

CASE # C15-2011-0026

ROW- 10562049

TP- 0217060601

**CITY OF AUSTIN
APPLICATION TO BOARD OF ADJUSTMENT
GENERAL VARIANCE/PARKING VARIANCE**

WARNING: Filing of this appeal stops all affected construction activity.

PLEASE: APPLICATION MUST BE TYPED WITH ALL REQUESTED INFORMATION COMPLETED.

STREET ADDRESS: 400 East 33rd Street

LEGAL DESCRIPTION: Subdivision - Grooms Addition

Lot(s) S. 60'x134' of Lots 1&2 Block 8 Outlot Division

I Jim Bennett on behalf of myself/ourselves as authorized agent for

Ricardo Robles affirm that on 3/17/2011, hereby apply for a hearing before

the Board of Adjustment for consideration to:

ERECT - ATTACH - COMPLETE - REMODEL - MAINTAIN

A two story duplex providing a front street setback of 15⁴ feet, and providing for two driveways, and providing for two of the parking spaces not to be located behind the 25 ft. setback line, and request a variance to provide two parking spaces instead of the required three spaces.

in a SF-3-NCCD-NP district.
(zoning district)

MUNA

The Austin Electric Utility Department (Austin Energy) enforces electric easements and the setback requirements set forth in the Austin Utility Code, Electric Criteria Manual and National Electric Safety Code. The Board of Adjustment considers variance to the Land Development Code, and a variance granted by the Board of Adjustment does not waive the requirements enforced by Austin Energy. Please contact Christine Esparza with Austin Energy at 322-6112 before filing your application with the Board of Adjustment if your request is for a reduction in setbacks or height limits.

NOTE: The Board must determine the existence of, sufficiency of and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional support documents.

VARIANCE FINDINGS: I contend that my entitlement to the requested variance is based on the following findings (see page 5 of application for explanation of findings):

REASONABLE USE:

1. The zoning regulations applicable to the property do not allow for a reasonable use because:

The applicant was issued a permit for the proposed construction and a C/O was issued. This permit was originally issued three years ago (3/19/08), and it is now time to resolve the issues.

HARDSHIP:

2. (a) The hardship for which the variance is requested is unique to the property in that:

A permit was issued for the proposed construction on March 19, 2008, and at that time two driveways were existing and the City required that one of the driveways be closed. This closure resulted in a deficiency in the total three space requirement. The owner attempted to vacate three different portions of R.O.W. along E. 33rd St. to satisfy the setback issue, but this attempt was rejected by several neighbors. It appears that from all the correspondence and plan revisions that have been required by the City that the owner has done everything that a reasonable and prudent person would do in order to comply with the City's wishes.

The hardship is not general to the area in which the property is located because:

The three year process that is applicable to this site is hopefully not general to the area.

AREA CHARACTER:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

The property was developed with a duplex use and the use will remain.

PARKING: (Additional criteria for parking variances only.)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed Section 479 of Chapter 25-6 with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonable require strict or literal interpretation and enforcement of the specific regulation because:

Two driveways were existing with the 1946 duplex permit.

2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

APPLICANT CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____ Mail Address

City, State & Zip

Printed Phone Date

OWNERS CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed _____ Mail Address

City, State & Zip

Printed Phone Date

GENERAL INFORMATION FOR SUBMITTAL OF A VARIANCE REQUEST TO THE BOARD OF ADJUSTMENT

(The following is intended to provide assistance in explaining the variance process. These suggestions are not intended to be a complete or exhaustive guide in assisting you through this process.)

2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

APPLICANT CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed Jim Bennett Mail Address 11505 Redge Dr
City, State & Zip Austin, TX. 78748

Printed Jim Bennett Phone 282-3079 Date 2/17/11

OWNERS CERTIFICATE – I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Signed [Signature] Mail Address 6721 Beaufole Bl.
City, State & Zip Austin, TX. 78750

Printed Ricardo Robles Phone 512-358-4005 Date 2-17-11

EXHIBIT "A"

ATS Job # 08090301s

Reference: Robles Address: 400 East 33rd Street, Austin, TX
 South 60 Ft. of Lot 1 & South 60 Ft. of W 62 Ft. Lot 2 Blk 8, Division D GROOMS
 ADDITION, Vol. 1 Pg. 59, Plat Records of Travis County, Texas.

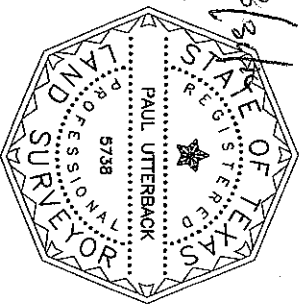
LEGEND	
●	1" (RF) IRON ROD FOUND (unless noted)
○	1" IRON PIPE FOUND
△	CALCULATED POINT
()	RECORD INFORMATION
()	PUBLIC UTILITY EASEMENT
()	BUILDING SETBACK LINE
()	P.O.C. POINT OF COMMENCEMENT
()	P.O.B. POINT OF BEGINNING
(A)	AIR CONDITIONER/ELECTRIC TRANS
(G)	GAS METER (x2)
(E)	ELECTRIC METER (x2)
(W)	WASTEWATER CLEANOUT
(S)	SIGN
(MB)	MAIL BOX (x2)
(○)	UTILITY POLE
(○)	ELECTRIC LINE
(○)	WATER METER
(WV)	WATER VALVE (x2)
///	WOOD FENCE
-x-	WIRE FENCE
N.	NEIGHBORHOOD OVERLAY

- Notes:
- 1) This map and the survey on which it is based have been prepared without the benefit of a title report and are not intended to reflect all easements, encumbrances or other circumstances affecting the title to the property shown herein.
 - 2) Front building setback 23 Feet according to Nora Briones, reference 25-2-778, Austin Land Development Code.
 - 3) Bearings shown hereon are based on the recorded plat.

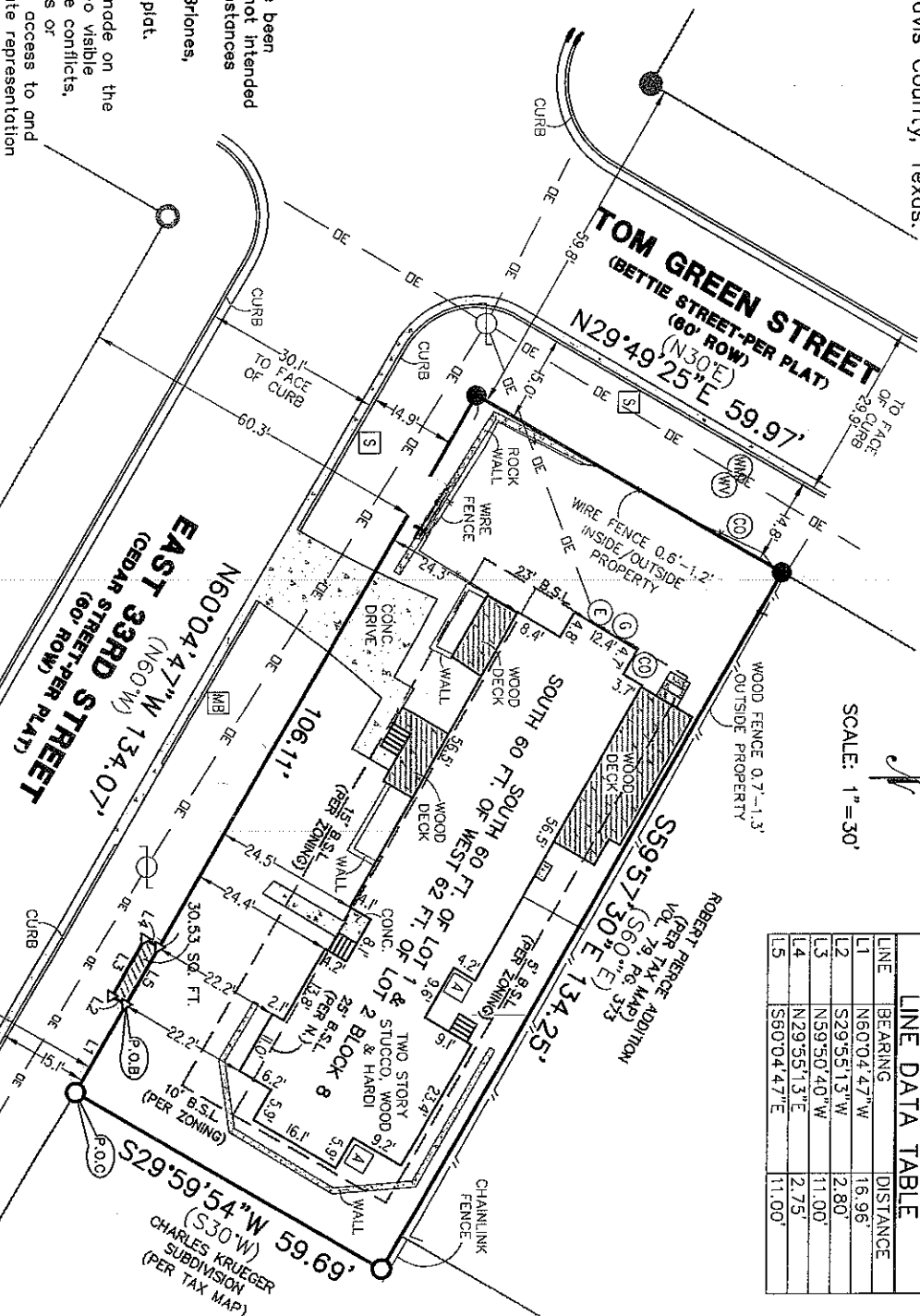
I, Paul Utterback, HEREBY CERTIFY that a survey was made on the ground of the property shown hereon; that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or right-of-way, except as shown; that said property has access to and from a public roadway; and that this plat is an accurate representation of the property to the best of my knowledge.

Paul Utterback
 Paul Utterback, RPLS No. 5738

Client: Ricardo Robles
 Date of Field Work: 08/27/2010
 Field: MPutman
 Tech: Granirrez
 Date Drawn: 08/31/2010
 Path: Projects/___BULK/33rdSIE-400/dwgs/VacationEsmt_100830-Rev.dwg



ATS eileen merrih's
Engineers Inspectors & Surveyors
 www.ats-engineers.com
 912 S CAPITAL OF TX HWY, STE 450
 AUSTIN, TEXAS 78748
 (512) 328-8985
 FAX: (512) 328-8996



LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N60°04'47"W	16.96'
L2	S29°55'13"W	2.80'
L3	N59°50'40"W	11.00'
L4	N29°55'13"E	2.75'
L5	S60°04'47"E	11.00'

EXHIBIT " "

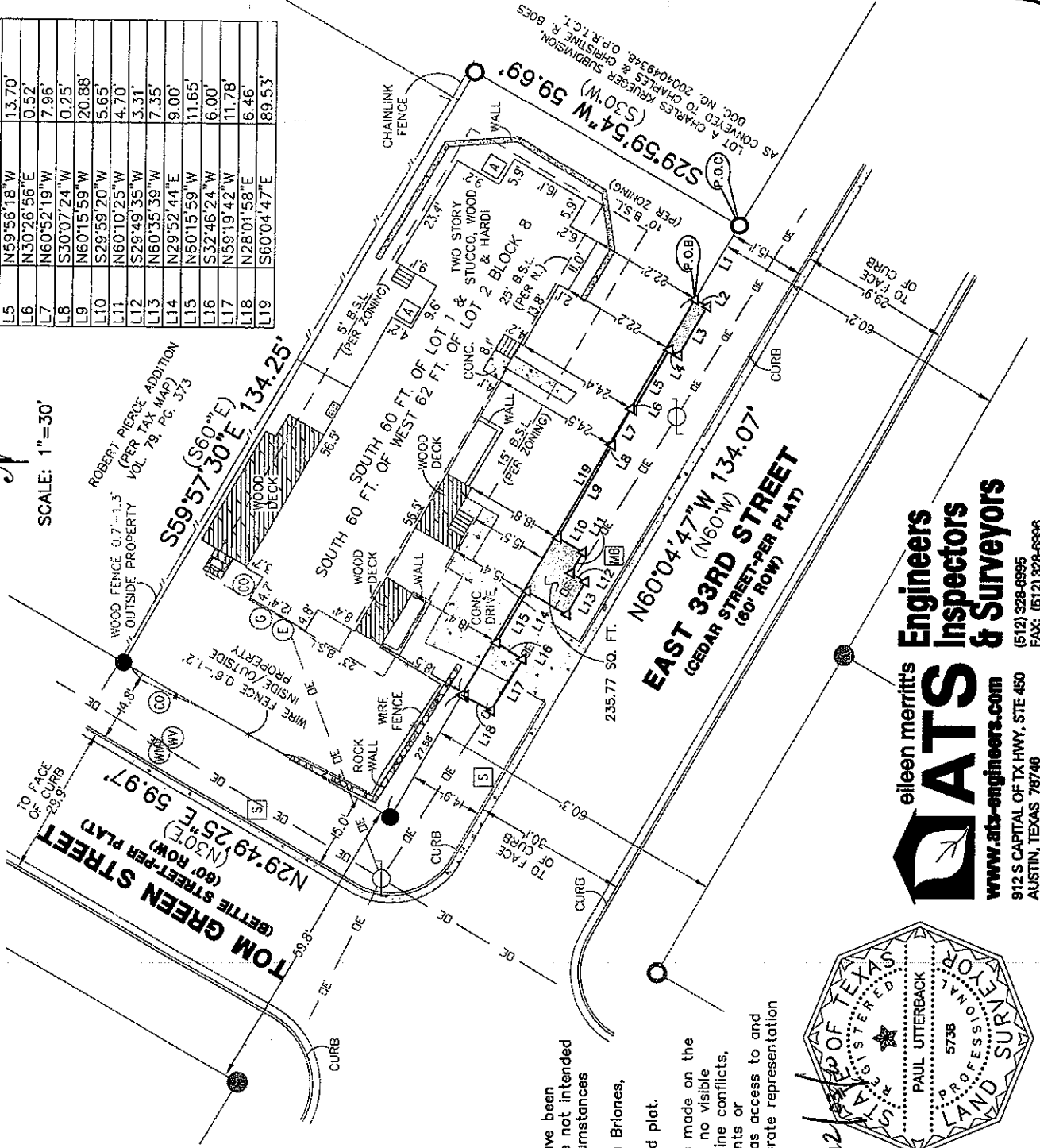
ATS Job # 10120202s

Reference: Robles Address: 400 East 33rd Street, Austin, TX
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ADDITION, Vol. 1 Pg. 59, Plat Records of Travis County, Texas.

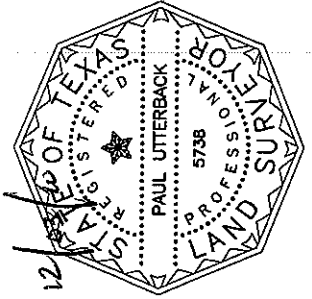
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E	ELECTRIC METER (x2)
CO	WASTEWATER CLEANOUT
S	SIGN
MB	MAIL BOX (x2)
U	UTILITY POLE
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X	WIRE FENCE
N	NEIGHBORHOOD OVERLAY

LINE DATA TABLE		
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L2	S29°55'13"W	2.80'
L3	N59°50'40"W	11.00'
L4	N29°55'13"E	2.09'
L5	N59°56'18"W	13.70'
L6	N30°26'56"E	0.52'
L7	N60°52'19"W	7.96'
L8	S30°07'24"W	0.25'
L9	N60°15'59"W	20.88'
L10	S29°59'20"W	5.65'
L11	N60°10'25"W	4.70'
L12	S29°49'35"W	3.31'
L13	N60°35'39"W	7.35'
L14	N29°52'44"E	9.00'
L15	N60°15'59"W	11.65'
L16	S29°46'24"W	6.00'
L17	N59°19'42"W	11.78'
L18	N28°01'58"E	6.46'
L19	S60°04'47"E	89.53'

SCALE: 1"=30'



- Notes:
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 - Front building setback 23 Feet according to Nora Briones, reference 25-2-778, Austin Land Development Code.
 - Bearings shown hereon are based on the recorded plat.
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Paul Utterback, RPLS No. 5738
 Client: Ricardo Robles
 Date of Field Work: 08/27/2010
 Field: MPutman
 Tech: CRamirez
 Date Drawn: 12/03/2010
 Path: Projects/...BULK/33rdStE-400/dwgs/VocationEsmt_101202-Rev.dwg

eileen merritt's
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 & Surveyors
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 AUSTIN, TEXAS 78746
 (512) 328-6995
 FAX: (512) 328-6996

Date: November 16, 2010

Attn: Chris Muraida

City of Austin
Office of Real Estate Services
505 Barton Springs Road, Suite 1350
Austin, TX 78704

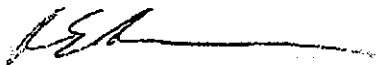
This is in response to the Certified Letter dated November 8, 2010 serving as 'Public Notice for Right-of-Way'.

As the property owners in the area surrounding the property at 400 East 33rd Street, this letter serves as our formal, stated objection to the City granting a Right-of-Way Vacation for 400 E 33 St .

As inner city property owners, we have no Home Owners Association protection or other means to protect our properties than to rely on the City to be diligent in enforcing its laws which include zoning requirements, parking requirements, impervious cover requirements, set back requirements and NCCD specific requirements. This property is in blatant violation of all of these requirements and for the City to consider selling 30.53 square feet of public right-of-way to accommodate legal requirements sets a terrible precedent.

Below are the people who could be reached. They were unanimous in their objections to this proposal. With more time, all the home owners who received the letter might have been reached.

Roy and Doris Walker	401 East 34 th Street
Lou Faid-Dattilo	3307 Tom Green
Sandy Bartlett	3307 Tom Green
Susan Pryor	3300 Duval Street
Richard Boner	3300 Duval Street
Charles and Christine Boes	408 East 33 rd Street
Dan Roberts	3210 Duval Street



Guernsey, Greg

From: Muraida, Chris
Sent: Monday, November 15, 2010 2:45 PM
To: Guernsey, Greg
Subject: FW: Certified Letter regarding Public Notice for Right-of-Way Vacation

FYI.

-----Original Message-----

From: OCLM Land Management
Sent: Monday, November 15, 2010 2:30 PM
To: 'Susan J. Pryor'
Subject: RE: Certified Letter regarding Public Notice for Right-of-Way Vacation

Ms. Pryor,
974-7090 is our main department number and it is a good working number. I called and checked with our front office personnel and was advised that the phone has been working. They were not aware of any problems.

The public notice was sent to anyone who lives or has a business within 300 feet of the area to be vacated. If one letter is to be sent to the City, we need a name and address for everyone signing the objection letter.

Thank you,
Chris Muraida

-----Original Message-----

From: Susan J. Pryor [REDACTED]
Sent: Thursday, November 11, 2010 3:45 PM
To: OCLM Land Management
Cc: Charles Boes
Subject: Certified Letter regarding Public Notice for Right-of-Way Vacation

To Chris Muraida:

I received this letter yesterday. It gave as a phone number (512) 974-7090 - I tried to call that number but the message says it is not a working number.

Can you tell me who else received this letter? We have serious concerns about this proposal - would it be better to have each person write a separate letter - or would having everyone sign the same letter be as effective?

Thank you,

Susan J. Pryor

ORDINANCE NO. 20101216-095

AN ORDINANCE AMENDING CITY CODE SECTIONS 25-2-472, 25-2-473, AND 25-2-475 TO AUTHORIZE APPEALS AND VARIANCES FROM REQUIREMENTS OF A NEIGHBORHOOD CONSERVATION COMBINING DISTRICT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 25-2-472 (*Board of Adjustment Variance Authority*) is amended to read:

§ 25-2-472 BOARD OF ADJUSTMENT VARIANCE AUTHORITY.

The Board of Adjustment shall hear and decide a request for a variance from a requirement of this chapter, or a Neighborhood Conservation Combining District adopted under this chapter, except as otherwise provided by the Code.

PART 2. Subsection (A) of City Code Section 25-2-473 (*Variance Requirements*) is amended to read:

- (A) A variance from the requirements of this chapter, or a Neighborhood Conservation Combining District adopted under this chapter, may be granted under this division if, because of special circumstances of a property, the strict application of this chapter deprives the property owner of privileges that are enjoyed by another person who owns property in the area that has the same zoning designation as the property for which the variance is requested.

PART 3. City Code Section 25-2-475 (*Appeals*) is amended to read:

§ 25-2-475 APPEALS.

A person may appeal a decision of the building official regarding a site development regulation prescribed by this subchapter, or by a Neighborhood Conservation Combining District adopted under this chapter, to the Board of Adjustment. After an appeal is filed, the building official shall provide the board with a copy of documents regarding the matter that has been appealed.

