



MEMORANDUM

TO: Jeff Jack, Board of Adjustment Chair
Board of Adjustment Members

FROM: Christopher Johnson
Development Assistance Center Manager
Planning & Development Review Department

DATE: March 3, 2014

SUBJECT: Appeal of Administrative Decision/Request for Interpretation for 2300 S. Lamar

Case Summary

The subject property at 2330 S. Lamar Blvd. is the location of the former Artz Rib House Restaurant which closed in the spring of 2012. On 3/6/2013 Staff approved a site plan exemption request, DA-2013-0091, for the remodel of the existing restaurant. The exhibit included with the site plan exemption request showed remodel of the existing restaurant, demolition of the smokehouse and entry totaling 186-sf, and additions to the front and rear of the building totaling 1,152-sf.

On 3/28/2013, the appellant obtained approval of a partial demolition permit and demolished the entire structure, except for an approximately 25-ft long section of exterior wall along the northeast side of the building. The existing building foundation has been covered by a significant amount of compacted base material and the site framed up for the pouring of a new foundation. A commercial building plan submittal was filed on 6/20/13 for "Interior Remodel Renovation and Addition to Existing Restaurant" for an approximate 6,900-sf restaurant, excluding deck area. This building plan submittal was rejected due to the proposed building plans not being consistent with the approved site plan exemption, and the fact that there is no existing restaurant to remodel, since the existing restaurant was demolished. The appellant disagrees with the denial of their commercial building plan submittal and the determination that it is not a remodel of the existing restaurant.

Staff believes the appellant's primary objection is with the Director's determination that the construction is beyond what's allowed without a site plan under Section 25-5-2. That issue is beyond the Board's authority, since Chapter 25-5 is not a zoning regulation, and the Board's decision in this case will not impact the requirement to submit a site plan.

However, portions of the appeal do imply that the appellant disagrees with staff's determination that the proposed construction is beyond what's allowed for a "remodel" of a legal non-complying structure under Section 25-2-963 and/or related provisions of Subchapter E.

Since these are questions within the Board's authority, we have posted this appeal solely to allow the Board to review staff's determination on these issues. The remainder of this report is limited to these issues.

Arguments

The project located at 2330 S. Lamar is still a remodel under all applicable zoning and other city codes. Section 1.2.3 of the zoning code [Chapter 25-2, Subchapter E, APPLICABILITY] specifically qualifies Level III alterations as defined in the International Building Code as remodels. Nothing that has been performed at the site would make the project less compliant with Section 25-5-2 that the day the site plan exemption was approved.

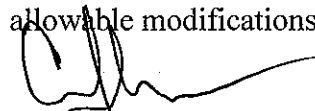
Staff Interpretation

Chapter 25-2, Subchapter E, Section 1.2.3 establishes the applicability of partial compliance with the Design Standards and Mixed-Use Subchapter E, also known as the Commercial Design Standards, based on terms of alteration defined in the adopted Existing Building Code. It does not define the term remodel as it pertains to modification of a non-complying structure.

Although the term "remodel" is not defined under the City's zoning regulations, the restaurant structure that existed on the subject property prior to its demolition, was considered a legal noncomplying structure since the site did not comply with the sidewalk and building placement requirements for a Core Transit Corridor under Chapter 25-2, Subchapter E, Section 2.2 – *Relationship of Buildings to Streets and Walkways*. Therefore permitted modification to the noncomplying structure is limited to what is authorized under Section 25-2-963. It is staff's determination that since the noncomplying structure was substantially demolished, including the roof, all interior and exterior walls, except for approximately 25-ft segment of the northeast wall, and a new foundation proposed (the old foundation is buried under fill, and not structurally connected to the proposed construction), there is no existing non-complying structure to modify.

Additionally, Section 25-2-964 limits the restoration to damaged or destroyed, noncomplying structures to *structures that were damaged by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind*. The demolition of the noncomplying structure at 2330 S. Lamar was not accidental. It was intentional demolition performed by the appellant's contractor and thus the non-complying structure cannot be restored to its prior noncompliant configuration.

Based on the findings above, staff respectfully requests the Board to uphold the Director's determination that the demolition of the entire roof, all interior and exterior walls, except for a small segment of the northeast wall, and the covering of the existing foundation with base material for the construction of a new foundation, is not a remodel in conformance with the allowable modifications to a noncomplying structure authorized by Section 25-2-963.



Christopher Johnson
Development Assistance Center Manager
Planning and Development Review Dept.

Pertinent Code references:

25-2-963 MODIFICATION AND MAINTENANCE OF NONCOMPLYING STRUCTURES.

(A) Except as provided in Subsections (B), (C), and (D) of this section, a person may modify or maintain a noncomplying structure.

(C) Except as provided in Subsections (E) and (F), a person may not modify or maintain a noncomplying structure in a manner that increases the degree to which the structure violates a requirement that caused the structure to be noncomplying.

(F) A person may modify a building that is a noncomplying structure based on a yard setback requirement of this title if:

(1) the modified portion of the building:

(a) does not extend further into the required yard setback than the existing noncomplying portion of the building, except for a vertical change in finished floor elevation allowed under Subsection (B)(2) of this section;

(b) unless located in a street side yard, is not greater in height than the existing noncomplying portion of the building, except for a vertical change in finished floor elevation allowed under Subsection (B)(2) of this section; and

(c) complies with the height requirements of this title; and

(2) the additional length of a modified portion of the building does not exceed the lesser of 50 percent of the length of the noncomplying portion of the building or 25 feet measured from the existing building and parallel to the lot line.

(G) Subsection (F) applies to each yard setback requirement with which the existing building does not comply.

25-2-964 RESTORATION AND USE OF DAMAGED OR DESTROYED NONCOMPLYING STRUCTURES.

(A) A person may restore a noncomplying structure that is damaged or destroyed by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind if the restoration begins not later than 12 months after the date the damage or destruction occurs.

(B) Except as provided in Section 25-2-963 (*Modification And Maintenance Of Noncomplying Structures*):

(1) a structure restored under this section is limited to the same building footprint, gross floor area, and interior volume as the damaged or destroyed structure; and

(2) a noncomplying portion of the structure may be restored only in the same location and to the same degree of noncompliance as the damaged or destroyed structure.

Chapter 25-2, Subchapter E – DESIGN STANDARDS AND MIXED-USE

1.2.3. Partial Compliance. For a project that is not subject to Sections 1.2.2 (Full Compliance) or 1.2.4 (Exemptions), the Director shall determine which standards of this Subchapter apply to the project or a portion of the project in accordance with the following requirements:

A. A new building, or building addition as defined by the adopted Existing Building Code must comply with:

1. Article 2 unless compliance cannot be achieved due to:

- a. The location of existing buildings or other improvements retained on the site;
- b. The size or nature of the proposed building limits placement on the site;
- c. Topography, protected trees, or critical environmental features; or
- d. The location of water quality or detention facilities.

- e. A waiver from the requirements of Article 2 shall be to the minimum extent required based on the criteria of this subsection; and
- 2. Article 3.
- B. A remodeled building or facade must comply with:
 - 1. Section 2.5 (Exterior Lighting); and
 - 2. Article 3 where the remodeled building is considered a "Level 3" Alteration or Addition as defined by the adopted Existing Building Code such that the work area exceeds 50% of the aggregate area of the building and the principal street facade.

Site Plan Exemption criteria (provided for information only)

25-5-2 SITE PLAN EXEMPTIONS.

(A) The director shall determine whether a project is exempt under this section from the site plan requirement of Section 25-5-1 (Site Plan Required). The director may require that the applicant submit information necessary to make a determination under this subsection. The director may require an applicant to revise a previously approved site plan under Section 25-5-61 (Revisions To Released Site Plans).

(B) A site plan is not required for the following development:

- (1) construction or alteration of a single-family residential, single-family attached residential, duplex residential, two-family residential, or secondary apartment special use structure, or an accessory structure, if:
 - (a) not more than one principal residential structure is constructed on a legal lot or tract; and
 - (b) a proposed improvement is not located in the 100 year flood plain, or the director determines that the proposed improvement will have an insignificant effect on the waterway;
- (2) removal of a tree not protected by this title;
- (3) interior alteration of an existing building that does not increase the square footage, area, or height of the building;
- (4) construction of a fence that does not obstruct the flow of water;
- (5) clearing an area up to 15 feet wide for surveying and testing, unless a tree more than eight inches in diameter is to be removed;
- (6) restoration of a damaged building that begins within 12 months of the date of the damage;
- (7) relocation or demolition of a structure or foundation covering not more than 10,000 square feet of site area under a City demolition permit, if trees larger than eight inches in diameter are not disturbed and the site is not cleared;
- (8) development in the extraterritorial jurisdiction that is exempt from all water quality requirements of this title; or
- (9) placement of a commercial portable building on existing impervious cover if the building does not impede or divert drainage and the site complies with the landscaping requirements of this title.

(C) Except for a change of use to an adult oriented business, a site plan is not required for a change of use if the new use complies with the off-street parking requirements of this title.

(D) Except for an adult oriented business, a site plan is not required for construction that complies with the requirements of this subsection.

- (1) The construction may not exceed 1,000 square feet, and the limits of construction may not exceed 3,000 square feet, except for the following:
 - (a) enclosure of an existing staircase or porch;
 - (b) a carport for fewer than ten cars placed over existing parking spaces;

use;

- (c) a wooden ground level deck up to 5,000 square feet in size that is for open space use;
- (d) replacement of a roof that does not increase the building height by more than six feet;

- (e) remodeling of an exterior facade if construction is limited to the addition of columns or awnings for windows or entrance ways;

- (f) a canopy over an existing gas pump or paved driveway;

- (g) a sidewalk constructed on existing impervious cover;

- (h) replacement of up to 3,000 square feet of building or parking area lost through condemnation, if the director determines that there is an insignificant effect on drainage or a waterway; or

- (i) modification of up to 3,000 square feet of a building or impervious cover on a developed site if the modification provides accessible facilities for persons with disabilities.

(2) The construction may not increase the extent to which the development is noncomplying.

(3) The construction may not be for a new drive-in service or additional lanes for an existing drive-in service, unless the director determines that it will have an insignificant effect on traffic circulation and surrounding land uses.

(4) A tree larger than eight inches in diameter may not be removed.

(5) The construction may not be located in the 100 year flood plain, unless the director determines that it would have an insignificant effect on the waterway.

(E) A site plan is not required for minor site development, minor construction, or a change of use that the director determines is similar to that described in Subsections (B), (C), and (D) of this section.

2330 S LAMAR BLVD



2009 image

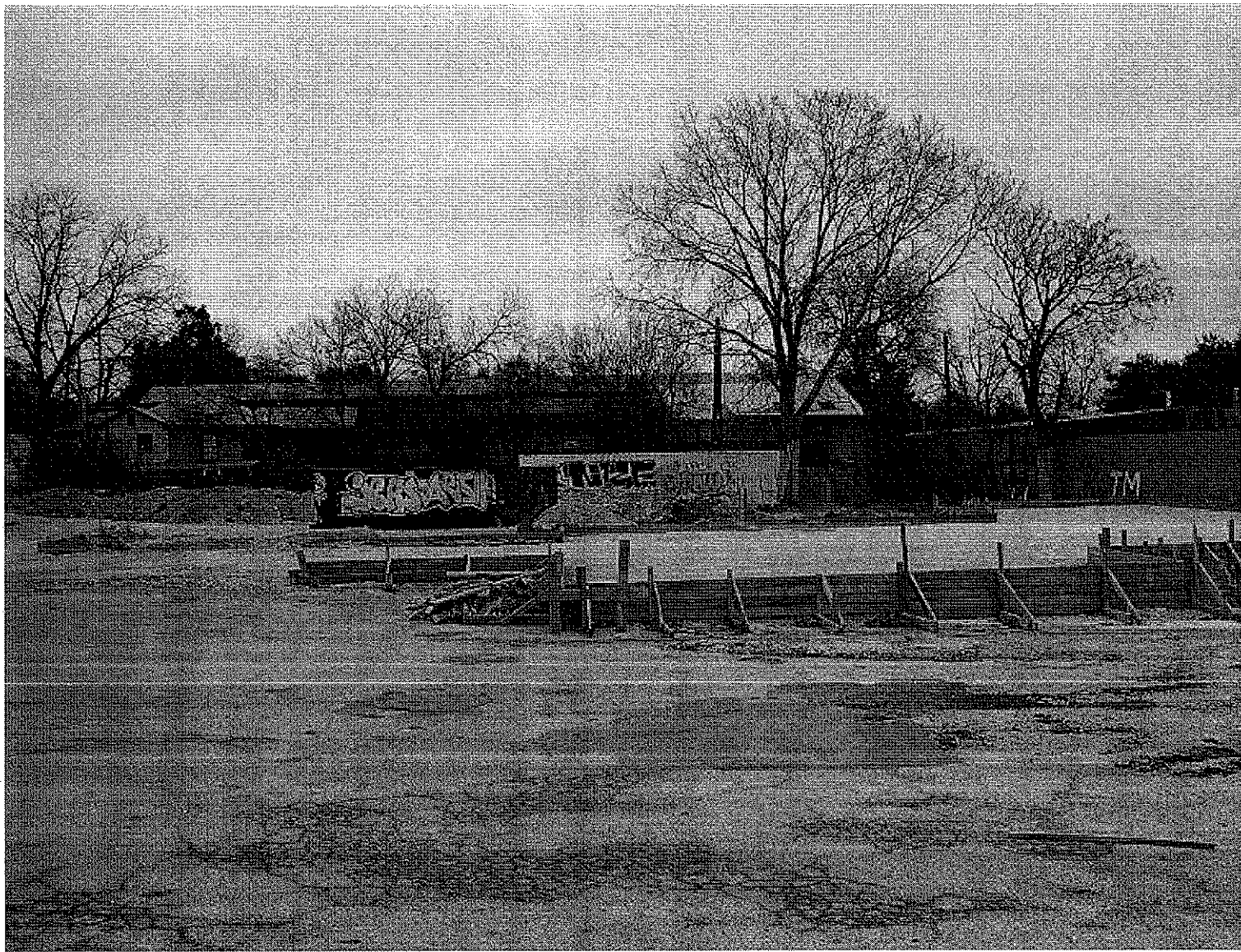
Legend

-  Lot Lines
-  Streets
-  Building Footprints
-  Named Creeks
-  Lakes and Rivers
-  Parks
-  County
-  Lot Line
-  Zoning (Large Map Scale)

THIS PRODUCT IS FOR INFORMATIONAL PURPOSES AND MAY NOT HAVE BEEN PREPARED FOR OR BE SUITABLE FOR LEGAL, ENGINEERING, OR SURVEYING PURPOSES. IT DOES NOT REPRESENT AN ON-THE-GROUND SURVEY AND REPRESENTS ONLY THE APPROXIMATE RELATIVE LOCATION OF PROPERTY BOUNDARIES. THIS PRODUCT HAS BEEN PRODUCED BY THE CITY OF AUSTIN FOR THE SOLE PURPOSE OF GEOGRAPHIC REFERENCE. NO WARRANTY IS MADE BY THE CITY OF AUSTIN REGARDING SPECIFIC ACCURACY OR COMPLETENESS.



① View north from S. Lamar Blvd.



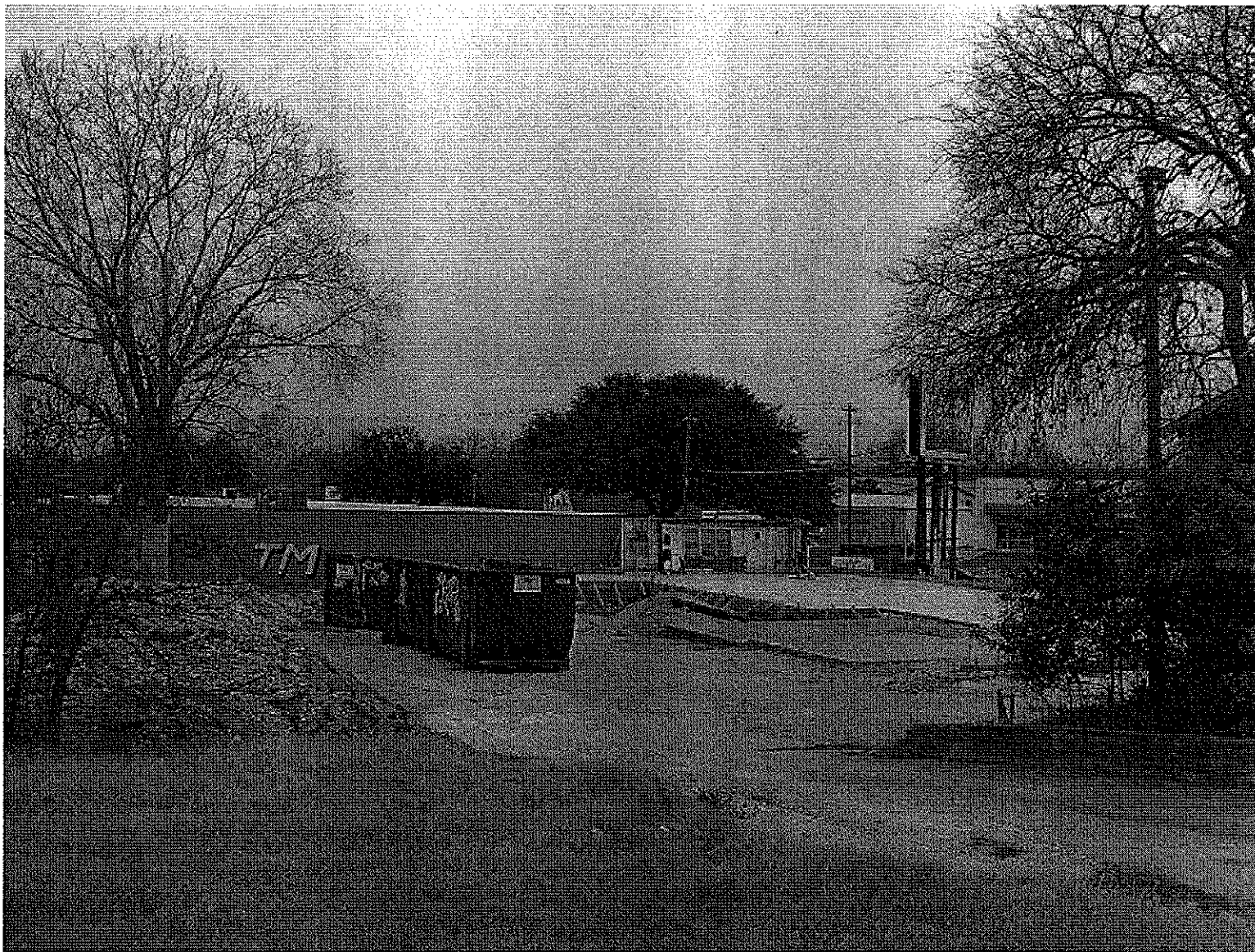
② View north from S. Lamar



③ View northeast from S. Lamar Blvd.



(4) View northeast from S. Lamer Blvd.



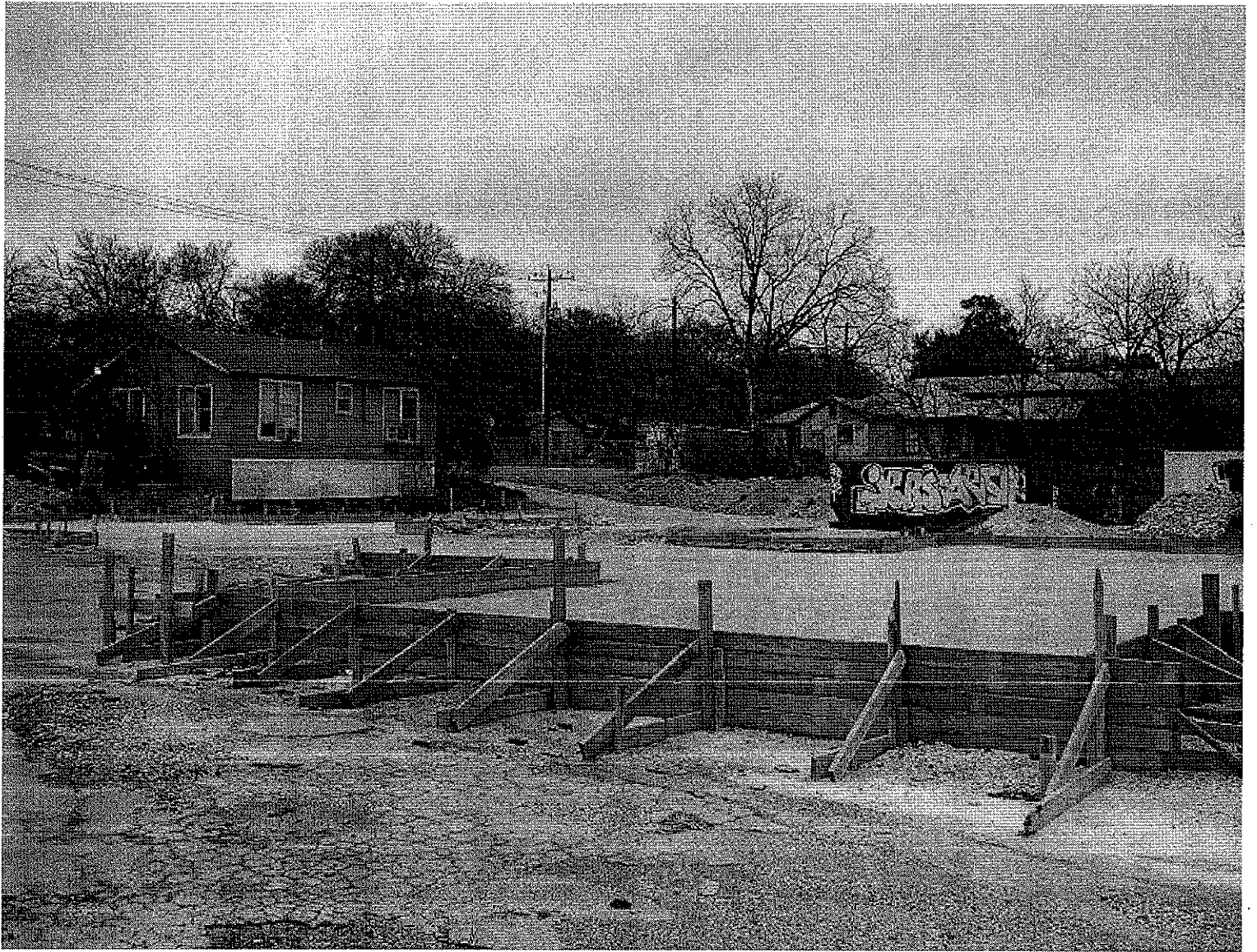
⑤ View southeast from Bluebonnet



⑥ View east from Bluebonnett



⑦ View southeast from Bluebonnett



⑧ View north west from S. Lamer Blvd.



Planning and Development Review Department

P.O. Box 1088, Austin, Texas 78767
One Texas Center, 505 Barton Springs Road
Telephone: (512) 974-6370 Fax: (512) 974-2423



Site Development Exemption Request

Tree Regulations Apply

DA-2013-0091

Site Address:	5 2330 Lamar Austin, TX 78704		
Project Name:	Abel's Rib House		
Legal Description:	TRT 2 TWENTY FOUR 0 ONE BLUEBONNET ADDN		
Zoning:	L0	Watershed:	
Existing Land Use(s):	Restaurant		
Proposed Land Use(s):	Restaurant		
Brief /General Description of the Development being sought:	Restaurant Remodel		

Attach a detailed description of the proposed development in a memorandum or letter and a site plat or survey plan that graphically indicates, but is not limited to,:

- | | |
|--|--|
| <input checked="" type="checkbox"/> existing trees | <input checked="" type="checkbox"/> limits of construction |
| <input checked="" type="checkbox"/> buildings | <input checked="" type="checkbox"/> type of construction |
| <input checked="" type="checkbox"/> parking areas | <input checked="" type="checkbox"/> location of construction |
| <input checked="" type="checkbox"/> roadways/streets | <input checked="" type="checkbox"/> accessible parking |
| <input checked="" type="checkbox"/> all areas of impervious cover levels (existing & proposed) | <input checked="" type="checkbox"/> access route |
| <input checked="" type="checkbox"/> erosion controls (i.e.: silt fencing, tree protection) | <input checked="" type="checkbox"/> on-site sewage (septic) systems and drain fields |

I, Margaret Gilbreth, do hereby certify that I am the
(PRINT NAME)

☒ Owner ☐ Owner's agent (to act as the owner's agent, written authorization from the owner must be provided) of this described property, and in this capacity, submit this request for exemption from the site plan submittal requirements pursuant to Chapter 25-5-2 of the Austin City Code.

Furthermore, I certify and acknowledge that:

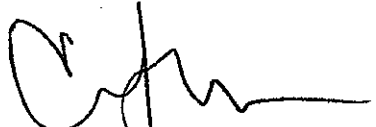

1. Although the proposed development does not require a formal site plan approval, it may require, prior to beginning any site work, the approval of the subdivision or issuance of a building, remodel, and/or demolition permit;
2. Although the proposed development complies with all applicable zoning regulations, it does not prohibit enforcement of restrictive covenants and/or deed restrictions;
3. The approval of this exemption request does not constitute authorization to violate any provisions of the Austin City Code or other applicable requirements, which includes the use or occupancy of the improvement.
4. The approval notice with paid receipt shall be clearly posted on-site and protected from the elements at all times.

Margaret Gilbreth Date: 2/7/13
Signature of Requester
Address: 2815 Manor Rd Austin, TX 78722
Telephone: 512 413-3792

Please indicate how you wish to receive a copy of the results of the review:

☐ FAX: ☒ E-mail Address: Please provide e-mail address on other side of form

Departmental Use Only

Project Name: <i>Abels Rb Home</i>		Case Number: <i>DA-2013-0091</i>		Applicant Name: <i>Margaret Gbreth</i>	
<input checked="" type="checkbox"/> If Required	Reviewer:	Date:	Comments:		
<input type="checkbox"/> Site Plan			<input type="checkbox"/> SPOC*		
					
<input type="checkbox"/> Transport			<input type="checkbox"/> SPOC*		
					
<input type="checkbox"/> Drainage	<i>Genf Book</i>	<i>3-4-13</i>	<input type="checkbox"/> SPOC*		
<i>OK</i>					
<input type="checkbox"/> Environ	<i>Kristen Carter</i>	<i>3-5-13</i>	<input type="checkbox"/> SPOC*		
<i>OK</i>					
<input checked="" type="checkbox"/> AFD	<i>S. Stuckey</i>	<i>3-5-2013</i>			
<i>APPROVED. NOTE: THE 865 sq. ft. ADDITION IS AN INCREASE IN THE BUILDING FIRE AREA & WILL REQUIRE AUTOMATIC SPRINKLER PROTECTION OR FIRE-RESISTIVE SEPARATION OF THE 865</i>					
<input checked="" type="checkbox"/> AWU	<i>Cory Harmon</i>	<i>3/5/2013</i>	<i>sq. ft. ADDITION.</i>		
<i>N/A</i>					
<input checked="" type="checkbox"/> Plumbing	<i>Cory Harmon</i>	<i>3/5/2013</i>			
<i>N/A: with utilities illustrated</i>					
<input checked="" type="checkbox"/> AE		<i>3-4-13</i>			
<i>N/A</i>					

• SPOC – Single Point of Contact

<input checked="" type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Determined to be a <input type="radio"/> Revision <input type="radio"/> New Project
--	---------------------------------	--

Building permit required? ☐ Yes ☐ No ☐ N/A
Smart Housing Project? ☐ Yes ☐ No

Qualifies for exemption per Section 25-5-2(____)

Check all that apply:

- ☐ Review Fee(s) Not Required
- ☐ Site Plan Correction/ Exemption Review Fee
- ☐ Change of Use Review Fee
- ☐ Phasing Review: _____ phases
- ☐ Landscape Inspection: _____ acres
- ☐ Shared Parking Review

NO.	DATE	REVISIONS
1	05/11/2011	ISSUED FOR PERMIT REVIEW
2	05/11/2011	ISSUED FOR PERMIT REVIEW
3	05/11/2011	ISSUED FOR PERMIT REVIEW
4	05/11/2011	ISSUED FOR PERMIT REVIEW
5	05/11/2011	ISSUED FOR PERMIT REVIEW
6	05/11/2011	ISSUED FOR PERMIT REVIEW
7	05/11/2011	ISSUED FOR PERMIT REVIEW
8	05/11/2011	ISSUED FOR PERMIT REVIEW
9	05/11/2011	ISSUED FOR PERMIT REVIEW
10	05/11/2011	ISSUED FOR PERMIT REVIEW

1201 East 7th Street, Suite 201
Austin, TX 78702
512.839.3400
www.opastudio.com

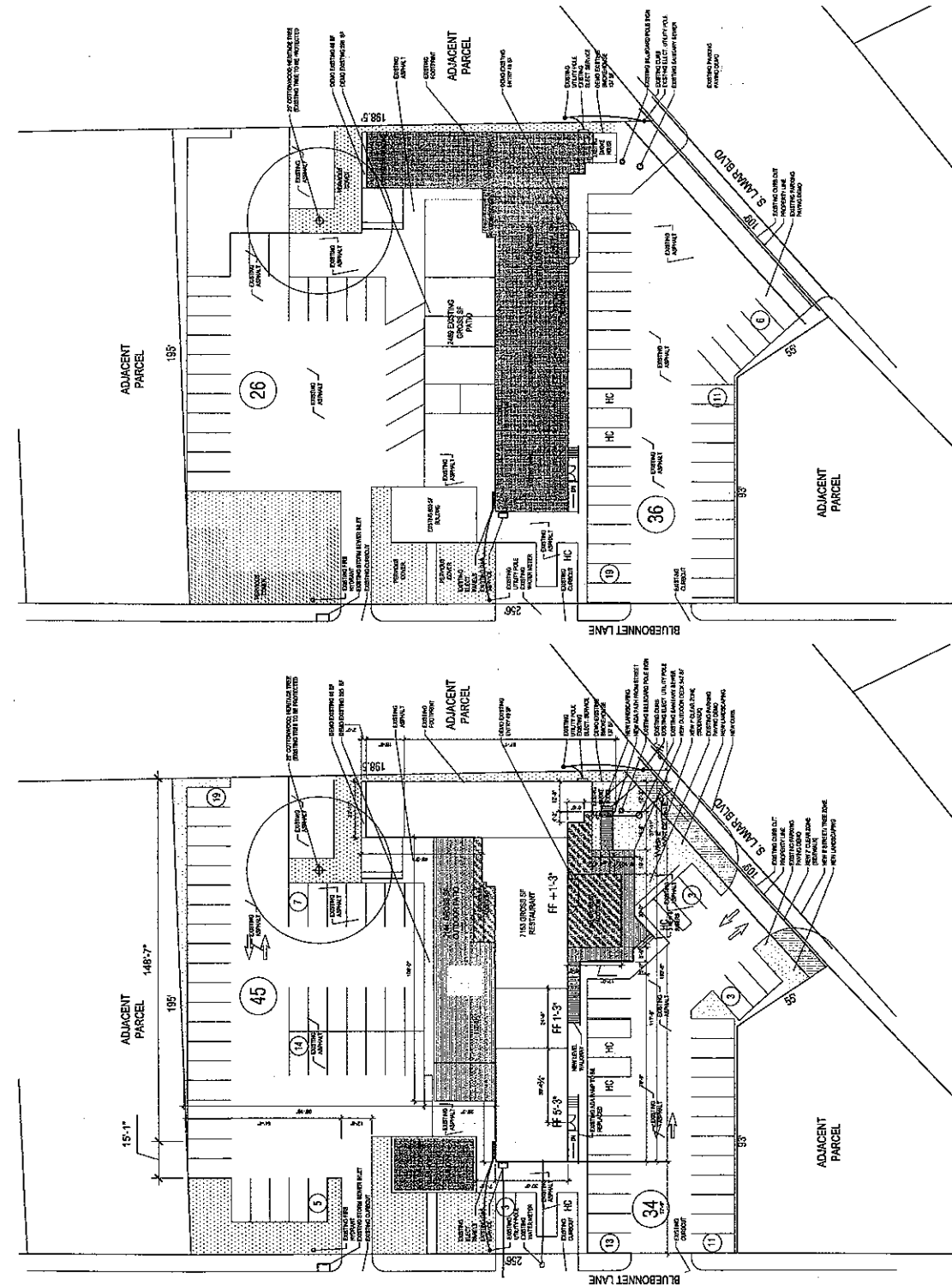
opa
DESIGN STUDIO, INC.

2330 SOUTH LAMAR
AUSTIN, TEXAS

DATE	12/20/2011
CHECKED	NO
DESIGNED	NO
PROJECT	NO
NO.	201107
DATE	12/20/2011

A1
SITE PLAN

PROJECT DESCRIPTION	
A. SITE DESCRIPTION	EXISTING 1.0265 ACRE SITE AT 2230 SOUTH LAMAR
B. SITE AREA	1.0265 ACRES = 44,501 SF
C. EXISTING IMPERVIOUS COVER	39,403 SF (87.3%)
D. ALLOWABLE IMP. COVER (LO)	31,960.7 (70%)
E. PROPOSED IMP. COVER	39,442 SF (86.7%)
OCUP. TYPE:	RESTAURANT (A2)
ZONING	LO
CONST. TYPE:	TYPE V-B
F. EXISTING RESTAURANT	6350 SF
G. GROSS AREA OF EXISTING ACCESSORY BUILDING	800 SF (STORAGE)
H. GROSS EXISTING PATIO	2489 SF
I. GROSS EXISTING PATIO	9919 SF (F+G+H)
J. PATIO ADDITION	0 SF
K. GROSS PATIO	324 SF
L. GROSS PATIO	2144 SF (H+J+K)
M. BUILDING ADDITION	1132 SF
N. GROSS BUILDING DEMO	(232 SF)
O. NET BUILDING	7260 SF (F+M+N)
P. RESTAURANT SF ADDITION	10194 SF (O+L+O)
DEVELOPMENT BUILDINGS/ PATIO	676 SF (P-1)
EXISTING DEVELOPMENT	NO
SPRINKLERED	YES
PROPOSED	YES
ALLOWABLE	9,000 SF PER LEVEL
BUILDING AREA PLUS SPRINKLER UNDER TYPE INCREASE	82 SPACES
V-B:	PREVIOUSLY PROVIDED ON SITE
S. NEW PARKING 7.87 SPACES (U-75)	REQUIRED FOR RESTAURANT ADDITION (676 SF NET)
ADDITION @ 1:75	20% PARKING 6.13 SPACES (S * 60%) REDUCTION
T. STORAGE BUILDING (800 SF @ 1:1000)	8 SPACES (800 SF/1000)
U. PARKING SPACES (R-S+T)	68.93 SPACES REQUIRED
V. PARKING PROVIDED	79 SPACES



1 EXISTING SITE PLAN
12/20/2011

1 NEW SITE PLAN
12/20/2011

ALL SITE INFORMATION FOR INFORMATION PURPOSES AND PERMIT REVIEW BASED UPON ON SITE OBSERVATIONS AND BUILDING INFORMATION PROVIDED BY THE CLIENT. THE CLIENT IS RESPONSIBLE FOR VERIFYING THE ACCURACY OF ALL INFORMATION AND PROVIDING ADDITIONAL SURVEY INFORMATION SHOULD BE PROVIDED SO AS TO VERIFY EXISTING CONDITIONS BEFORE PROCEEDING.

DA-2012-0091