

STAFF REPORT



Meeting: June 6, 2016

To: Zoning Board of Adjustment

From: Jon James, AICP
Director of Planning and Development Services

Through: Rebeca A. Guerra, AICP, LEED-AP, CPD
Planning Manager

Staff Planner: David Fee, AICP
Senior Planner

Case: ZBA16-07

Request: A request to delete Condition of Approval #1 from the Zoning Board of Adjustment's January 4, 2016, meeting for Case ZBA15-24, in the name of Sierra Vista Construction, Inc., which reads: "If the nonconforming structure (single family residence) is destroyed or damaged by 50% or more, the nonconforming structure shall be rebuilt with the required 25-foot front yard setback as dictated by the Zoning Ordinance, Chapter 12, Section 501"

Location: 5905 Merrick Street; generally located approximately 250 feet west of the intersection of Canadian Street and Tarin Street

Legal Description: Occupying Lot 17A of the Amended Plat of Lots 15, 16 and 17 in the Trinity West Subdivision, Section 2, Block 1

Size: 0.15 acres

General Information

Zoning: RS-1 (Single-Family Residence)
District
Future Land Use: Neighborhood
Existing Land Use: Existing single-family detached residences

Surrounding Zoning/Land Use:

North:	RS-1	Single-family detached residences
West:	RS-1	Single-family detached residences
South:	RS-1	Single-family detached residences
East:	RS-1	Single-family detached residences

District: SMD #1 – Bill Richardson
Neighborhood: Country Club Neighborhood

History and Background:

On January 4, 2016, the Zoning Board of Adjustment voted to approve ZBA15-24 Sierra Vista Construction, a Variance request from Section 501(A) of the Zoning Ordinance to allow for a 20-foot front yard setback in lieu of 25 feet in the Single-Family Residence (RS-1) Zoning District. The Variance was subject to one (1) Condition:

1. If the nonconforming structure (single family residence) is destroyed or damaged by 50% or more, the nonconforming structure shall be rebuilt with the required 25-foot front yard setback as dictated by the Zoning Ordinance, Chapter 12, Section 501.

On April 26, 2016, the applicant formally sought to have the Condition of Approval deleted. He contends that due to the condition attached to the property, potential buyers would not qualify for insurance coverage based on the information from a home insurer and a mortgage lending company.

The property is zoned Single-Family Residence (RS-1) Zoning District and is located within the Trinity West Subdivision. The existing house was constructed in 2015 with a front setback of 20 feet. Section 501(A) of the Zoning Ordinance requires a minimum front setback of 25 feet. During the final survey, the builder discovered the attached garage encroached 5 feet into the front yard setback. During construction, the north property pin of lot 17A was moved 10 feet north in order to obtain the proper side lot setback distance to lot 16A to the north. This change led to an error in the angle of the home's construction resulting in a 5-foot encroachment into the 25-foot front yard setback which went unnoticed during construction of the home.

Analysis:

Section 207(F) of the Zoning Ordinance requires that an applicant for a Variance must show that a hardship exists and that the Zoning Board of Adjustment make an affirmative finding that each and every one of the following six (6) criteria are met.

- 1. Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial;**

The original variance request in ZBA15-24 had no special circumstances as the lot is not irregularly shaped, the contour of the land is similar to other lots, and the required front yard setbacks are not unique because they apply to all lots within this subdivision. In this latest entreaty, the applicant's request rests solely on a potential financial loss that came with the Condition of Approval of the variance approval. Every other legal nonconforming structure in the same Zoning District would be held to this standard in the event of its partial destruction. The variance granted by the ZBA does not make for a special circumstance in this regard. The variance would allow the structure to lawfully encroach into the required front setback until such a time when the situation may be corrected due to the partial destruction of the subject structure. Absent this Condition, the encroachment would never be rectified.

- 2. These special circumstances are not the result of the actions of the applicant;**

The nature of the circumstance was the direct result of the applicant's actions as they contracted to have the house built in its current location. The current

request to delete the Condition of Approval stems from seeking to avoid a situation where “the price will have to be reduced to allow for compensation due to the condition.” Unfortunately, the Zoning Ordinance in Chapter 12, Section 207 E.7, clearly states that a variance is not allowed if “the variance is grounded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.”

3. Literal interpretation and enforcement of the terms and provisions of this Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship;

A literal interpretation and enforcement of the Zoning Ordinance would not deprive the applicant of any rights commonly enjoyed by other land owners. The Condition of Approval in question has been recommended by staff on at least four other ZBA cases in the last two years: ZBA15-07 Von Rosenberg, ZBA15-026 Meeks, ZBA15-28 Hameister, and ZBA16-03 Mason. ZBA15-28 was denied by the ZBA, so the 50% rebuilding Condition was not applied. The Condition was imposed in this case because the house remains encroaching five feet into the 25-foot front yard setback. If the current request were granted, the applicant would enjoy a special privilege not available to surrounding landowners by having a shorter front yard setback. Moreover, it could set a precedent for allowing other structures in the immediate area to use this as the basis for having a reduced setback.

4. Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of this Zoning Ordinance and substantial justice;

Granting the deletion of the Condition is the minimum action that would make possible the use of this land, but staff contends it would be contrary to the public interest. Without the Condition, there would be no way to correct the nonconformity in the future. The property could be rebuilt with a 20-foot setback thus creating a disconformity in the block face. Moreover, as stated previously, it could set a precedent for allowing other structures on the block to use this as the basis for having a reduced setback. Keeping the variance is the only means by which the City may correct the encroachment at a future date.

5. Granting the variance will not adversely affect adjacent land in a material way;

At this time, there is no real way to know if granting a deletion of the condition to allow the structure to maintain a 20-foot front yard setback in lieu of 25 feet for a detached, single family residence would adversely affect adjacent land or property owners other than being closer to the street by 5 feet. It does, however, reduce the

clearance distance from the right-of-way to the structure, thus reducing safe visibility and outlook from the adjacent road. Moreover, granting such a deletion of the Condition may set a precedent for allowing other properties on the same side of the street to be given reduced setbacks in perpetuity as well. Again, the owner could rebuild the home in the setback without an attempt to make the home conform to the Zoning Ordinance.

6. Granting the variance will be generally consistent with the purposes and intent of this Zoning Ordinance.

The proposed deletion of the Condition to allow for rebuilding in the 20-foot front yard setback in lieu of 25 feet for a detached, single family residence is not consistent with the purposes and intent of the Zoning Ordinance, and although the existing single family structure does comply with all other provisions of the Zoning Ordinance, it does not currently meet the front yard setback. A monetary loss alone on the sale of the home cannot be considered legitimate grounds to delete the rebuild condition under the Zoning Ordinance. Among the purposes behind the Zoning Ordinance are to “maintain property values by stabilizing expectations and ensuring predictability in development,” and “establish a process that effectively and fairly applies the regulations and standards of this Zoning Ordinance and respects the rights of property owners and the interests of citizens.” (*Chapter 12, Section 104.4-5*) These purpose statements are reaffirmed when there is damage or destruction of a nonconformity: “Such rebuilding or restoration shall comply with the provisions of this Zoning Ordinance to the extent deemed reasonably practical, and the applicant shall make every reasonable effort to eliminate the nonconformities and bring the structure and site into substantial conformance with this Zoning Ordinance.” (*Zoning Ordinance, Chapter 12, Section 605.B.2*)

Notification:

On May 26, 2016, ten (10) notifications were mailed out within a 200-foot radius of the subject site. As of June 1, 2016, there were zero (0) responses in favor and zero (0) responses in opposition of the request.

Staff Recommendation:

Staff's recommendation is for the Zoning Board of Adjustment to **DENY** an amendment to Case ZBA16-07, to delete Condition of Approval #1 from the Zoning Board of Adjustment's January 4, 2016, decision.

However, should the Board wish to amend the Condition of Approval in order to make it more consistent with the requirements for the partial destruction of nonconforming structures, Staff recommends the following wording for the revised Condition:

1. If the nonconforming structure (single family residence) is destroyed or damaged by 50% or more of the current replacement value for the entire structure, the nonconforming structure shall be rebuilt with the required 25-foot front yard setback as dictated by the Zoning Ordinance, Chapter 12, Section 501.

Effect of Variance:

Per Section 207(H) of the Zoning Ordinance:

1. Issuance of a Variance shall authorize only the particular variation which is approved in the Variance. A Variance shall run with the land.
2. Unless otherwise specified in the Variance, an application to commence construction of the improvements that were the subject of the Variance request must be applied for and approved within 12 months of the date of the approval of the Variance; otherwise, the Variance shall automatically become null and void. Permitted time frames do not change with successive owners. Upon written request, only one (1) extension from the 12-month period may be granted by the Planning Manager if it is determined that conditions of the site and immediately surrounding area are substantially unchanged.

Attachments:

- Aerial Map
- Future Land Use Map
- Zoning Map
- Notification Map
- Survey
- Application

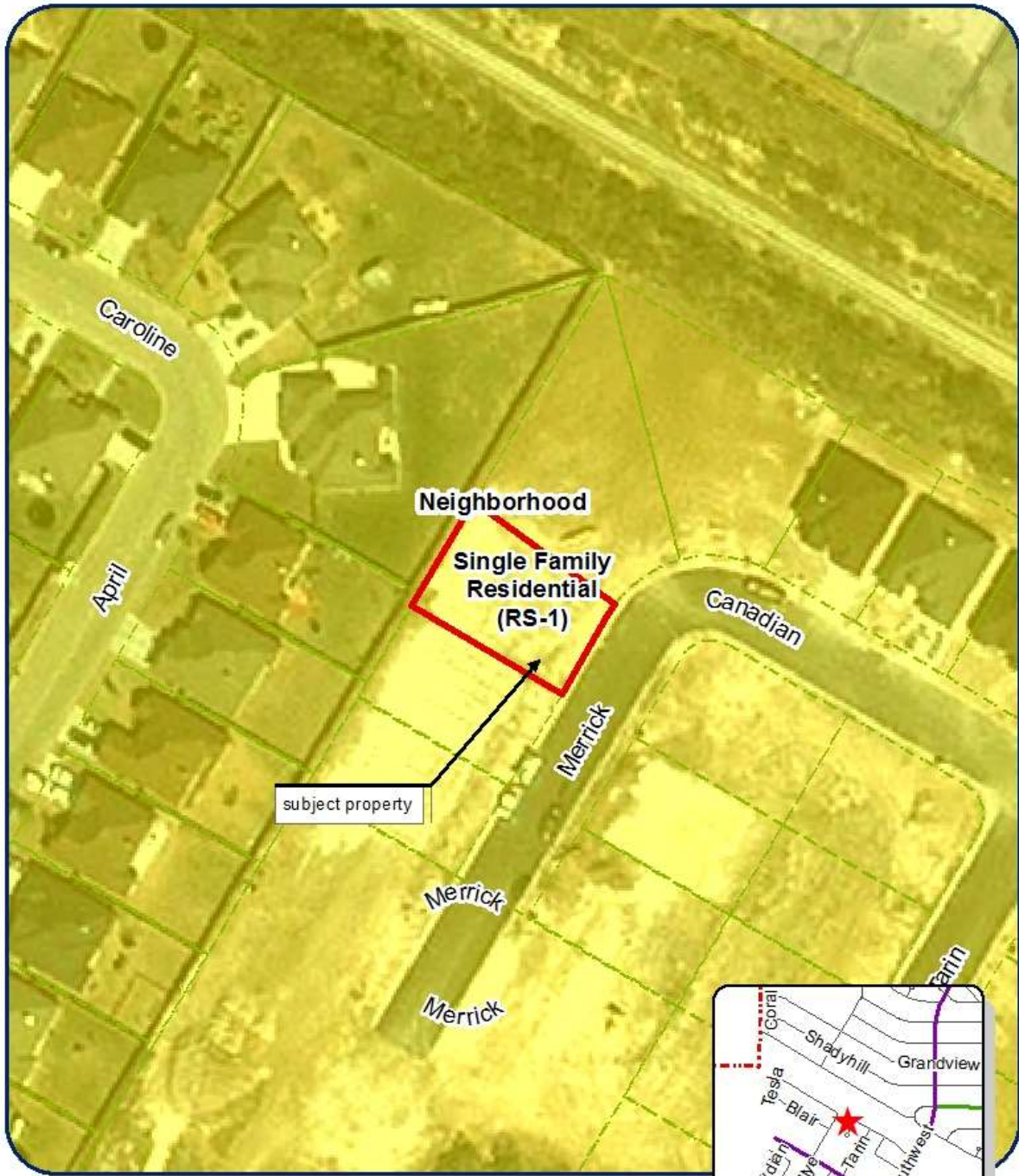


Variance Case File

Case ZBA16-07 Sierra Vista Construction
 Council District: Bill Richardson (SMD #1)
 Neighborhood: Bonham
 Scale: 1" approx. = 75 ft
 Subject Property: 5905 Merrick St.

Legend
 Subject Properties: —
 Current Zoning: **RS 1**
 Requested Zoning Change: **N/A**
 Vision: **Neighborhood**





Variance Case File

Case ZBA16-07 Sierra Vista Construction
 Council District: Bill Richardson (SMD #1)
 Neighborhood: Bonham
 Scale: 1" approx. = 75 ft
 Subject Property: 5905 Merrick St.

Legend
 Subject Properties:
 Current Zoning: **RS 1**
 Requested Zoning Change: **N/A**
 Vision: **Neighborhood**





Variance Case File

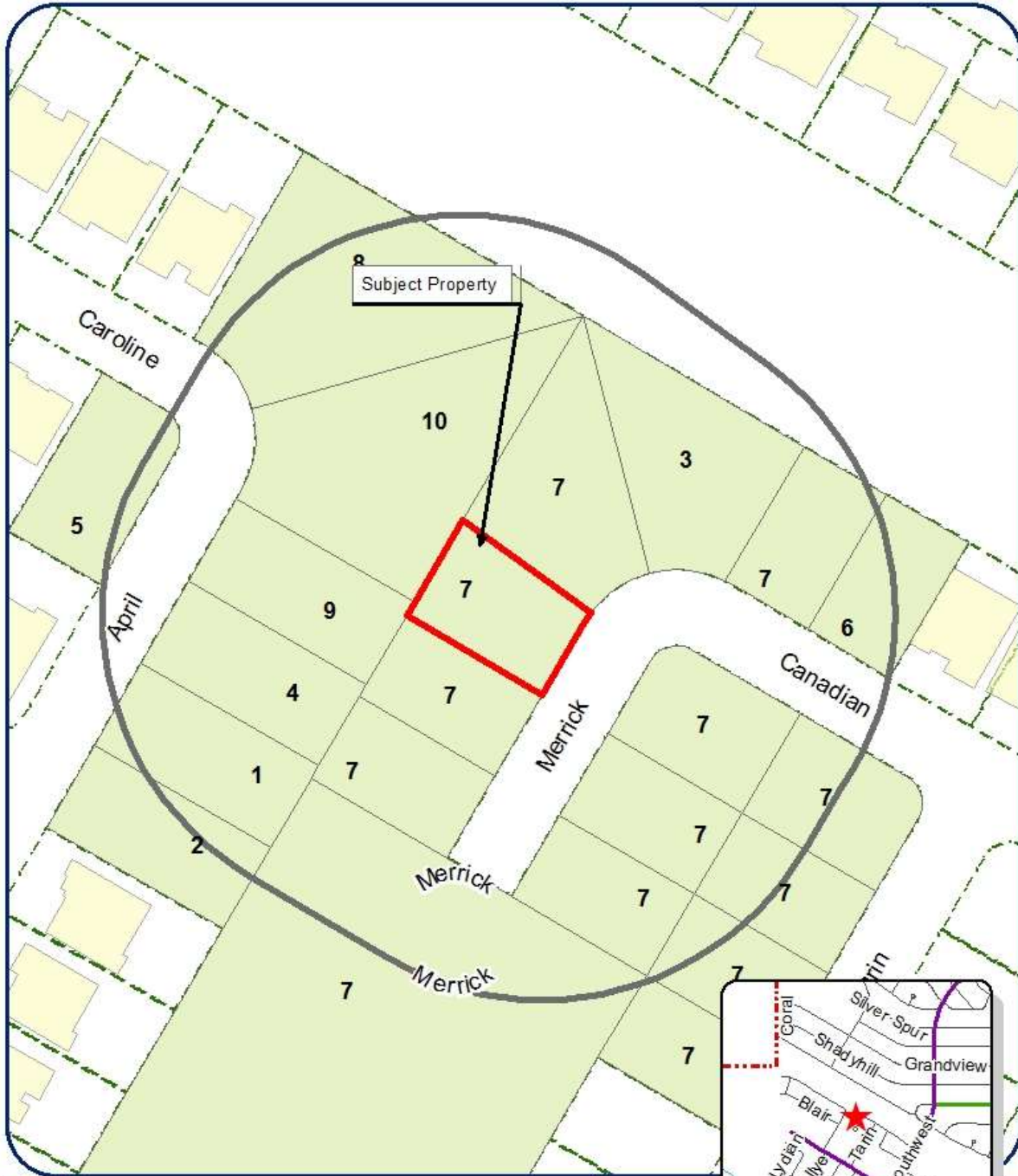
Z16-07: Sierra Vista Construction

Council District: Rodney Fleming (SMD #1)
 Neighborhood: Country Club
 Scale: 1" approx. = 75 ft
 Subject Property: 5905 Merrick Street

Legend

Subject Properties: —
 Current Zoning: **RS-1**
 Requested Zoning Change: **N/A**
 Vision: **Neighborhood**





Variance Case File

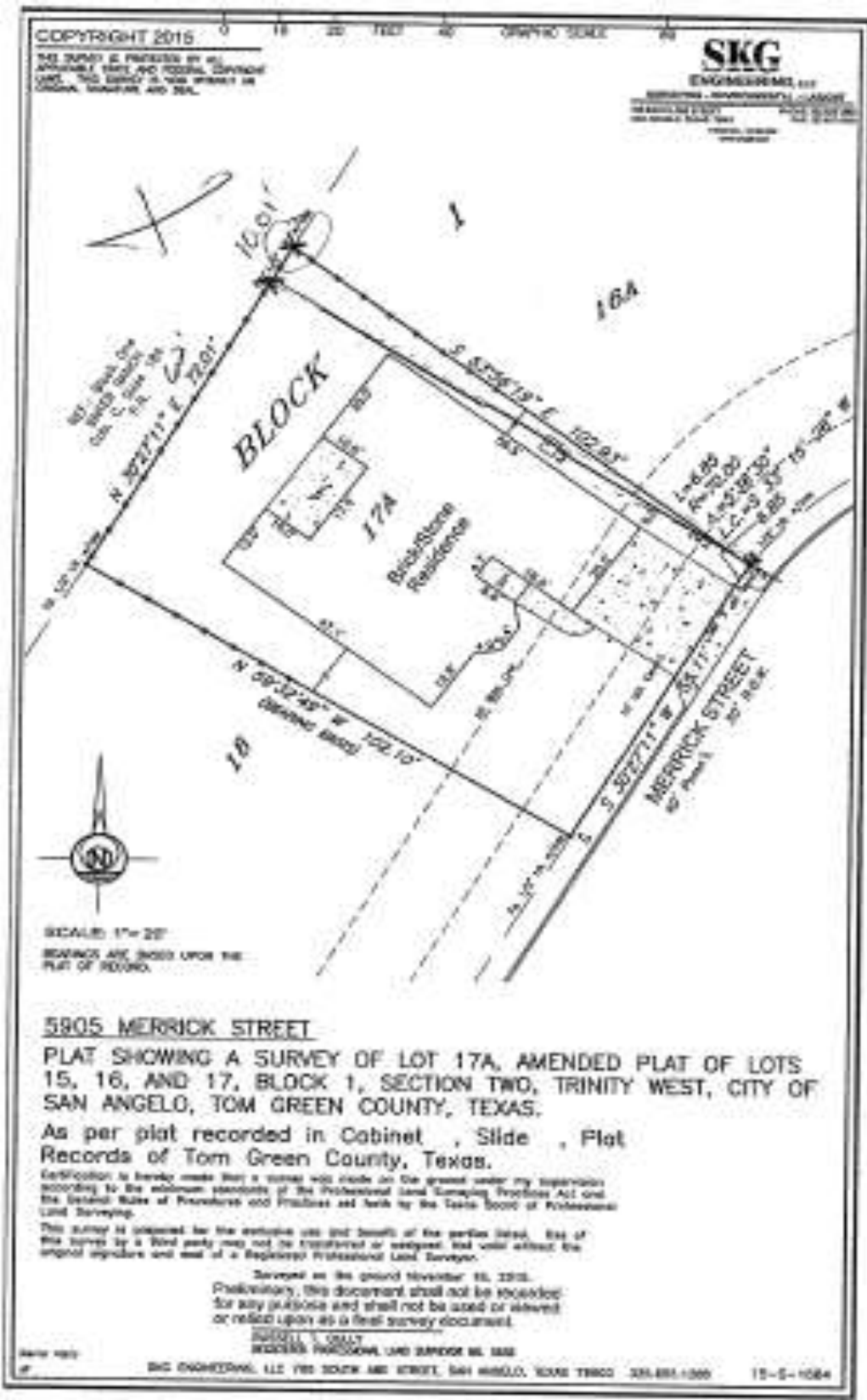
ZBA16-07 Sierra Vista Construction

Council District: Bill Richardson (SMD #1)
 Neighborhood: Country Club
 Scale: 1" approx. = 83 ft
 Subject Property: 5905 Merrick Street

Legend

Subject Properties: 
 Current Zoning: RS-1
 Requested Zoning Change: N/A
 Vision: Neighborhood





COPYRIGHT 2015

THIS SURVEY IS PROVIDED BY SKG ENGINEERS, L.L.C. FOR THE CLIENT'S USE ONLY. THIS SURVEY IS NOT A GUARANTEE OF ACCURACY, VALIDITY, AND SO.

SKG
ENGINEERS, L.L.C.

REGISTERED PROFESSIONAL LAND SURVEYORS
MEMBER OF THE TEXAS SURVEYORS ASSOCIATION
1100 WEST 10TH STREET, SUITE 1000, SAN ANGELO, TEXAS 76901-4800
PHONE: 361-351-1100 FAX: 361-351-1101
WWW.SKGENG.COM

SCALE: 1" = 20'
BEARINGS ARE BASED UPON THE PLAT OF RECORD.

5905 MERRICK STREET
PLAT SHOWING A SURVEY OF LOT 17A, AMENDED PLAT OF LOTS 15, 16, AND 17, BLOCK 1, SECTION TWO, TRINITY WEST, CITY OF SAN ANGELO, TOM GREEN COUNTY, TEXAS.

As per plat recorded in Cabinet , Slide , Plat Records of Tom Green County, Texas.

Certification is hereby made that a survey was made on the ground under my supervision according to the minimum standards of the Professional Land Surveying Practice Act and the General Rules of Procedure and Practice set forth by the State Board of Professional Land Surveying.

This survey is prepared for the exclusive use and benefit of the parties listed. Use of this survey by a third party may not be considered or warranted, and void without the original signature and seal of a Registered Professional Land Surveyor.

Surveyed on the ground November 16, 2015.
Preliminary, this document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document.

RUSSELL T. ORALLY
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 3533

City of San Angelo, Texas - Planning Division
Application for Variance from Zoning Regulations

Name of Applicant(s): Sicco Vista Construction, Inc.

Owner

Tenant

Representative (Affidavit required)

Mailing Address: 1002 Ashland Dr Telephone: 325-212-9257

City/State/Zip: San Angelo, TX 76901 Fax/other: 325-227-6581

Email Address: Sicco Vista Construction1@live.com

Subject Property Address and/or Location*:

5905 Merritt St., San Angelo, TX 76904

Legal Description*:

Lot 17A, Block 1, Section 2, Trinity West

Zoning: RS-1

Specific Description of Request*:

See Attached

* use attachment, if necessary

I/We the undersigned acknowledge that the information provided above is true and correct, and have read the statements below.

[Signature]
Signature

4/20/2016
Date

- I understand that the Zoning Board of Adjustment is bound by criteria established by state law; I further understand that my request is not guaranteed to be approved and that it constitutes an exception from regulations of the City of San Angelo;
- I/We the undersigned acknowledge that the information provided above is true and correct. I/We understand that any variation(s) authorized by the Zoning Board of Adjustment will require me/us to obtain a building permit for that stated variation within twelve (12) months of the approval date by the Board, unless the Board has specifically granted a longer period;
- I understand that all drawings, pictures, documents or other information used during your testimony to the Board must be kept in the permanent files of the Planning Division; and
- I understand that any appeal of a decision made by the Zoning Board of Adjustment must be presented to a court of record with a verified petition stating that the decision of the Zoning Board of Adjustment is illegal in whole or in part and specifying the grounds of the illegality. This petition for appeal must be presented within ten (10) days after the date the decision is filed in the board's office.

I assert that my request for variance meets all of the required criteria based on my explanation(s) below:

- Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial;

Explanation: The lot exist along a redline turn and backs up to an adjacent neighborhood with differing property pins.

- These special circumstances are not the result of the actions of the applicant;

Explanation: A conscious effort was made to abide by the setback lines.

- Literal interpretation and enforcement of the Zoning Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district, and would cause an unnecessary and undue hardship;

Explanation: It is not possible to meet the front setback, because the issue was not brought to our attention until progress exceeded the opportunity to make adjustments.

- Granting the variance is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of the Zoning Ordinance and substantial justice;

Explanation: The variance is in the best interest of the future buyer and does not affect the adjacent properties.

- Granting the variance will not adversely affect adjacent land in a material way, and

Explanation: The front boundary is the only boundary being encroached upon. Thus, no adjacent land will be effected.

- Granting the variance will be generally consistent with the purposes and intent of the Zoning Ordinance.

Explanation: Notwithstanding the front setback, the property would meet the zoning ordinance.

OFFICE USE ONLY	
Case no.: ZBA <u>16-07</u>	Date of application: <u>4/26/2016</u>
Fully-dimensioned site plan: <input checked="" type="checkbox"/>	Nonrefundable fee: \$ <u>250.00</u> Date paid: <u>4/26/2016</u>
Date to be heard by ZBA: <u>6/6/2016</u>	
Received by: <u>JEFF FISHER</u>	Receipt Number: <u>247313</u>
Ordinance section(s) from which variance(s) is/are requested: <u>501.A.</u>	

Specific Description of Request*:

Formal request from the developer/builder/property owner regarding the property found here within for a variance from the original 25' building line established by the plat recorded for Trinity West Section 2, 3, & 4 San Angelo, Texas.

The Property in question possesses a current structure (single family residence) that surpasses the front yard boundary by 4.8 feet at its furthest point. Thus, we request that the boundary line be modified for the lot in question to a 20' front yard building line in lieu of the existing 25' front yard building line.

The current variance on the Property allows for a 20' front yard setback in lieu of a 25' front yard setback with the following condition:

"If the nonconforming structure (single family residence) is destroyed or damaged by 50% or more; the nonconforming structure shall be rebuilt with the required 25' front yard setback as dictated by the Zoning Ordinance, Chapter 12, Section 501"

But, the above condition is specific to nonconforming structures and if granted the request of a 20' front yard setback in lieu of a 25' front yard setback the structure shall become a conforming structure and therefore will not require the above condition.

Under the current condition, the Property does not qualify for insurance coverage and therefore becomes a liability for any lender considering the property. As denoted by the attached emails, a respected local insurance provider as well as a respected local lender have both voiced their negativity in accepting the property under the current condition. Therefore, the only way the property may be sold is under a revised approval of variance that removes the above clause from the approval by merely granting the 20' front yard setback in lieu of a 25' front yard setback.

The property in its present condition is not of any consequence to the adjacent properties or any within the community. The cosmetic appeal of a front yard setback does nothing to reduce the local property values nor does it reduce the value of the community as a whole. Under the current condition, if sold, the price will have to be reduced to allow for compensation due to the condition. If sold at a reduced cost, the adjacent property values will then be affected due to a low comparison value within the community.

Sierra Vista Construction, Inc.
1002 Ashford Dr.
San Angelo, TX 76901

The City of San Angelo, Texas Planning Division
52 West College Avenue
San Angelo, Texas 76903

20 April 2016

SUBJECT:

Formal request from the developer regarding the property found here within for a variance from the original 25' building line established by the plat recorded for Trinity West Section 2, 3, & 4 San Angelo, Texas.

The Property in question possesses a current structure (single family residence) that surpasses the front yard boundary by 4.8 feet at its furthest point. Thus, we request that the boundary line be modified for the lot in question to 20' in lieu of the existing 25' building line.

The current variance on the Property allows for a 20' front yard setback in lieu of a 25' front yard setback with the following condition:

"If the nonconforming structure (single family residence) is destroyed or damaged by 50% or more; the nonconforming structure shall be rebuilt with the required 25' front yard setback as dictated by the Zoning Ordinance, Chapter 12, Section 501"

But, the above condition is specific to nonconforming structures and if granted the request of a 20' front yard setback in lieu of a 25' front yard setback the structure shall become a conforming structure and therefore will not require the above condition.

PROPERTY: 5905 Merrick St. Lot 17A, Block 1, Section 2, Trinity West.

To Whomever It May Concern:

This letter is to notify the members of the City of San Angelo Planning Division that Sierra Vista Construction, Inc. is the sole developer for Section 2, 3, & 4 of the Trinity West Development. As such, we hereby grant the necessary action for approving the adjustment of the front boundary line to prevent future issues from arising.

For further assistance regarding this information please contact Danny Aguero at telephone number (325) 374-2199.

A handwritten signature in blue ink that reads "Danny Aguero". The signature is written in a cursive style with a large initial "D".

Danny Aguero, President
Sierra Vista Construction, Inc.

Gateway

MORTGAGE GROUP

April 20, 2016

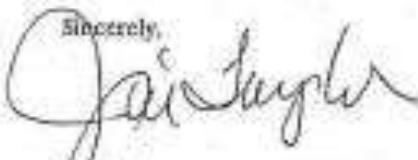
To Whom It May Concern,

As a mortgage lending company, we are required to have full replacement cost coverage on any property that we lend on. We would/could not lend on single family residence with the following condition.

If the nonconforming structure (single family residence) is destroyed or damaged by 50% or more; the nonconforming structure shall be rebuilt with the required 25' front yard setback as dictated by the Zoning Ordinance, Chapter 12, Section 501

Please contact me if you have any additional questions.

Sincerely,



Jill Taylor
NMLS#346036

Area Manager
4850 Knickerbocker Road
San Angelo, TX 76904

Home that is in question with the city

bestins@suddenlinkmail.com

Thu 4/7/2016 2:23 PM

To: sierravistaconstruction@live.com <sierravistaconstruction@live.com>

Austin,

I have visited with several of my adjusters and have been told by each that they will not pay for the home to be torn down and moved should there be %50 or more in damages. They will only total a home if it is totally destroyed. The expense to move the home would be the homeowners.

I am sorry this is not good news.

Valerie Rodriguez
Best Insurance
15 N Tyler Ste. B
San Angelo, TX 76901
325-617-2378
bestins@suddenlinkmail.com



The City Of

San Angelo, Texas

Planning Division

52 West College Avenue, 76903

January 11, 2016

Mr. Danny Aguero, President
Sierra Vista Construction
1002 Ashford Drive
San Angelo, TX 76901

SUBJECT: ZBA15-24: Sierra Vista Construction, Inc., a request for approval of a Variance from Section 501.A, of the Zoning Ordinance to allow for a single-family dwelling to have a 20-foot front yard setback in lieu of 25 feet in the Single-Family Residence (RS-1) Zoning District, on the following property:

PROPERTY: 5905 Merrick Street; generally located approximately 250 feet west of the intersection of Canadian Street and Tarin Street; specifically occupying Lot 17A of the Amended Plat of Lots 15, 16 and 17 in the Trinity West Subdivision, Section 2, Block 1.

Dear Mr. Aguero:

At its meeting on **January 4, 2016**, the Zoning Board of Adjustment for the City of San Angelo **approved** your Variance request, subject to the following Condition(s):

1. If the nonconforming structure (single family residence) is destroyed or damaged by 50% or more, the nonconforming structure shall be rebuilt with the required 25-foot front yard setback as dictated by the Zoning Ordinance, Chapter 12, Section 501.

A building permit may still be necessary, however. Permits may be obtained at the City's Permits and Inspections Division, located at 52 West College Avenue next to the City Hall building. You may contact this Division at (325) 657-4420 for further details. A copy of this approval letter will be forwarded to this Division for their reference and permitting purposes.

Lastly, per Section 207 of San Angelo's City Ordinance, a Variance becomes null and void if the improvement for which the Variance was sought is not completed within 12 months of the date of approval. This variance will therefore expire on **January 4, 2017** if not used by that date.

If you have further questions or concerns about this matter, feel free to contact the Planning Division at telephone number (325) 657-4210. Thank you.

Sincerely,

David Fee, AICP
Senior Planner

CC: Rebeca Guerra, Planning Manager
Alfonso Torres, Chief Building Official