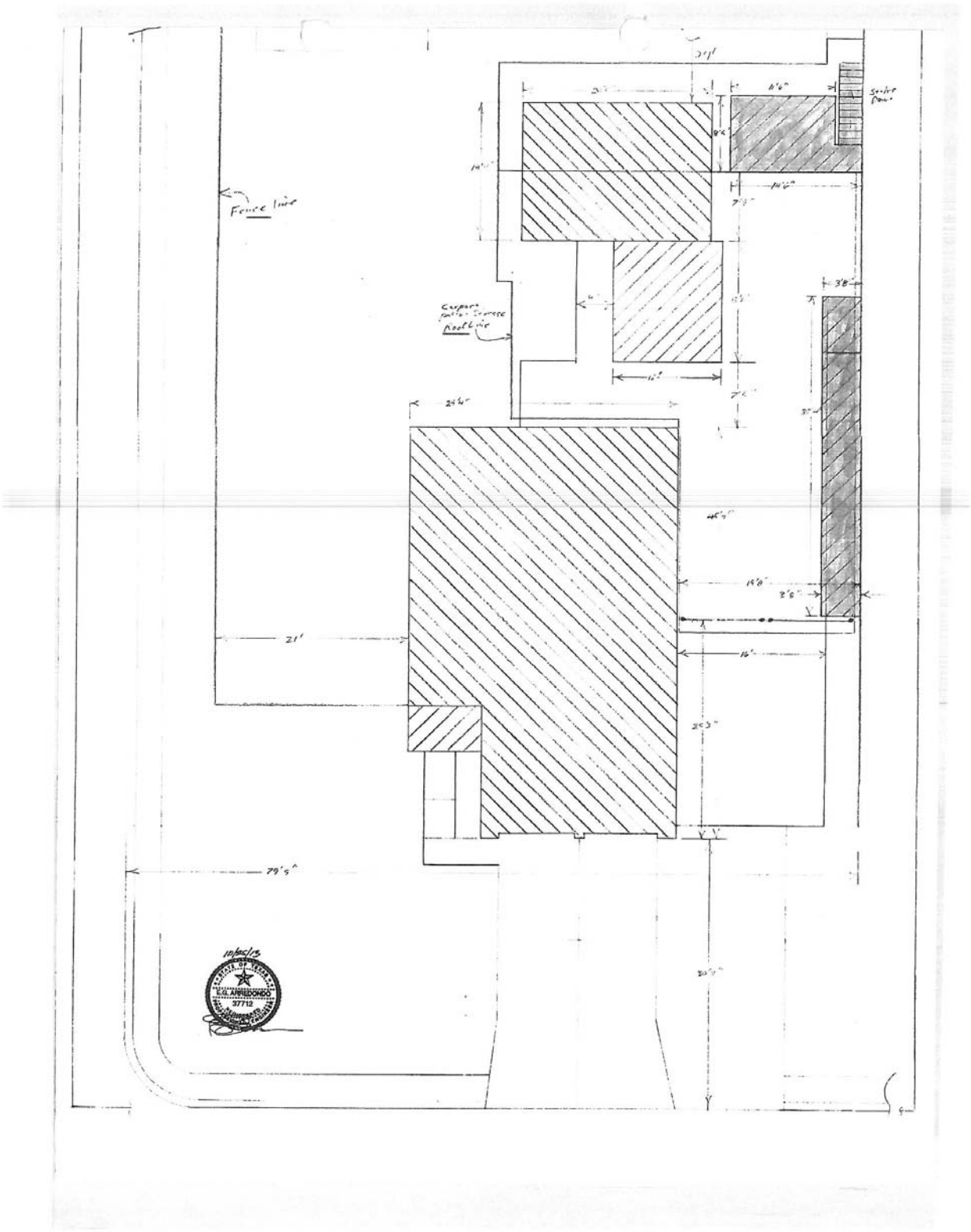
**Board of Adjustment**
Plot Plan for
**Case No A-14-017**

"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 7

**7939 Viking Trail**

Development Services Department
City of San Antonio

**Attachment 3**
**Applicant's Site Plan**



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

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

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|---|---|
| To: | Board of Adjustment |
| Case No.: | A-14-018 |
| Date: | February 3, 2014 |
| Applicant: | Jesus Salazar |
| Owner: | Jesus Salazar |
| Location: | 654 West Pyron Avenue |
| Legal Description: | The west 50 feet of the North one-half of Tract 206, NCB 7847 |
| Zoning: | "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District |
| Prepared By: | Tony Felts, Planner |

**Request**

A request for 1) a variance from Table 310-1 of the UDC for a 3-foot variance from the 5-foot minimum side yard to allow an attached carport 2 feet from the west 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 January 16, 2014. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation, on January 17, 2014. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before January 31, 2014, in accordance with Section 551.043(a) of the Texas Government Code.

**Executive Summary**

The subject property is located on the south side of West Pyron Avenue, approximately 656 feet west of Pleasanton Road.

The site is currently developed with a single-family residence. The applicant constructed an attached carport 2 feet from the west side property line without proper permits. The applicant states that the side yard variance is needed in order to have enough room to park two cars because of the narrowness of the lot.

The lot is approximately 50 feet in width and 224 feet long. There is sufficient area to place a covered carport in the rear of the structure.

**Subject Property Zoning/Land Use**

| Existing Zoning | Existing Use |
|---|---|
| "R-6 AHOD" (Residential Single-Family Airport Hazard Overlay District) | Multiple Family Dwelling |

**Surrounding Zoning/Land Use**

| Orientation | Existing Zoning District(s) | Existing Use |
|---|---|---|
| North | "R-6 AHOD" (Residential Single-Family Airport Hazard Overlay District) | Single-Family Residence |
| South | "R-6 AHOD" (Residential Single-Family Airport Hazard Overlay District) | Single-Family Residence |
| East | "R-6 AHOD" (Residential Single-Family Airport Hazard Overlay District) | Single-Family Residence |
| West | "R-6 AHOD" (Residential Single-Family Airport Hazard Overlay District) | Single Family Residence |

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the South Central San Antonio Community Plan (designated as Low Density Residential). The subject property is not located within the boundaries of a registered neighborhood association.

**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 preserve adequate access, access to light and air, and preserve public safety by ensuring proper separation of buildings. The structure abuts the neighboring property's side yard area. By allowing the addition to remain, it may adversely affect the neighboring property by not allowing for adequate access for maintenance of the structure.

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

   The subject property is sufficiently deep to allow the construction of a compliant carport or garage in the rear of the main structure. Likewise, there is sufficient room for the applicant

to access the rear of the property with an automobile, and therefore, any garage or carport. As such, no special conditions exist on the property to warrant the granting of a 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 observed by granting the variance as the carport, as constructed, does not provide for adequate room to access the structure for maintenance and there are adequate alternatives to the structure's current placement.

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-6" Residential Single-Family 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 the appropriate use of the adjacent property to the south because there is not adequate space to maintain the structure. It should be noted that, while there are other carports to the side of homes in the area, it is unknown whether these carports are in conformance with the requirements of the UDC.

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 are no unique circumstances readily apparent to warrant the granting of the requested variances.

## Alternatives to Applicant's Request

The alternative to the applicant's request is to construct a compliant carport or garage in the rear of the main structure.

## Staff Recommendation

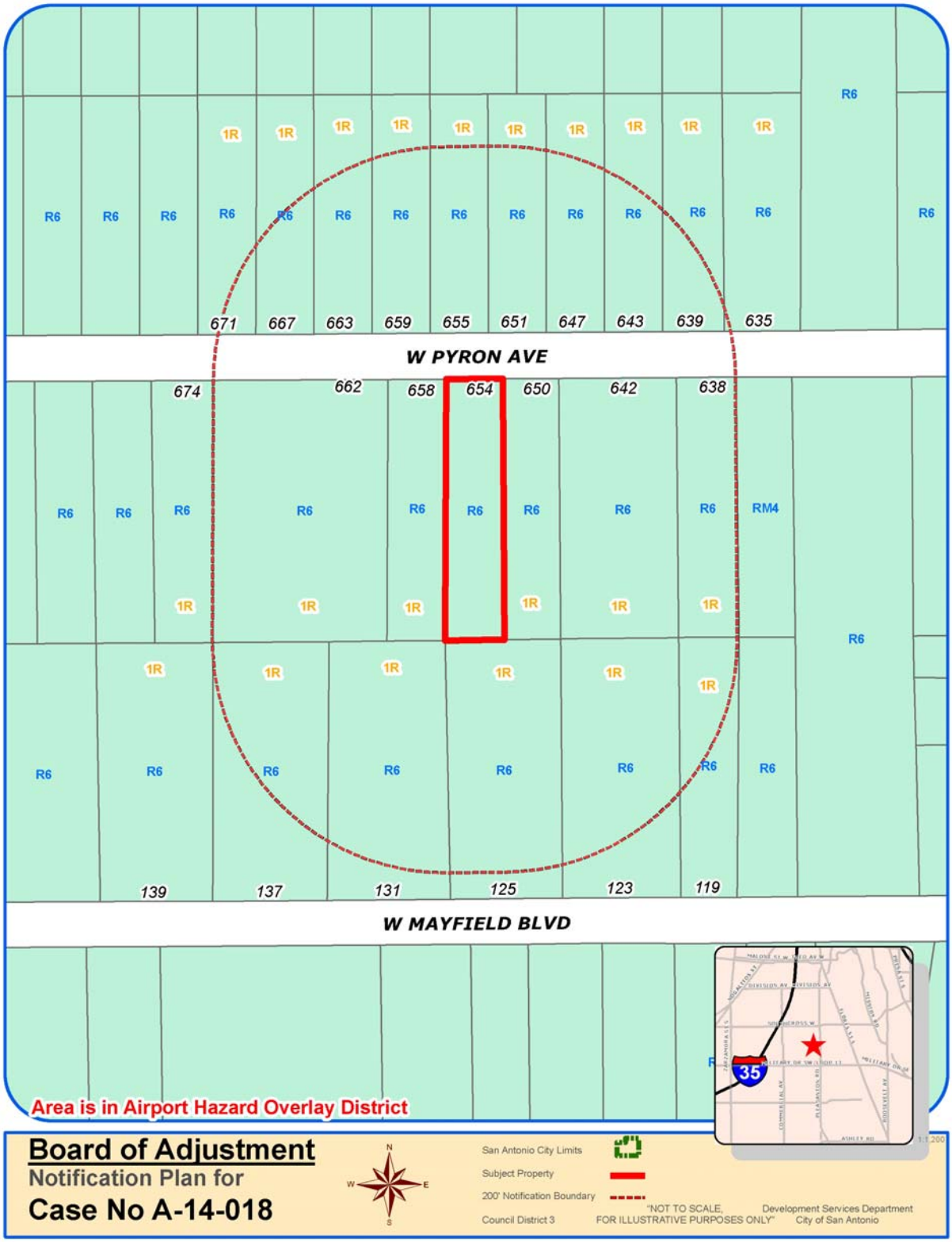
Staff recommends **denial of A-14-018** because of the following reasons:

- The addition does not allow enough room to be maintained and does not meet the spirit of the ordinance.

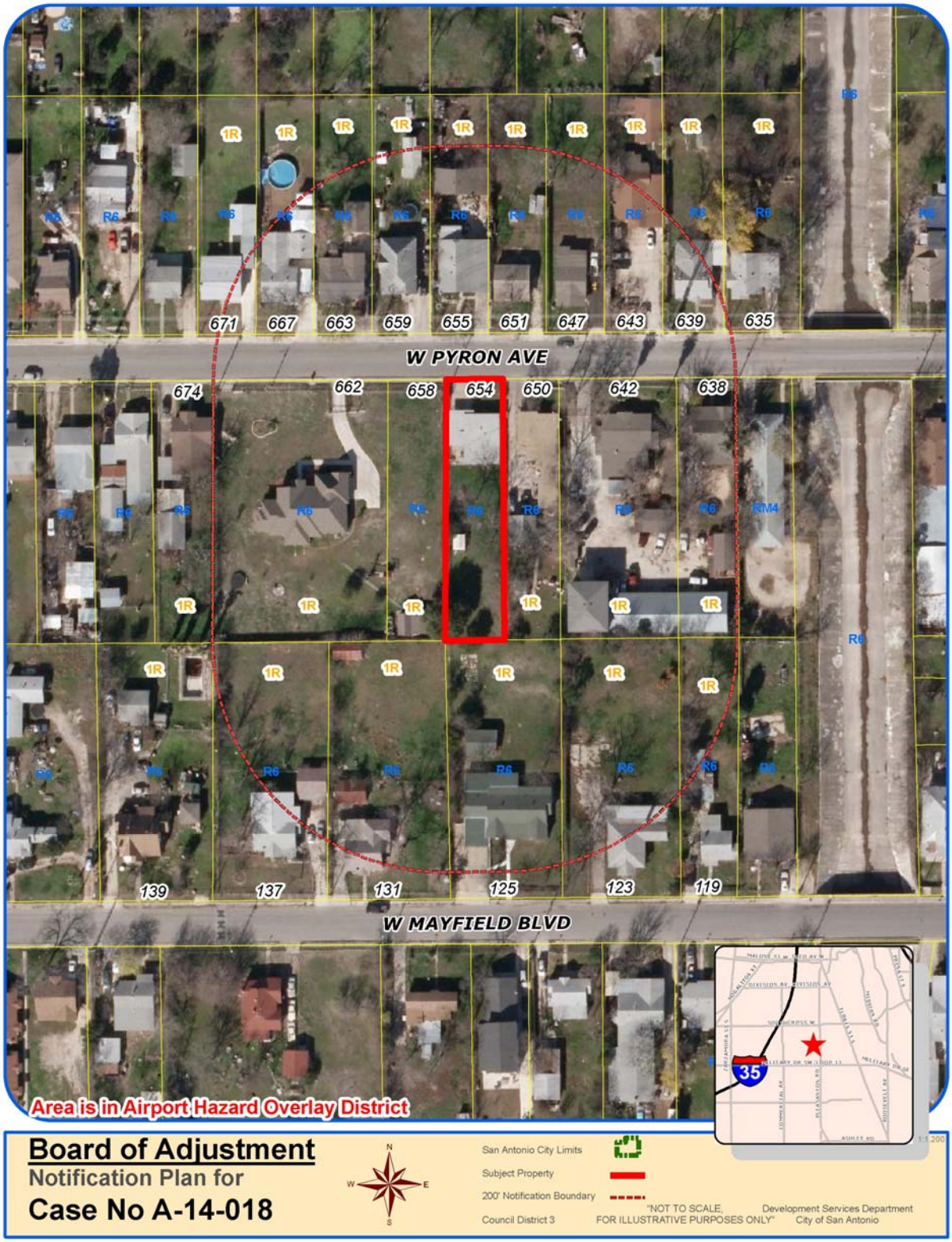
## Attachments

Attachment 1 – Notification Plan (Location Map)
Attachment 2 – Plot Plan
Attachment 3 – Applicant's Site Plan
Attachment 4 – Site Photos

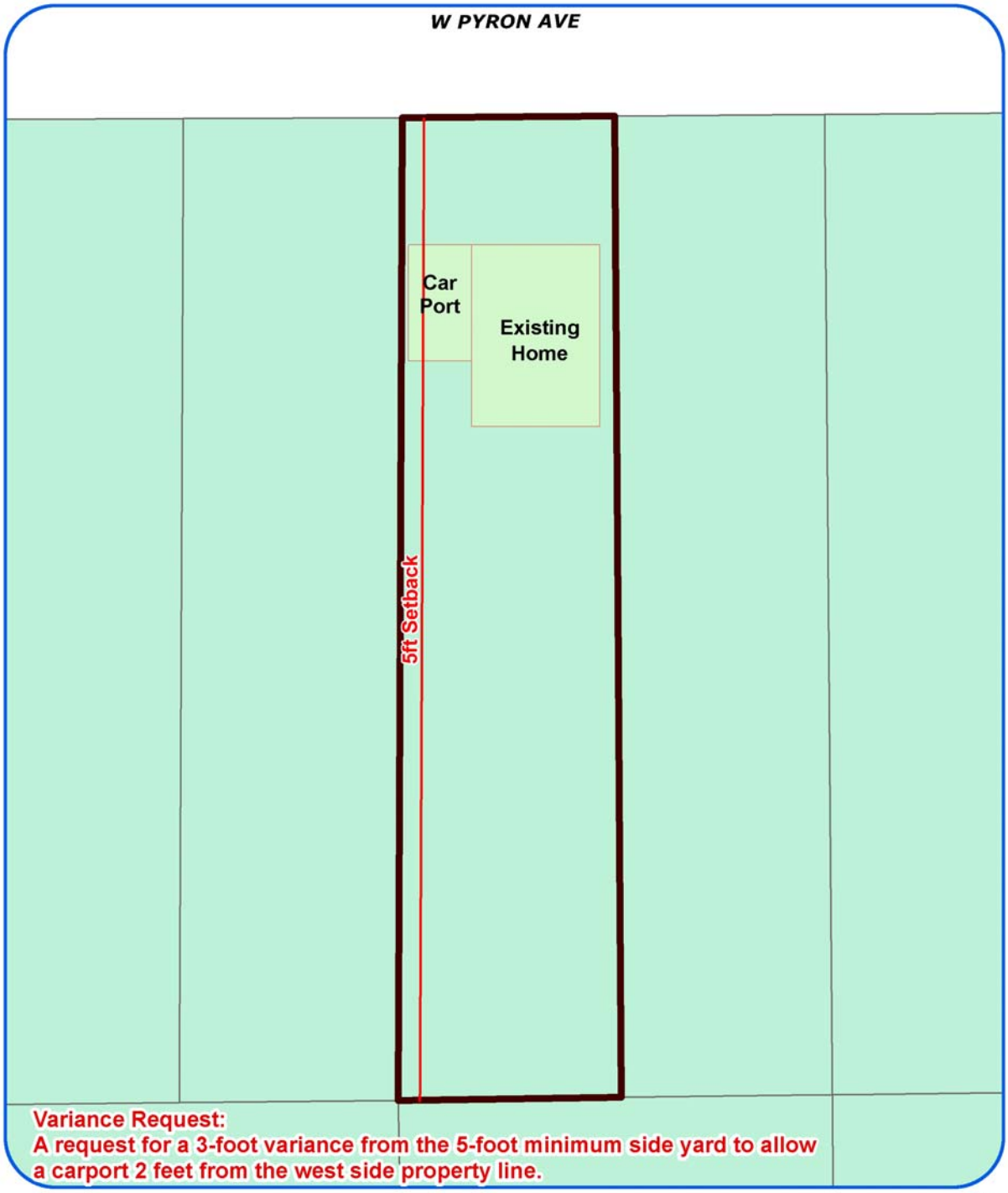
**Attachment 1**
**Notification Plan**



**Attachment 1 (Continued)**
**Notification Plan**



**Attachment 2**
**Plot Plan**




**Board of Adjustment**
Plot Plan for
**Case No A-14-018**

"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 3

**654 W Pyron**

Development Services Department
City of San Antonio

**Attachment 2 (Continued)**
**Plot Plan**

**Board of Adjustment**
Plot Plan for
**Case No A-14-018**

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"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 3

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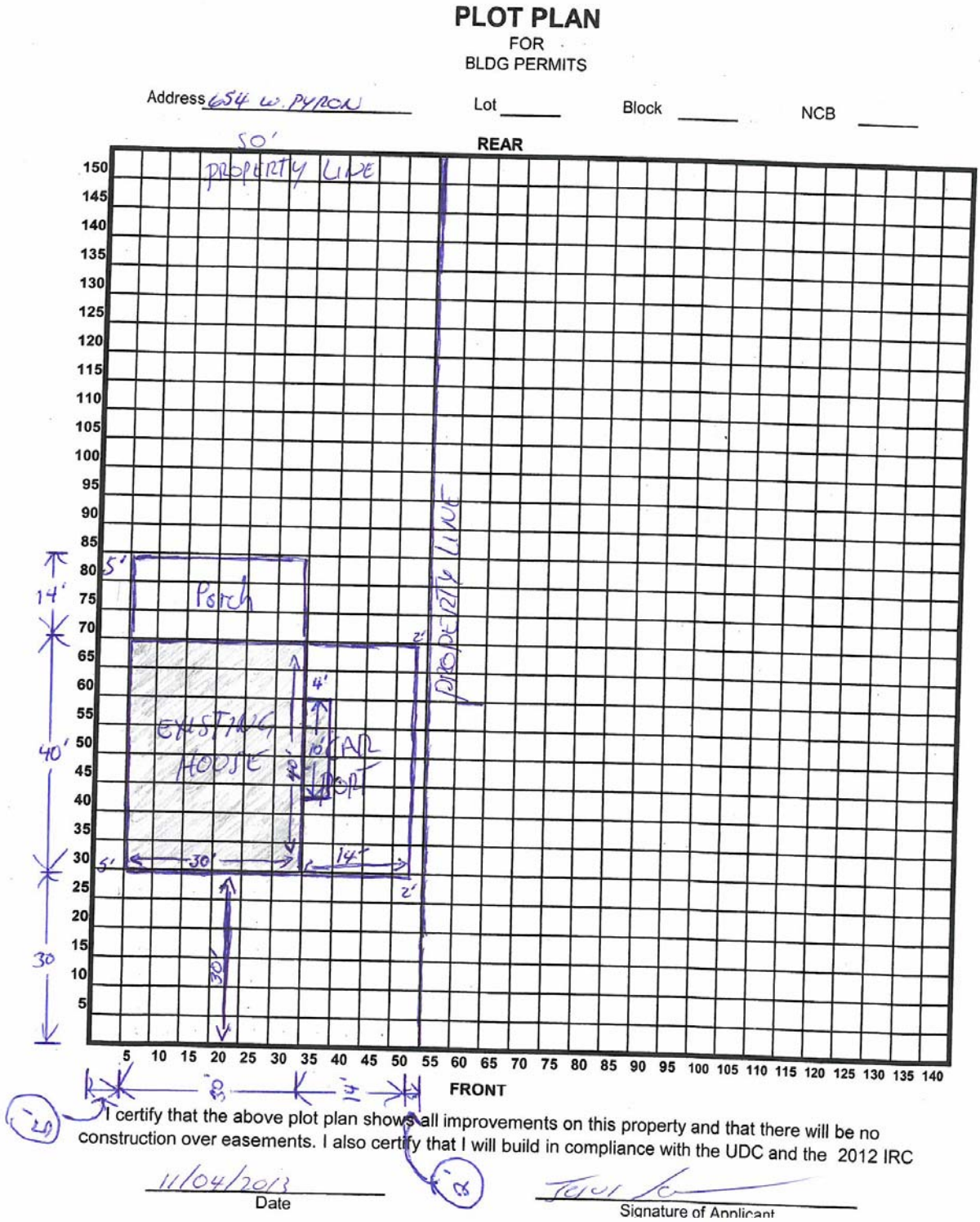
**654 W Pyron**

Development Services Department
City of San Antonio

**Attachment 3**
**Applicant's Site Plan**



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

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

| | |
|---|---|
| To: | Board of Adjustment |
| Case No.: | A-14-020 |
| Date: | February 3, 2014 |
| Applicant: | Celso Cuellar Jr. |
| Owner: | Celso Cuellar Jr. |
| Location: | 202 Porter Street |
| Legal Description: | Lots 27 & 28, Block 39, NCB 1623 |
| Zoning: | "C-2NA AHOD" Commercial Nonalcoholic Sales Airport Hazard Overlay District |
| Prepared By: | Tony Felts, Planner |

**Request**

A request for 1) a variance from Section 35-514(a)(6)c. of the UDC to allow barbed wire on a predominantly open fence at a residential property, 2) a request from Section 35-514(d)(1) of the UDC for a 3-foot height variance from the 4-foot maximum height to allow a predominantly open fence 7 feet in height in the front yard, and 3) a request from Section 35-514(d)(1) of the UDC for a 1-foot height variance from the 6-foot maximum height to allow a predominantly open fence 7 feet in height in the rear and side 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 January 16, 2014. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation, on January 17, 2014. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before January 31, 2014, in accordance with Section 551.043(a) of the Texas Government Code.

**Executive Summary**

The subject property is located on the southeast corner of Porter Street and Piedmont Avenue.

The site is currently developed with a single multiple-family building containing five dwelling units. The applicant has installed a 6-foot chain link fence with three strands of barbed wire on the top (giving the fence a total height of 7 feet) around the entirety of the property without a

permit. The fence is within all yards, and thus a fence height variance is required. Additionally, the barbed wire fencing is prohibited by the UDC around residential structures, thus requiring a variance for fence materials.

The applicant has stated that there has been crime in the neighborhood and trespassing onto their property, thus requiring the fence.

**Subject Property Zoning/Land Use**

| Existing Zoning | Existing Use |
|---|---|
| "C-2NA AHOD" Commercial Nonalcoholic Sales Airport Hazard Overlay District | Multiple Family Dwelling |

**Surrounding Zoning/Land Use**

| Orientation | Existing Zoning District(s) | Existing Use |
|---|---|---|
| North | "RM-4 AHOD" (Residential Mixed Airport Hazard Overlay District) | Single-Family Residence |
| South | "RM-4 AHOD" (Residential Mixed Airport Hazard Overlay District) | Single-Family Residence |
| East | "RM-4 AHOD" (Residential Mixed Airport Hazard Overlay District) | Single-Family Residence |
| West | "RM-4 AHOD" (Residential Mixed Airport Hazard Overlay District) | Single Family Residence |

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Arena District/Eastside Community Plan (designated as Medium Density Residential). The subject property is also located within the boundaries of the Denver Heights Neighborhood Association, a registered neighborhood association, and as such, they were 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:*

   Usually, fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. Additionally, fence material restrictions, particularly regarding barbed wire and other dangerous materials, are in place to protect public safety and reduce the risk of injury.

   Though front yard fences of varying materials are common in this area, no fences of the height or type requested by the applicant were observed in the area during staff's visit. In

fact, the fencing that the applicant has installed is more reminiscent of the type that would be seen around an industrial building or government facility, not a residential structure. While there may be crime in the area, the fence that has been installed appears to be excessive, and injurious to the urban form of the neighborhood; as well as dangerous to both residents of the building and the surrounding neighborhood. As such, the variance is 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 area of the subject property. The applicant did submit a copy of a police report from November, 2012, regarding a vehicle break-in at the property, but no other police reports were submitted. While there may be a need for a fence around the parking area, the fencing and the barbed wire that the applicant has installed without permits appears to be excessive and dangerous. As such, in this case, a literal enforcement of the ordinance would not result in 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. While there may be a need for some fencing, the location of the fence in the front yard, as well as the addition of the barbed wire does not observe the spirit of the ordinance.

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 "C-2NA" Commercial Nonalcoholic Sales 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, may be injurious to adjacent conforming properties because of the height, type, and location of the fence, as well as the addition of barbed wire. The fencing is more akin to the type that would surround an industrial use, and is not characteristic of a fence surrounding a residential land use in the middle of an established residential 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.*

   The unique circumstances existing on the property were not caused by the applicant, but rather the circumstances result from crime in the area. While there could be an acceptable argument for some additional fence height within the rear and side yard, especially surrounding the parking area, there does not seem to be any special circumstances to warrant the barbed wire or the height of the fencing within the front yard.

## Alternatives to Applicant's Request

The alternative to the applicant's request is to remove all barbed wire, modify the fence to 4 feet in height within the front yard (in front of the front façade of the building) and either have a 6-foot fence in the rear and side yards or have the Board grant a height variance for additional fence height within the rear and side yards.

## Staff Recommendation

Staff recommends **denial of the request for barbed wire and denial of the additional height request in the front yard and approval of the additional height variance request in the rear and side yards only** because of the following reasons:

- The proposed fence design in the front yard which includes and seven-foot high fence with barbed wire is incompatible with the surrounding neighborhood.
- The proposed barbed wire is incompatible with a residential structure.
- The additional fence height in the side and rear yard could be considered appropriate due to crime in the area.

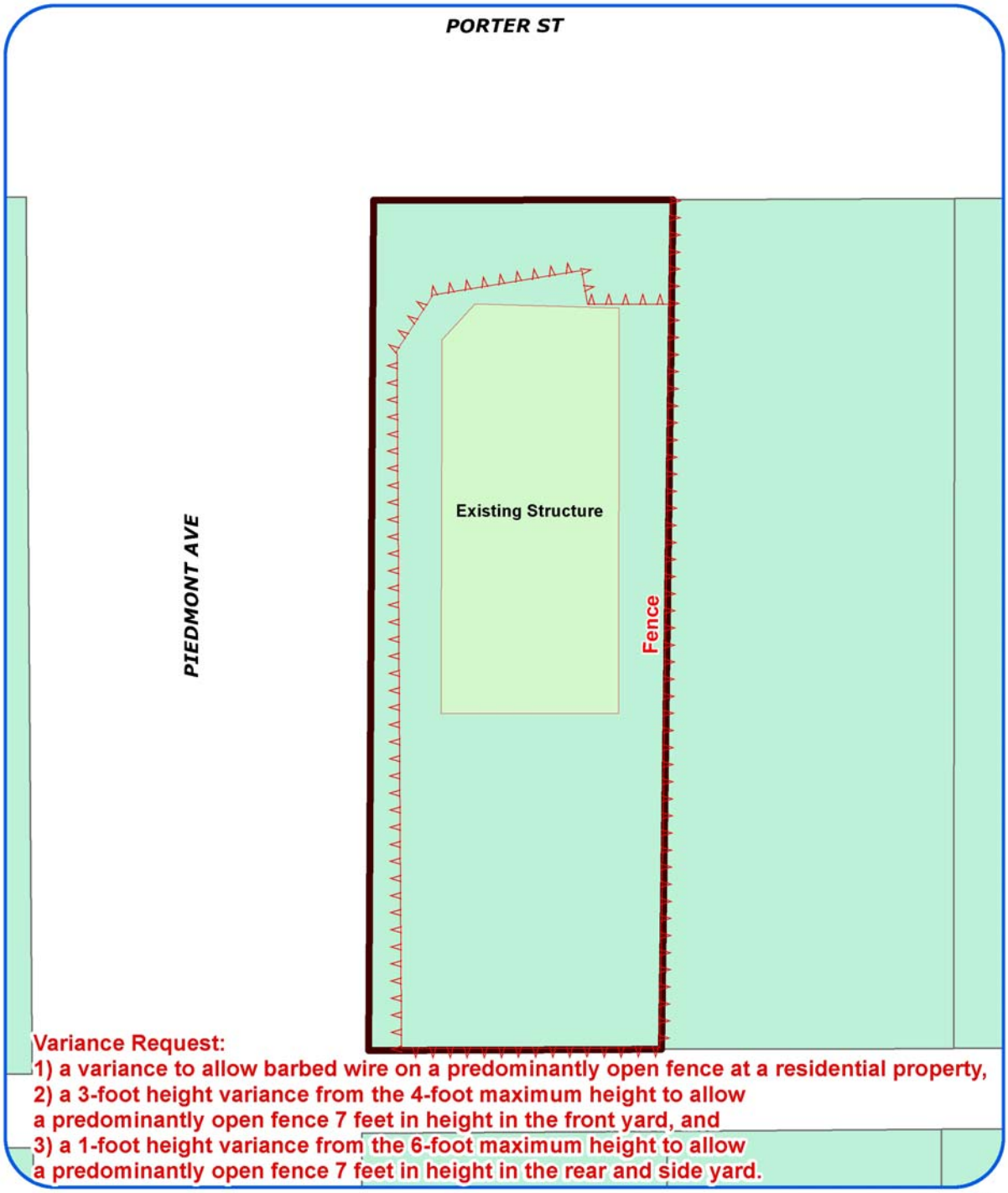
## Attachments

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 (Continued)**
**Notification Plan**

**Attachment 2**
**Plot Plan**




**Board of Adjustment**
Plot Plan for
**Case No A-14-020**

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"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 2

**202 Porter**

Development Services Department
City of San Antonio

**Attachment 2 (Continued)**
**Plot Plan**

**Board of Adjustment**
Plot Plan for
**Case No A-14-020**

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W E
S

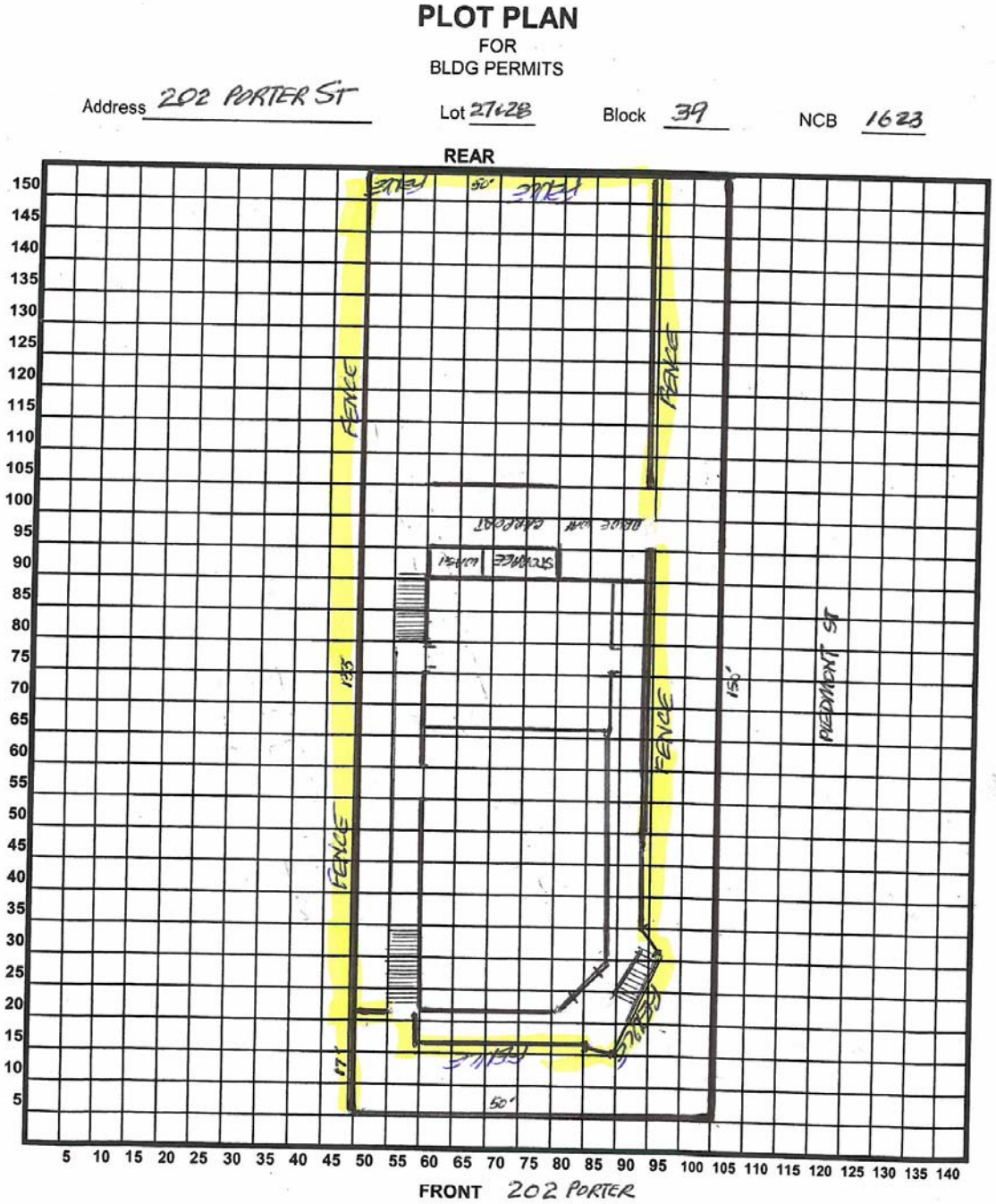
"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 2

1:260

**202 Porter**

Development Services Department
City of San Antonio

**Attachment 3**
**Applicant's Site Plan**




I certify that the above plot plan shows all improvements on this property and that there will be no construction over easements. I also certify that I will build in compliance with the UDC and the 2012 IRC

DEC 06, 2013
Date

Celso Cuellar. Jr
Signature of Applicant

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

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

| | |
|---|---|
| To: | Board of Adjustment |
| Case No.: | A-14-022 |
| Date: | February 3, 2014 |
| Applicant: | Saul Audel Parra Cendejas |
| Owner: | Saul Audel Parra Cendejas |
| Location: | 2211 Santiago Street |
| Legal Description: | Lots 16, 17, 18, & 19, Block 1, NCB 2891 |
| Zoning: | "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District |
| Prepared By: | Tony Felts, Planner |

**Request**

A request for 1) a variance from Table 310-1 of the UDC for an 18-foot variance from the 20-foot required rear yard setback to allow a structure 2 feet from the rear property line; and 2) a variance from Table 310-1 of the UDC for a 4-foot variance from the 5-foot required side yard to allow a structure 1 foot from the 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 January 16, 2014. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation, on January 17, 2014. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before January 31, 2014, in accordance with Section 551.043(a) of the Texas Government Code.

**Executive Summary**

The subject property is located on the north side of Santiago Street, mid-block between Southwest 19th Street and South Minter.

The site is currently developed with a single-family residence. The applicant was cited by Code Compliance for constructing a 423 square-foot addition to the rear of the dwelling without proper permits that does not meet side and rear yard setbacks. Prior to the improper addition, the house was already non-conforming with setbacks. It should be noted that the entire rear yard of the lot is covered with the structure.

The Plan Review team has noted that fireproofing for the walls adjacent to the rear and side yard, as well as gutters and downspouts, will be required.

**Subject Property Zoning/Land Use**

| Existing Zoning | Existing Use |
|---|---|
| "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District | Single-Family Residence |

**Surrounding Zoning/Land Use**

| Orientation | Existing Zoning District(s) | Existing Use |
|---|---|---|
| North | "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District | Single-Family Residence |
| South | "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District | Single-Family Residence |
| East | "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District | Single-Family Residence |
| West | "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District | Single Family Residence |

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Guadalupe/Westside Community Plan (designated as Low Density Residential). The subject property is not located within the boundaries of a registered neighborhood association.

**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 preserve adequate access, access to light and air, and preserve public safety by ensuring proper separation of buildings. The structure abuts the rear and side yards of multiple neighboring properties. By allowing the addition to remain, it may adversely affect the neighboring property by not allowing for adequate access for maintenance of the structure, and by blocking air flow within the area by not preserving open space.

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

   There are special conditions that exist in the site, namely the limited depth of the lot at 76 feet. Despite this condition, the lot appears to be overdeveloped, with almost the entire rear

yard of the lot covered with structures. As such, in this case, a literal enforcement of the ordinance would not result in an unnecessary hardship.

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 observed by granting the variance as the addition, as constructed, does not provide for adequate room to access the structure for maintenance takes up nearly the entire rear yard of the lot, thus impeding free flow of air for adjacent properties.

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-4" Residential Single-Family 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 the appropriate use of the adjacent property to the north and side because there is not adequate space to maintain the structure and the structure blocks the free flow of air to these properties. It should be noted that staff has identified properties in the immediate vicinity that have rear yard setback issues; however, it is unknown if these issues are the result of new constructions or existing non-conforming structures.

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.*

   In this circumstance, there are no unique circumstances readily apparent to warrant the granting of the requested variances.

## Alternatives to Applicant's Request

The alternative to the applicant's request is to remove the improperly constructed addition.

## Staff Recommendation

Staff recommends **denial of A-14-022** because of the following reasons:

- The addition does not allow enough room for it to be maintained and does not meet the spirit of the ordinance.
- The addition blocks the free flow of air to adjacent properties.

## Attachments

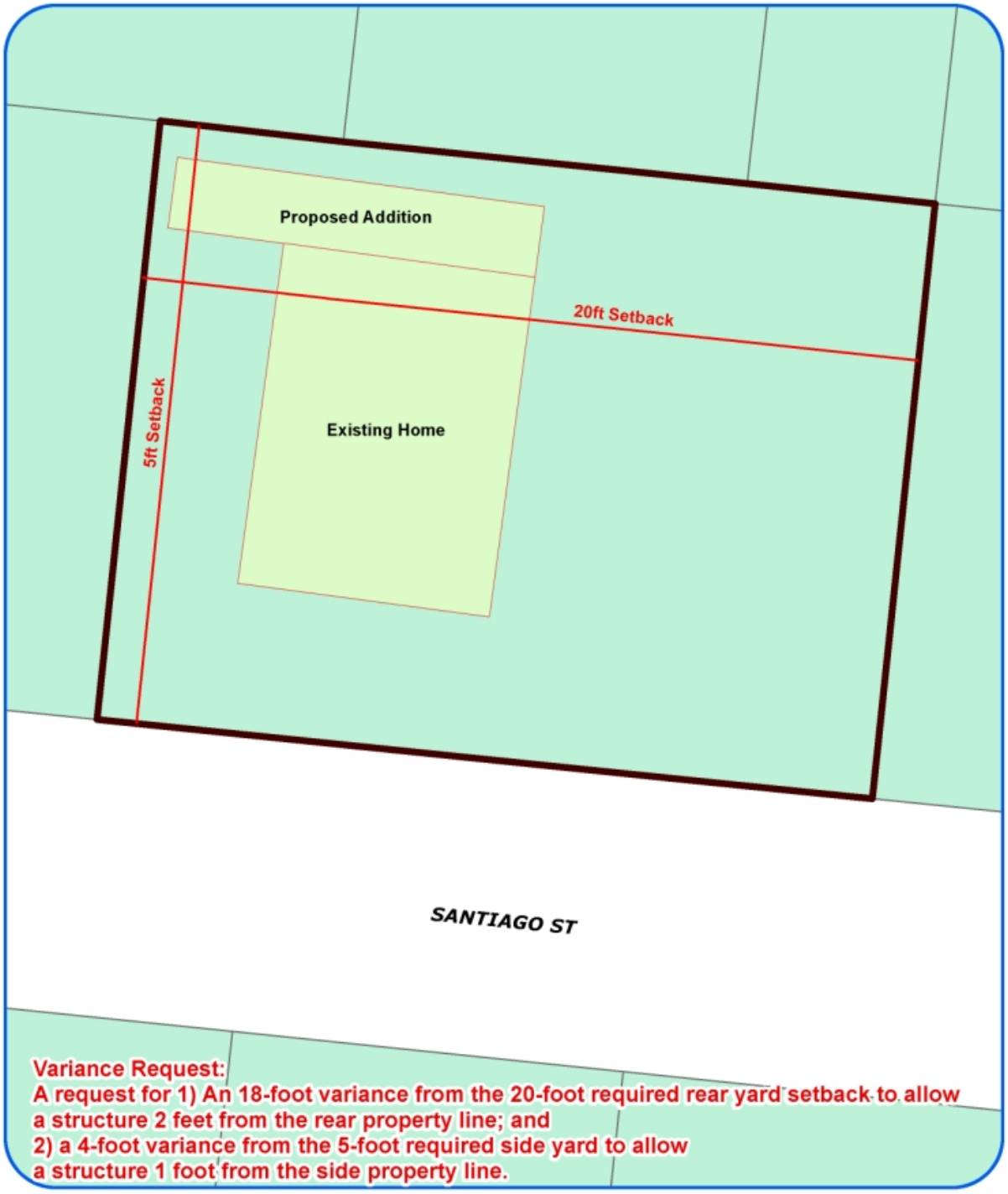
Attachment 1 – Notification Plan (Location Map)
Attachment 2 – Plot Plan

Attachment 3 – Applicant’s Site Plan
Attachment 4 – Site Photos

**Attachment 1**
**Notification Plan**

**Attachment 1 (Continued)**
**Notification Plan**

**Attachment 2**
**Plot Plan**




**Board of Adjustment**
Plot Plan for
**Case No A-14-022**

"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 5

**2211 Santiago**

Development Services Department
City of San Antonio

**Attachment 2 (Continued)**
**Plot Plan**

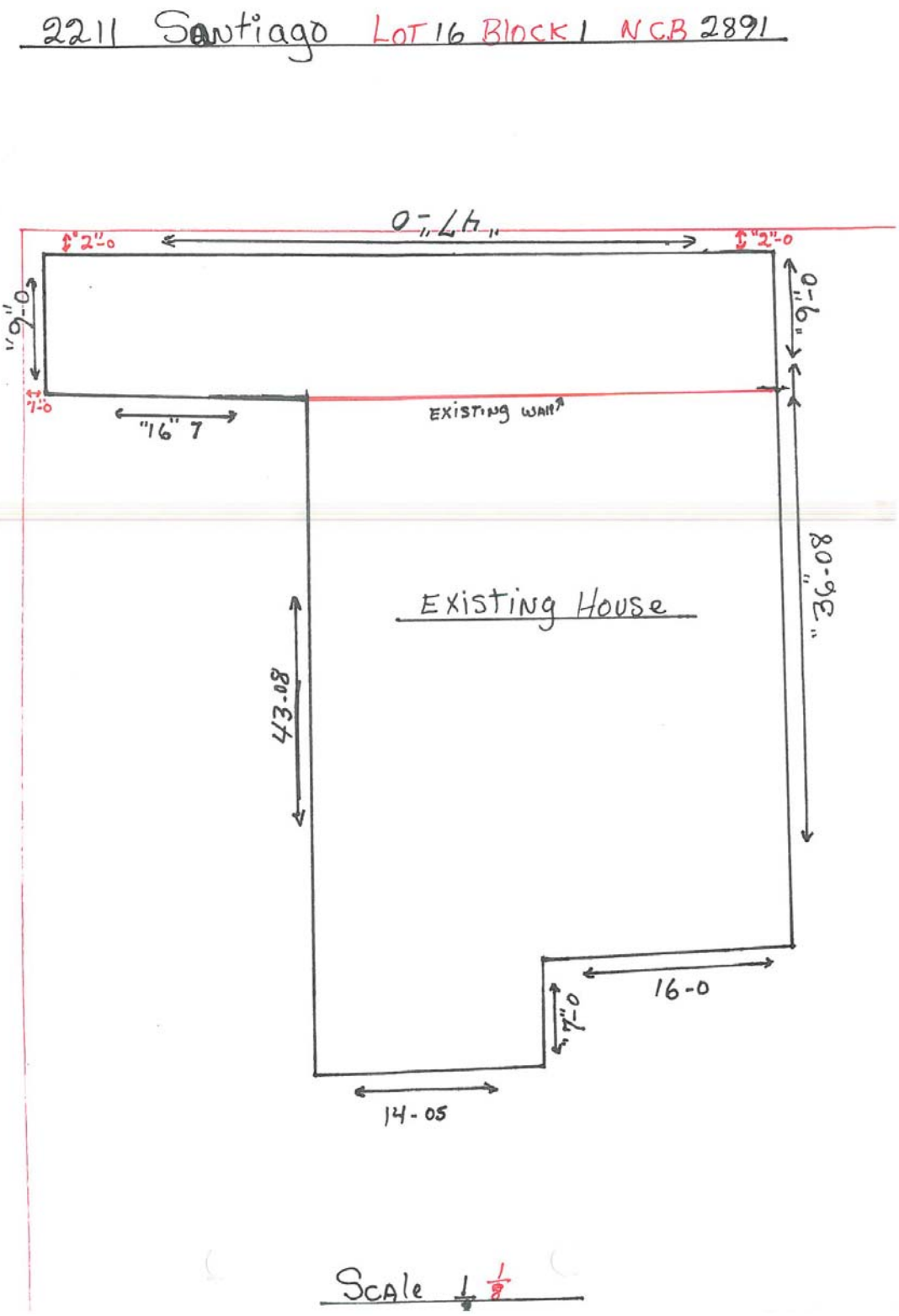
**Board of Adjustment**
Plot Plan for
**Case No A-14-022**

"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 5

**2211 Santiago**

Development Services Department
City of San Antonio

**Attachment 3**
**Applicant's Site Plan**



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

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

| | |
|---|---|
| To: | Board of Adjustment |
| Case No.: | A-14-023 |
| Date: | February 3, 2014 |
| Applicant: | Virginia Losoya |
| Owner: | Frank and Virginia Losoya |
| Location: | 248 West Cheryl Drive |
| Legal Description: | Lot 71A, Block B, NCB 11508 |
| Zoning: | "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District |
| Prepared By: | Tony Felts, Planner |

**Request**

A request for a special exception pursuant to Section 35-399.01 of the UDC to allow a four-year renewal of a special exception for a one-operator beauty shop in a single family home.

**Procedural Requirements**

A special exception is a decision vested with the Board of Adjustment, and includes uses which may be authorized under certain circumstances. 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 January 16, 2014. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation, on January 17, 2014. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before January 31, 2014, in accordance with Section 551.043(a) of the Texas Government Code.

**Executive Summary**

The subject property is located on the south side of West Cheryl Drive, approximately 420 feet east of Ligustrum Drive. The site is currently developed with an existing single-family residence which includes the one-operator beauty shop within the residence.

The Board of Adjustment first granted approval for this one operator beauty salon in 1997. Subsequent approvals have been obtained from the Board in 1998; 2001; 2004; 2006; and lastly on February 1, 2010. The last approval was for a period of four years. The current approval expires on February 1, 2014. Section 35-399.01(i) of the UDC allows the Board to approve the requested special exception for a period not to exceed four years.

The applicant has proposed hours of operation as Tuesdays, Wednesdays, Thursdays, Fridays, and Saturdays, 10:00am until 6:00pm. The proposed hours of operation total 40. These proposed hours differ slightly from the previously approved hours of operation by adding Wednesdays, and making the hours of operation uniform on all days that the shop is open. The difference results in a net change of 11 more hours. The applicant will be the only cosmetologist at the location.

No violations of the requirements of the UDC were observed upon a staff visit to the site, and there have been no code violations reported.

It has been the Board's policy that when considering renewals to a granted special exception application for one operator beauty salons to time limit any approval to four years after an initial two-year period. As such, if approval is contemplated by the Board, it should be for a time limit of four years (48 months). If approved for four years, the current special exception request would expire February 3, 2018.

It should be noted that the applicant will be required to obtain a Certificate of Occupancy for the one operator beauty shop, if the request is approved by the Board.

**Subject Property Zoning/Land Use**

| Existing Zoning | Existing Use |
|---|---|
| "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District | Single-Family Dwelling with a one-operator beauty salon |

**Surrounding Zoning/Land Use**

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

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the West/Southwest Sector Plan (designated as Rural Estate Tier). The subject property is located within the boundaries of the University Park registered neighborhood association, and as such, they were notified of the request and asked to comment.

## Criteria for Review

According to Section 35-482(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 will be in harmony with the spirit and purpose of the chapter **in that the proposed one-operator beauty salon 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.*

   Public welfare and convenience will be served with the granting of this request **as it will provide a valuable and needed public service to the residents of the neighborhood and it will not negatively impact surrounding properties**.

3. *The neighboring properties will not be substantially injured by such proposed use.*

   The subject property will be primarily used as a single-family residence. **The beauty shop will occupy only a small part of the structure, and the fact that a beauty shop is being operated from the home will likely be indiscernible to passersby.** As such, neighboring properties will not be substantially injured.

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.*

   The requested special exception will not alter the essential character of the district **as the use will likely be indiscernible to passersby.**

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 zoning district is to promote the public health, safety, morals, and general welfare of the city. **The granting of this special exception will not weaken these purposes**, nor will it weaken the regulations established for this district.

## Staff Recommendation

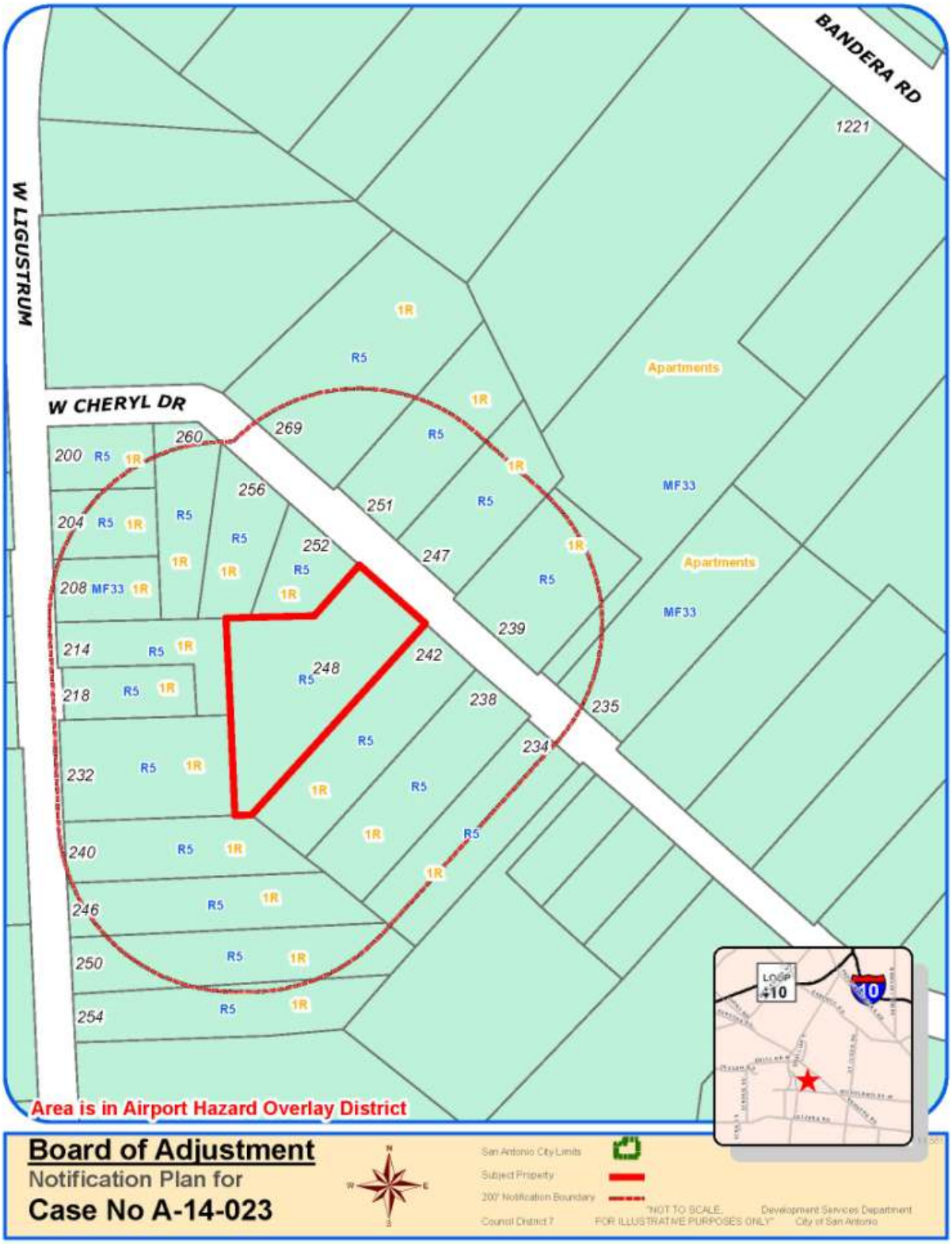
Staff recommends **approval of A-14-023 for a period of 48 months with hours of operation not to exceed 40 hours per week (Tuesdays, Wednesdays, Thursdays, Fridays, and Saturdays, 10:00am until 6:00pm),** due to the following reasons:

**1.** The request meets all of the criteria for granting the special exception

## Attachments

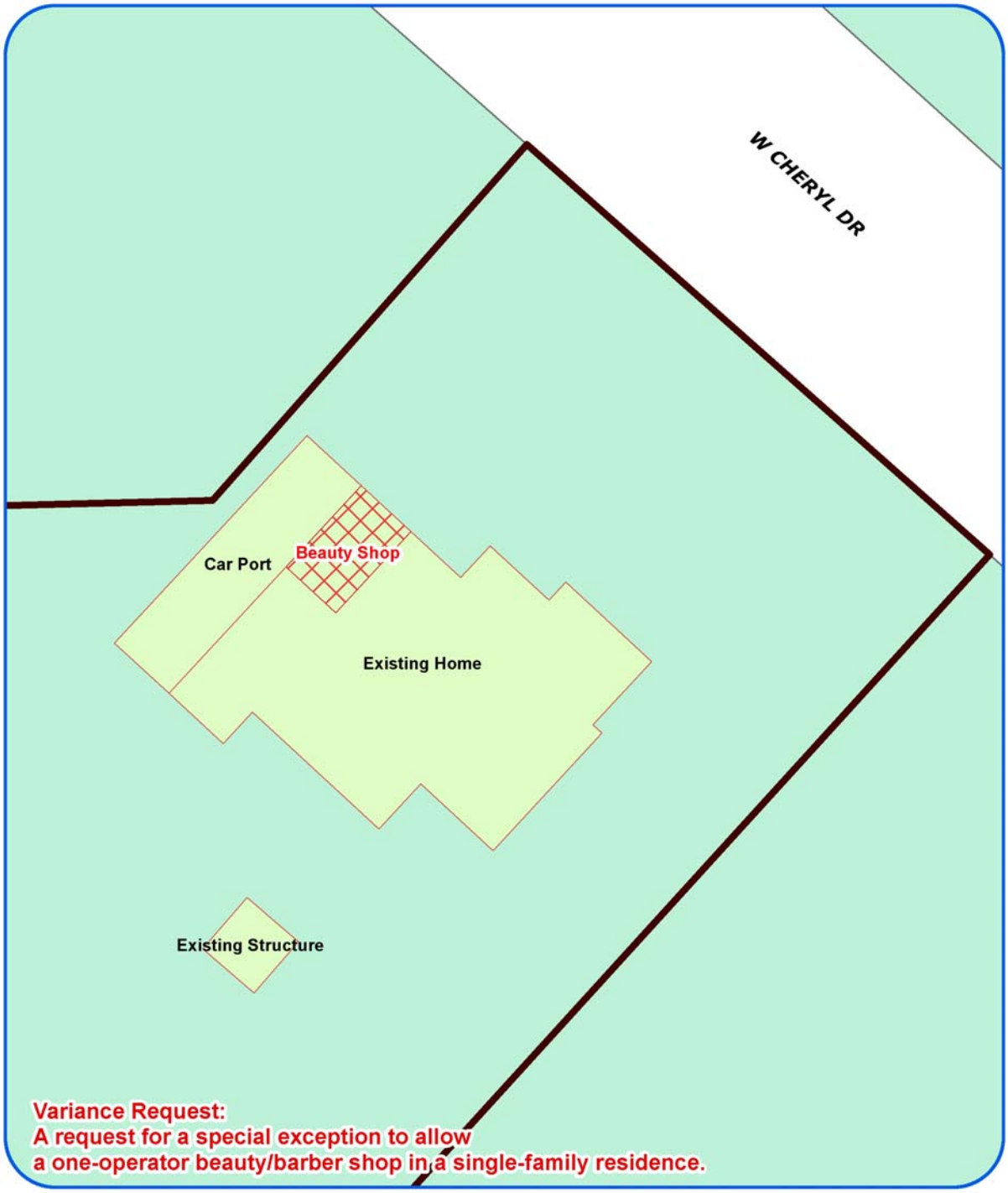
Attachment 1 – Notification Plan
Attachment 2 – Plot Plan
Attachment 3 – Applicant's Site Plan
Attachment 4 – Site Photos
Attachment 5 – Interior Photos

**Attachment 1**
**Notification Plan**



**Attachment 1 (Continued)**
**Notification Plan**

**Attachment 2**
**Plot Plan**




**Board of Adjustment**
Plot Plan for
**Case No A-14-023**

"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 7

1:240
**248 W. Cheryl Dr.**

Development Services Department
City of San Antonio

**Attachment 2 (Continued)**
**Plot Plan**

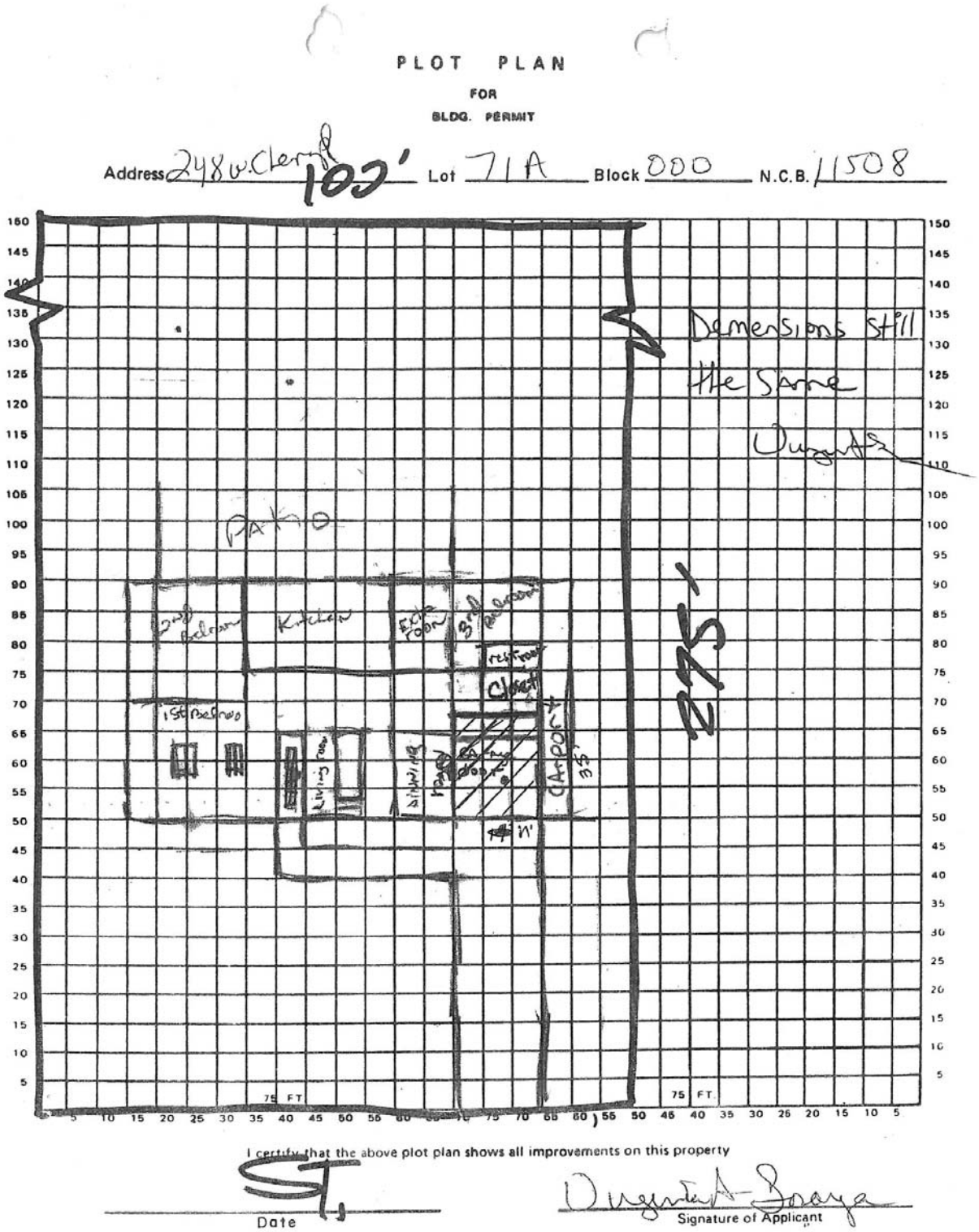
**Board of Adjustment**
Plot Plan for
**Case No A-14-023**

"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 7

1:240
**248 W. Cheryl Dr.**

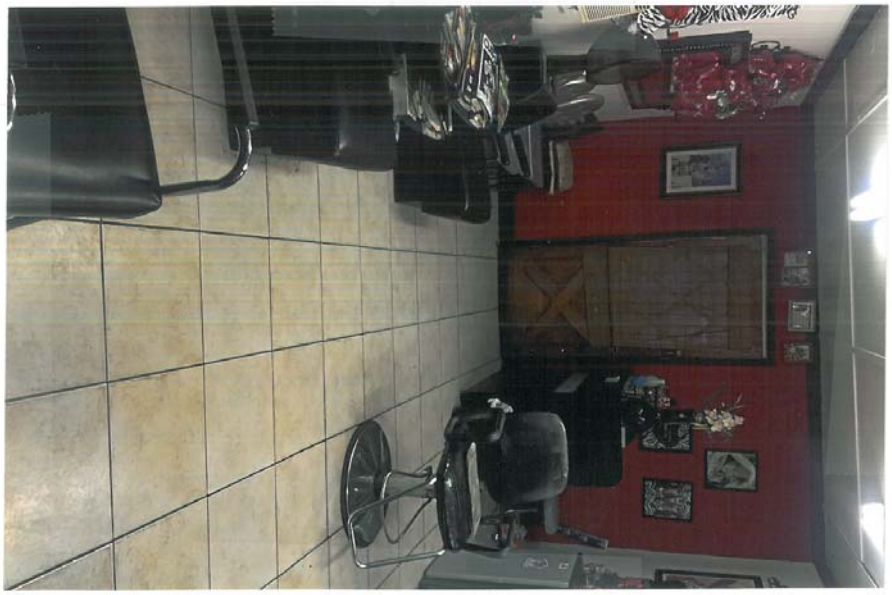
Development Services Department
City of San Antonio

**Attachment 3**
**Applicant's Site Plan**



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

**Attachment 5**
**Interior Photos**



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

| | |
|---|---|
| To: | Board of Adjustment |
| Case No.: | A-14-024 |
| Date: | February 3, 2014 |
| Applicant: | Robert Vetter |
| Owner: | Ace Mart Restaurant Supply |
| Location: | 2619 Austin Highway |
| Legal Description: | Lot 45, NCB 12167 |
| Zoning: | "C-2 MC-3 AHOD" Commercial Austin Highway/Harry Wurzbach Metropolitan Corridor Airport Hazard Overlay Districts |
| Prepared By: | Margaret Pahl, AICP Senior Planner |

**Request**

A request for a 114-foot variance from the maximum 40-foot front setback, as detailed in 35-339.01, to allow a new building 154 feet from the front 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 January 17, 2014. The application details were published in The Daily Commercial Recorder, an official newspaper of general circulation, on January 17, 2014. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before January 31, 2014, in accordance with Section 551.043(a) of the Texas Government Code.

**Executive Summary**

The subject property is currently vacant, contains 3.75 acres and loses 30 feet in elevation within its 700 foot depth. The rear lowest portion of the site is located within the floodplain and is encumbered by a drainage easement. The applicant owns and operates a restaurant supply business next door and would like to construct a 15,000 square foot retail showroom. The subject property was rezoned from "I-1 MC-3" to "C-2 MC-3" in August of 2013 in anticipation of this project. Warehousing and wholesale distribution are not permitted in the C-2 zoning district. The original location next door however is zoned C-3 which allows furniture wholesale.

Their "warehousing" operation is non-conforming and represented on their Certificate of Occupancy dated in 1998.

The applicant is requesting a 114 foot variance from the maximum 40-foot setback to allow the building to be located 154 feet from the front property line. The primary reason, as stated by the applicant, is improving the safety of their customers, by separating vehicular traffic from truck traffic. The new store site is sharing a curb cut with the existing warehouse, the company's distribution warehouse for their 15 Texas locations. As many as twenty-five 18-wheelers are entering and exiting the site throughout the day. If the showroom were to satisfy the required setback, the customer parking would be forced to the rear, taking the retail customers closer to the trucking maneuvering area of the site.

A tree inventory was completed for this project and identified several "heritage" trees. While several existing trees will be lost during site development, the proposed location of the building footprint and the isolated parking lot eliminate the need for a fire lane around the southeast side of the building where three heritage trees will be preserved.

The property is located in the City's most recent design overlay, Austin Highway/Harry Wurzbach Metropolitan Corridor Overlay District, adopted in March of 2012. An extensive public process was initiated in an effort to have all stakeholders represented during the drafting of the overlay requirements, including postcards, flyers, a website and news coverage. The primary goal of the overlay regulations is to encourage the continued revitalization that began with the Austin Highway Revitalization Project (AHRP) in 2002. AHRP was a non-profit board of directors who approved revitalization grants for proposed projects consistent with design requirements. Many of the design requirements in the new overlay zone were originally contained in their guidelines. This project will satisfy all of the building design requirements and landscaping requirements of the overlay; it is only the building location that is in question.

**Subject Property Zoning/Land Use**

| Existing Zoning | Existing Use |
|---|---|
| "C-3 MC-3 AHOD" Commercial Corridor Overlay Airport Hazard Overlay Districts | Vacant |

**Surrounding Zoning/Land Use**

| Orientation | Existing Zoning District(s) | Existing Use |
|---|---|---|
| North | "R-5 AHOD" Residential Single-Family Airport Hazard Overlay Districts | Vacant |
| South | "C-3 MC-3 AHOD" Commercial Corridor Overlay Airport Hazard Overlay Districts | Offices |
| East | "C-3 MC-3 AHOD" Airport Hazard Overlay Districts | Restaurant Supply |
| West | "R-5 AHOD" Residential Single-Family Airport Hazard Overlay Districts | Church |

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the San Antonio International Airport Vicinity Plan, adopted by the City Council in May of 2010. The future land use plan designates this property as appropriate for community commercial uses. The subject property is located within the boundary of Village North One, a registered neighborhood association. 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. For safety purposes, TxDot has restricted the site to a shared access point because of its proximity to a traffic control signal. **The applicant is hoping to construct the customer parking in front of the building to minimize conflict with large trucks moving merchandise from the existing warehouse to its 15 retail locations throughout the State. The variance will reduce potentially dangerous traffic issues and therefore would be in the public interest.**

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

The special condition according to the applicant is the location of the neighboring distribution warehouse. But the site issues are more complicated than just the location of the warehouse. **The driveway into the site slopes down at a 6% grade to an elevation nearly 10 feet lower than the elevation of Austin Highway. Placing the building within the required setback would result in a similar difference between the floor of the showroom and the rear parking area**. The Board will have to 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.*

For each requested variance, the Board must determine the "spirit" of the ordinance as contrasted with the "strict letter" of the requirement. The intent of the restricted setback is to preserve a streetscape pattern that was typical of commercial corridors developed in the 1960s. The buildings along this section of Austin Highway, approaching the interchange with loop 410, have inconsistent setbacks. **Their neighboring building is almost 90 feet back and the church on the other side is 70 feet. The applicant is instead focused on installing lush landscaping along the frontage to enhance the streetscape, thereby observing 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 "C-2 MC-3 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 requested variance to allow a greater setback will not negatively impact adjacent properties. Rather, **the addition of a new building, especially one with the detailing required by the overlay zone, should enhance 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.*

The subject parcel is a large vacant rectangle, giving the impression of an easy site to design. **It is impacted by its proximity to a traffic control signal; it was denied an independent curb cut. For this reason, the customers have to share the access with the wholesale/ warehousing location. On the southeast side of the parcel, three heritage trees are being preserved. These trees however eliminate the space for an internal driveway around the east side of the building.** The site slopes quickly below the street elevation. All factors considered, the property's design is challenging.

**Alternatives to Applicant's Request**

The alternative to the applicant's request is to construct the building at the maximum front setback.

**Staff Recommendation**

Staff recommends **approval** based on the following findings:

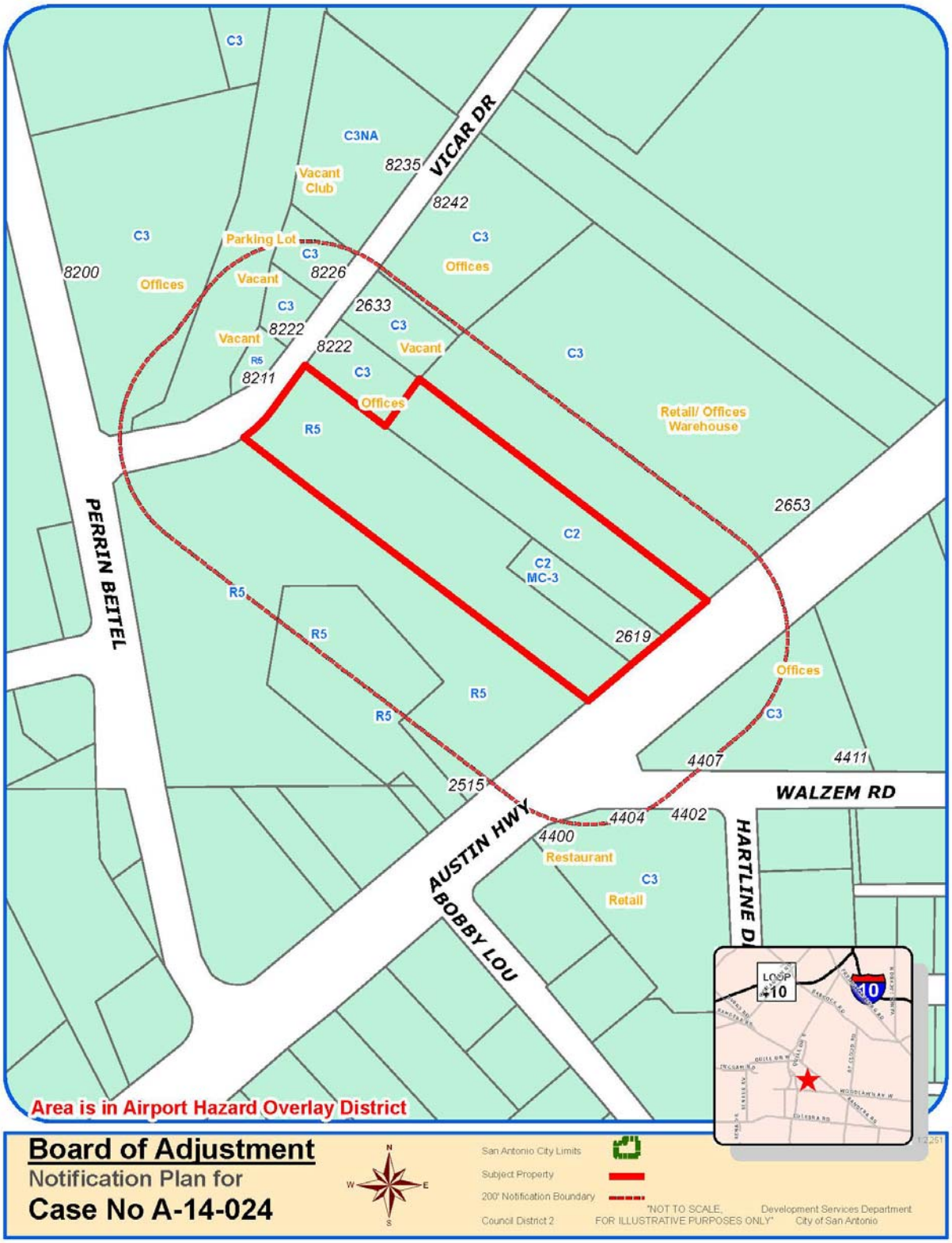
1. The shared access creates a traffic safety conflict between trucks and cars that should be addressed.

2. The elevation below street grade near the front property line creates a hardship in addressing the conflicting elevations further into the site.

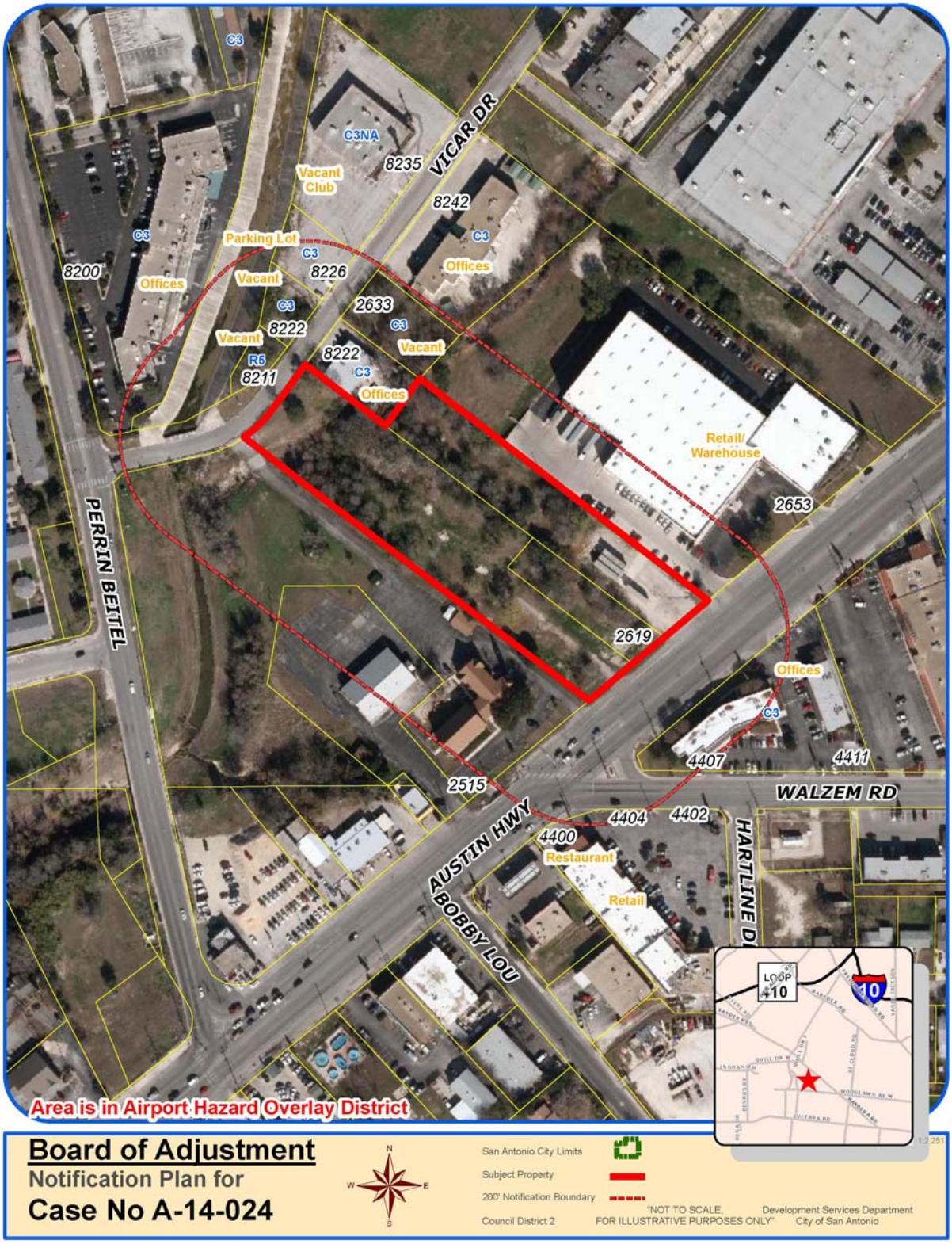
**Attachments**

Attachment 1 – Notification Plan (Location Map)
Attachment 2 – Plot Plan
Attachment 3 – Applicant's Site Plan
Attachment 4 – Site Photos

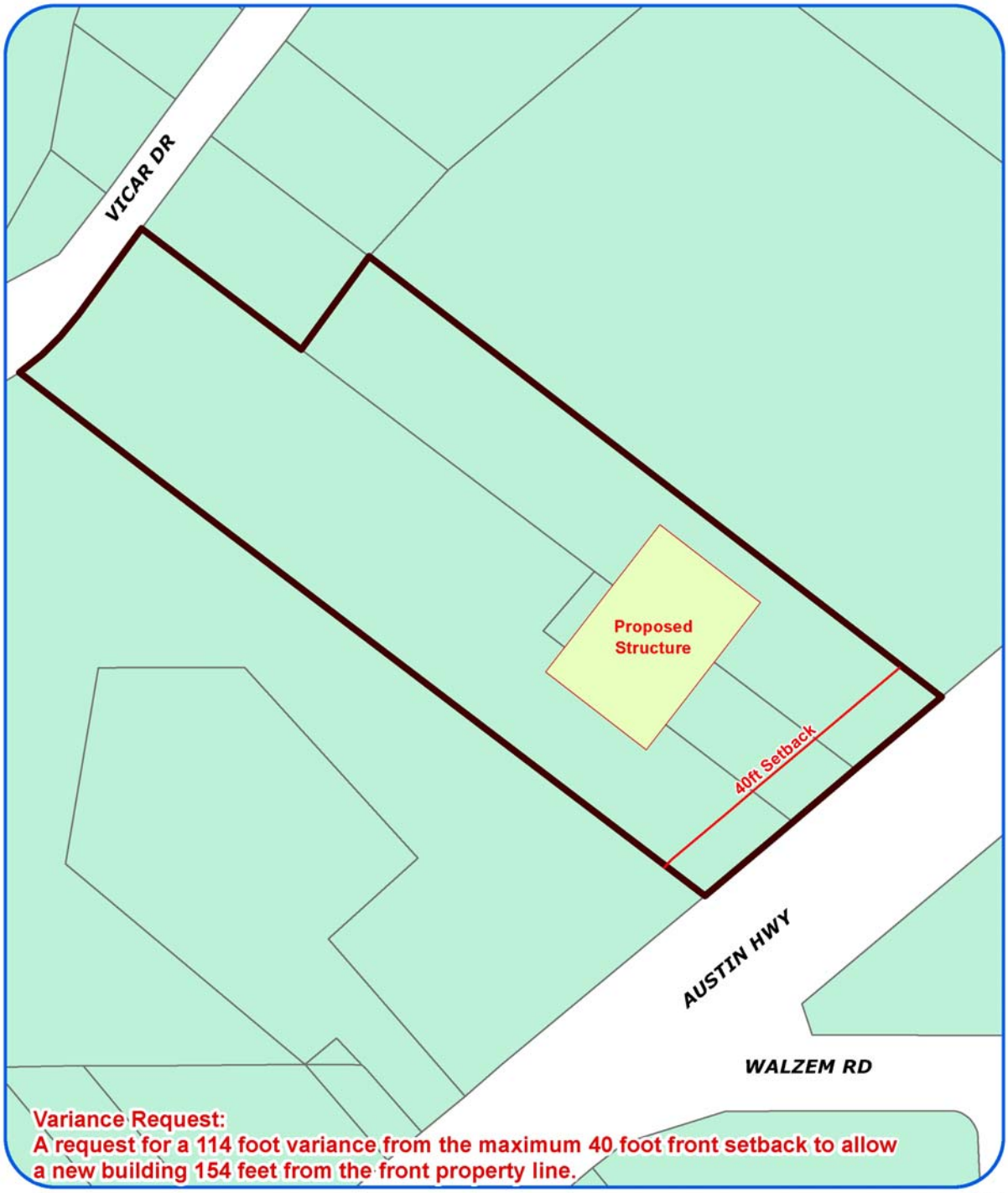
**Attachment 1**
**Notification Plan**



**Attachment 1**
**Notification Plan (continued)**



**Attachment 2**
**Plot Plan**




**Board of Adjustment**
Plot Plan for
**Case No A-14-024**

"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 2

1:1,200
**2619 Austin Hwy**

Development Services Department
City of San Antonio

**Attachment 2**
**Plot Plan (continued)**

1:1,200

**Board of Adjustment**
Plot Plan for
**Case No A-14-024**

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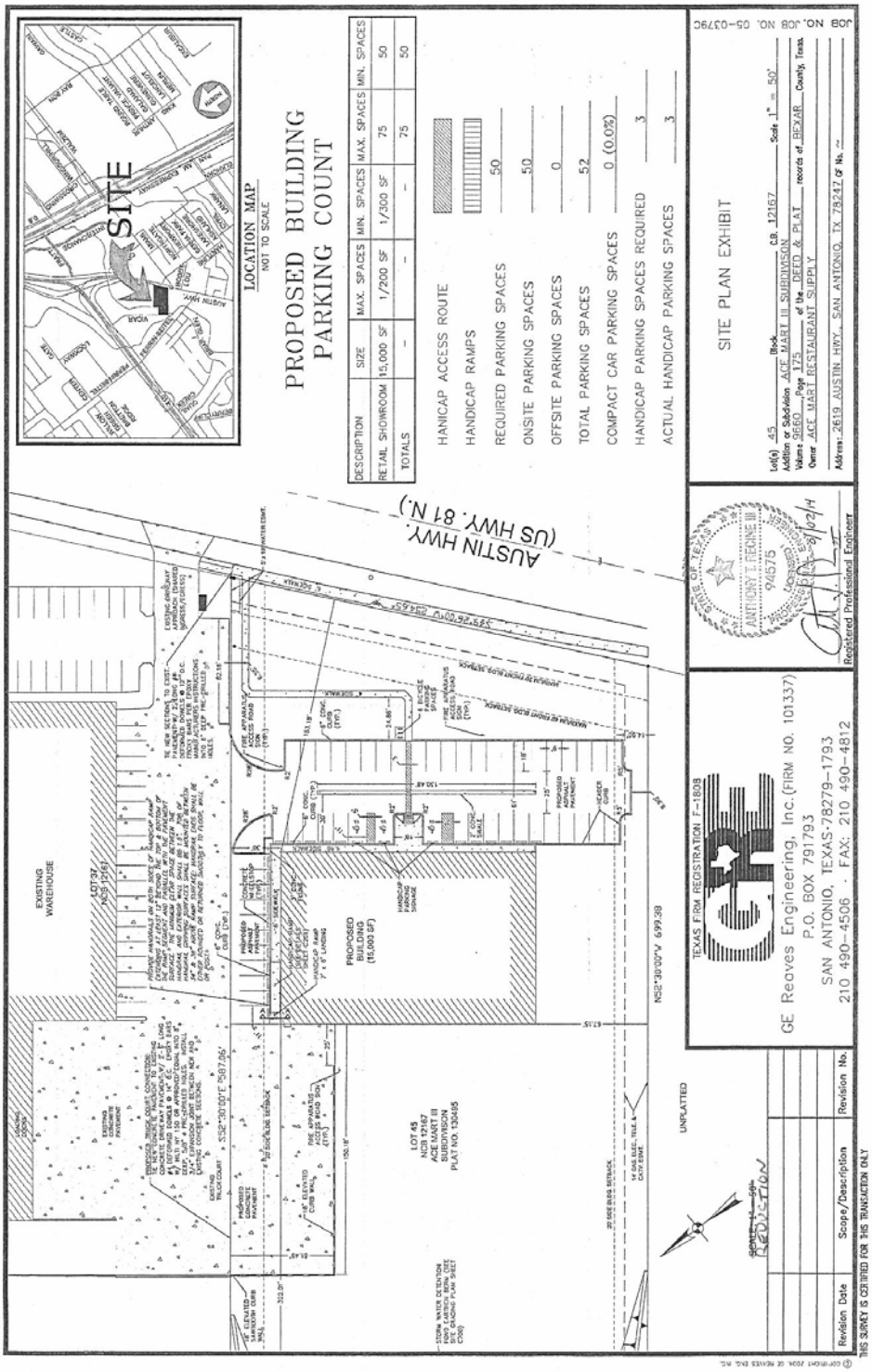
"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 2

**2619 Austin Hwy**

Development Services Department
City of San Antonio

**Attachment 3**
**Applicant's Site Plan**



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

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

| | |
|---|---|
| To: | Board of Adjustment |
| Case No.: | A-14-025 |
| Date: | February 3, 2014 |
| Applicant: | Xavier Gonzalez |
| Owner: | Gene Williams |
| Location: | 104 Bushnell |
| Legal Description: | Lot A, Block 1, NCB 6328 |
| Zoning: | "R-5 H AHOD" Residential Single-Family Historic Airport Hazard Overlay Districts |
| Prepared By: | Margaret Pahl, AICP Senior Planner |

**Request**

A request for a 2-foot variance from the maximum 4-foot fence height, as detailed in 35-514 (d) to allow a 6-foot predominately open ornamental iron front yard fence.

**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 January 17, 2014. The application details were published in The Daily Commercial Recorder, an official newspaper of general circulation, on January 17, 2014. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before January 31, 2014, in accordance with Section 551.043(a) of the Texas Government Code.

**Executive Summary**

The subject property is nearly a half acre corner lot in the Monte Vista Historic District. The house was constructed in 1914 and is nearly 4,000 square feet. Because of its historic status, the project has been reviewed, modified and approved by the Office of Historic Preservation (OHP). A Certificate of Appropriateness was issued for the fence, pending the Board's consideration of the variance. During their review, they noted that more than half of the homes on Bushnell between shook and McCullough already have front yard fences or walls in excess of the 4-foot limitation. The staff also modified the column design between the sections of wrought iron to include brick detailing consistent with the character of the home.

**Subject Property Zoning/Land Use**

| Existing Zoning | Existing Use |
|---|---|
| "R-5 H AHOD" Residential Single-Family Historic Airport Hazard Overlay Districts | Single-Family Home |

**Surrounding Zoning/Land Use**

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

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Monte Vista Neighborhood Plan, adopted by the City Council in 1988. The future land use plan designates this property as appropriate for low density residential uses. The subject property is located within the boundary of Monte Vista, a registered neighborhood association. 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 home is located in a historic neighborhood on the corner of a busy collector street McCullough. A bus stop is also located on this corner. Because of its proximity to this traffic corridor, the requested fencing is in the public interest.**

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

The applicant is willing to design the fence to be in compliance with the standards of a special exception, however fencing in historic districts cannot be considered as a special exception. Fencing and walls up to 6 feet in height are quite common in this area. **Many of the lots are very large and the historic homes are setback further than usual. This large stature would dwarf a fence height allowed by the ordinance. The proposed fencing will be more consistent with the size of the parcel and the home, with a matching brick base and**

**columns**. The Board will have to 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.*

For each requested variance, the Board must determine the "spirit" of the ordinance as contrasted with the "strict letter" of the requirement. Because the site is located within a historic district, the applicant must seek approval for the fence as a variance. Since the design has been approved by the OHP, the spirit is 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 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.*

**Several other properties along Bushnell have historic walls along their front property line, and include large homes setback from the street. These have created an essential character of this district, making the proposed fencing consistent with that character.**

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 subject parcel is very large and located on a busy corner. These conditions were not created by the owner. Front yard fencing is a repeated feature within this historic district.**

## Alternatives to Applicant's Request

The applicant could restrict the front yard fence height to four feet as allowed by Code.

## Staff Recommendation

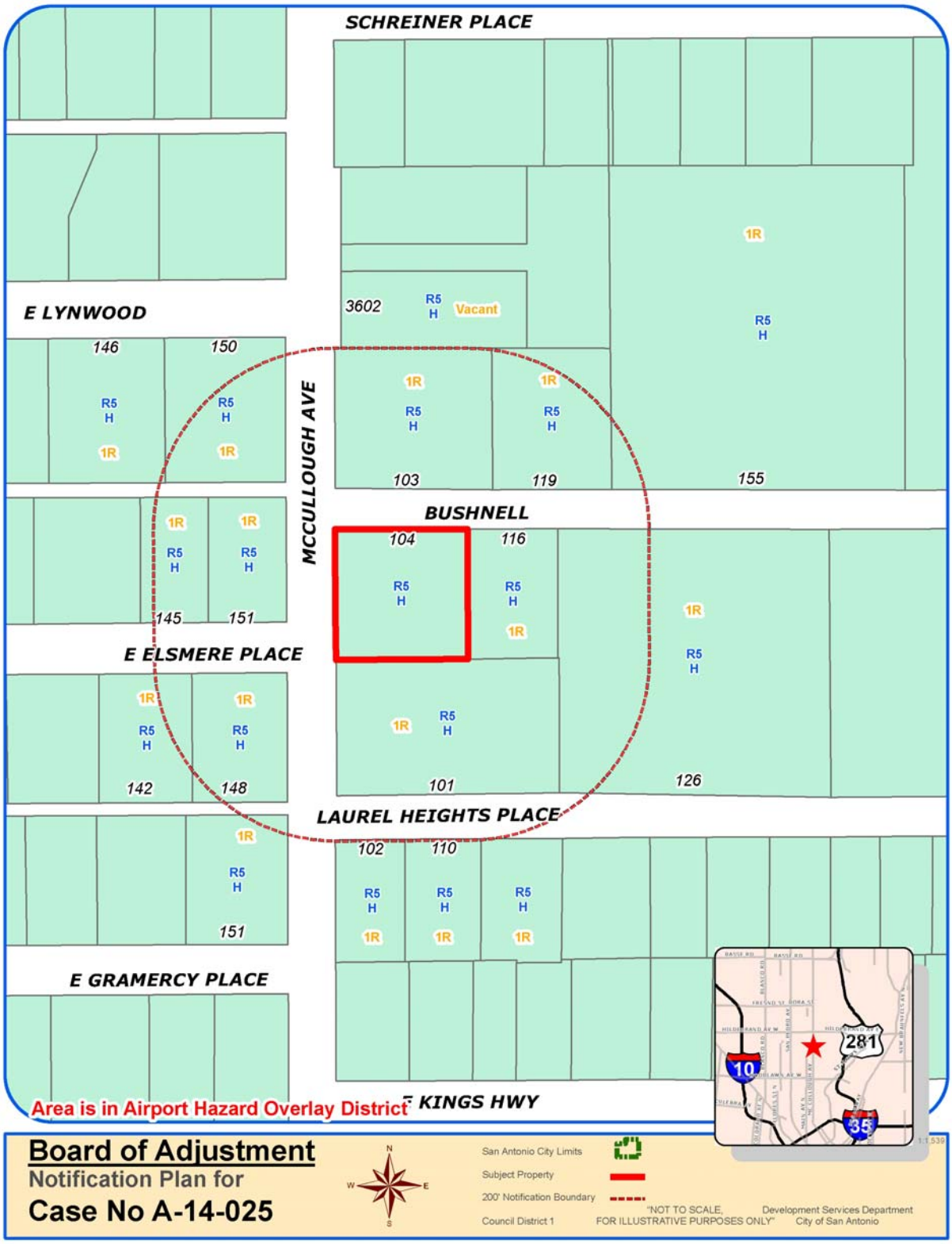
Staff recommends **approval** based on the following findings:

1. The fence has been reviewed, modified and approved by the Office of Historic Preservation.
2. The fence will remain predominately open, consistent with the conditions for a special exception.

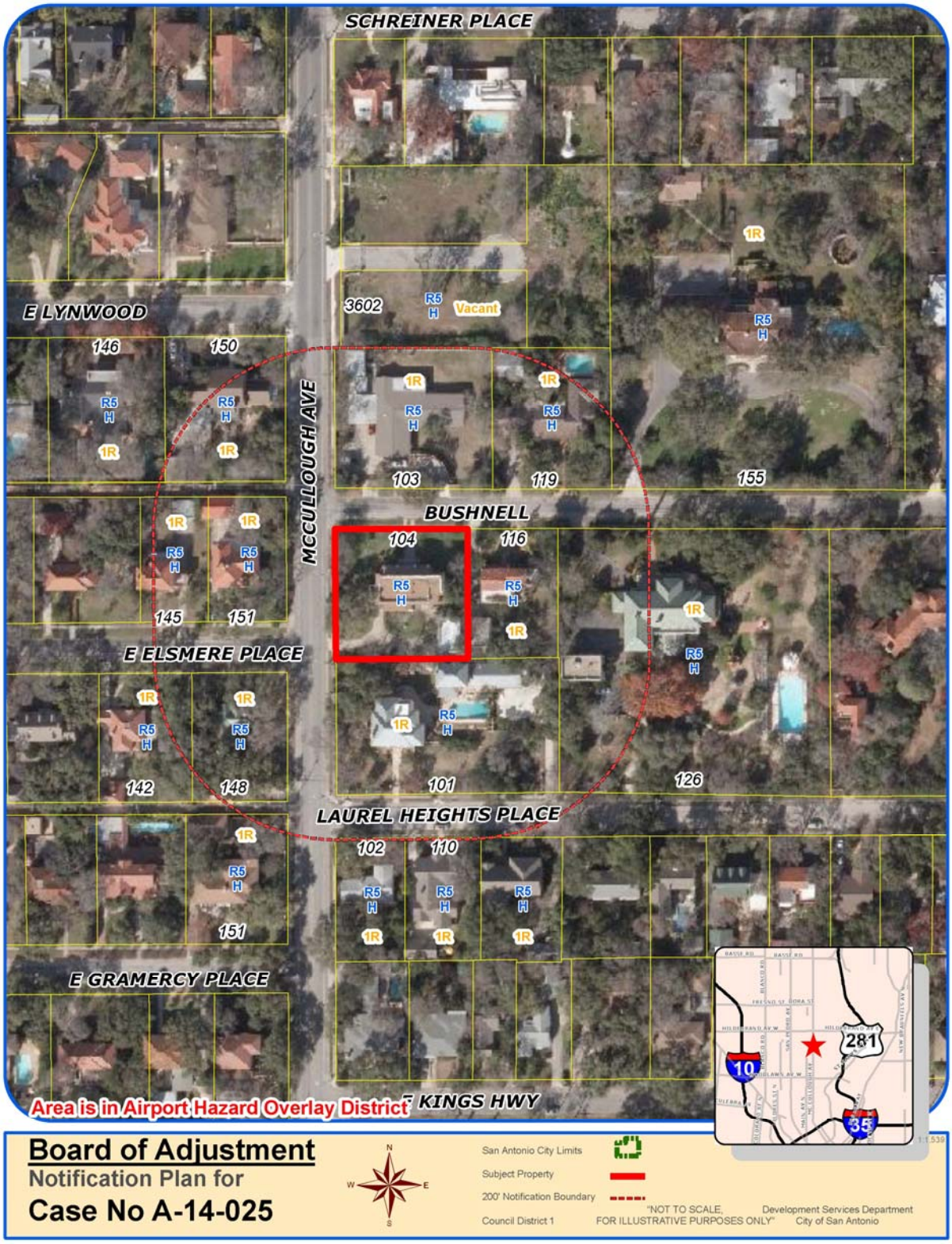
## Attachments

Attachment 1 – Notification Plan (Location Map)
Attachment 2 – Plot Plan
Attachment 3 – Applicant's Site Plan
Attachment 4 – Site Photos

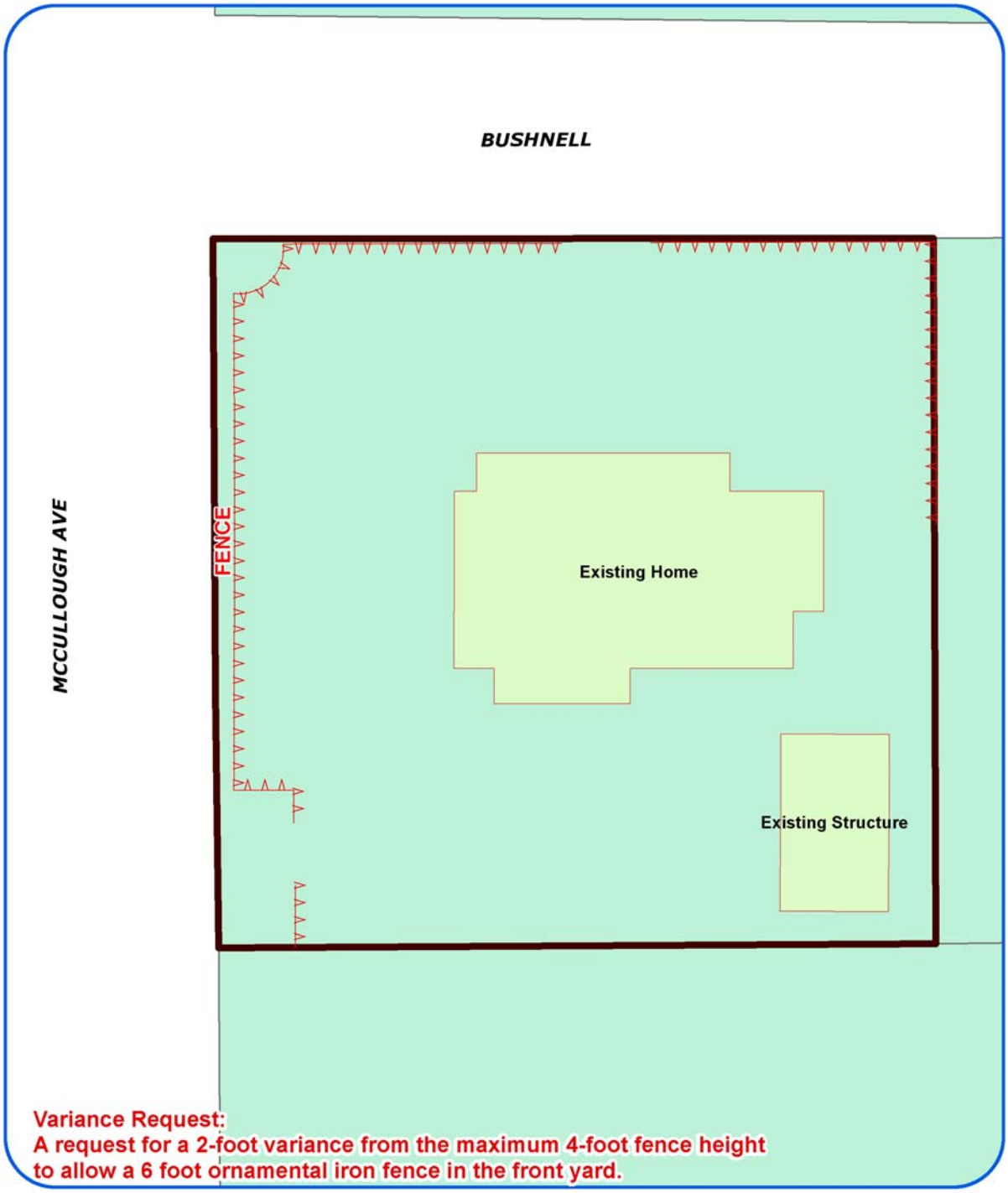
**Attachment 1**
**Notification Plan**



**Attachment 1**
**Notification Plan (continued)**



**Attachment 2**
**Plot Plan**




**Board of Adjustment**
Plot Plan for
**Case No A-14-025**

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

**104 Bushnell**

Development Services Department
City of San Antonio

**Attachment 2**
**Plot Plan (continued)**

1:300

**Board of Adjustment**
Plot Plan for
**Case No A-14-025**

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

**104 Bushnell**

Development Services Department
City of San Antonio

**Attachment 3**
**Applicant's Site Plan**

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