

CASE# C15-2014-0153
ROW# 11236694
TAX# 0103030203

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: 903 Ethel St.

LEGAL DESCRIPTION: Subdivision - _____

Lot(s) _____ Block _____ Outlot _____ Division _____

Ginny A. Catania

I/We David Camacho on behalf of myself/ourselves as authorized agent for

Ginny Catania affirm that on 9/26, 2014,

hereby apply for a hearing before the Board of Adjustment for consideration to:

(check appropriate items below and state what portion of the Land Development Code you are seeking a variance from)

ERECT ___ ATTACH ___ COMPLETE ___ REMODEL ___ MAINTAIN

Install Garage door and frame sidewall to enclose existing
carport open on 2 sides. Requesting variance from FAR to allow
44% FAR (AND less than 80% wall opening on each wall)

in a SF3 NP district.
(zoning district)

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 COA PERMIT APPROVED A CARPORT 2' HIGHER @ 39.9% FAR. THE OWNER INSTALLED GARAGE DOOR FOR PROTECTION. OWNER HAS REASONABLE EXPECTATION TO SECURE PROPERTY VIA GARAGE DOOR.

HARDSHIP:

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

COA UNWISLY APPROVED 39.9% FAR BY ALLOCATING 450 SF FAR EXEMPTION. THE CARPORT EXEMPTION IS 200 SF BECAUSE CARPORT IS USED AS AREA TO MEET MINIMUM PARKING REQ'S.

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

THERE ARE NO OTHER KNOWN PROPERTIES W/ EROSION APPROVALS COMBINED W/ FAR ISSUE TRIGGERED BY GARAGE DOOR INSTALLATION.

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:

EVERY HOUSE ON ETHEL ST. HAS A FRONT LOAD PARKING AREA. MOST ARE ENCLOSED GARAGES.

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:

N/A

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:

N/A

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

N/A

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

N/A

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 105 W RIVERSIDE DR. #225

City, State & Zip AUSTIN 78704

Printed DAVID CANVIALOSI Phone 593 5368 Date 9/26/14

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

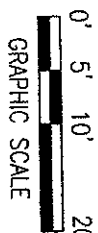
Signed GINNY CATANIA Mail Address 903 E 4th ST.

City, State & Zip Austin 78704

Printed Ginny CATANIA Phone _____ Date 9/26/14

REVIEWED FOR ZONING ONLY

CITY OF AUSTIN
Planning and Development Review Department
APPROVED FOR PERMIT
Greg Guenney
By: *[Signature]*
Date: 05/14/2013
The granting of a permit, fee, or approval of these plans and specifications shall not be construed to be a permit, fee, or an approval of any violation of any of the provisions of the current adopted building code or any other ordinance of the City of Austin.



1 SITE PLAN
SCALE: 3/32" = 1'-0"

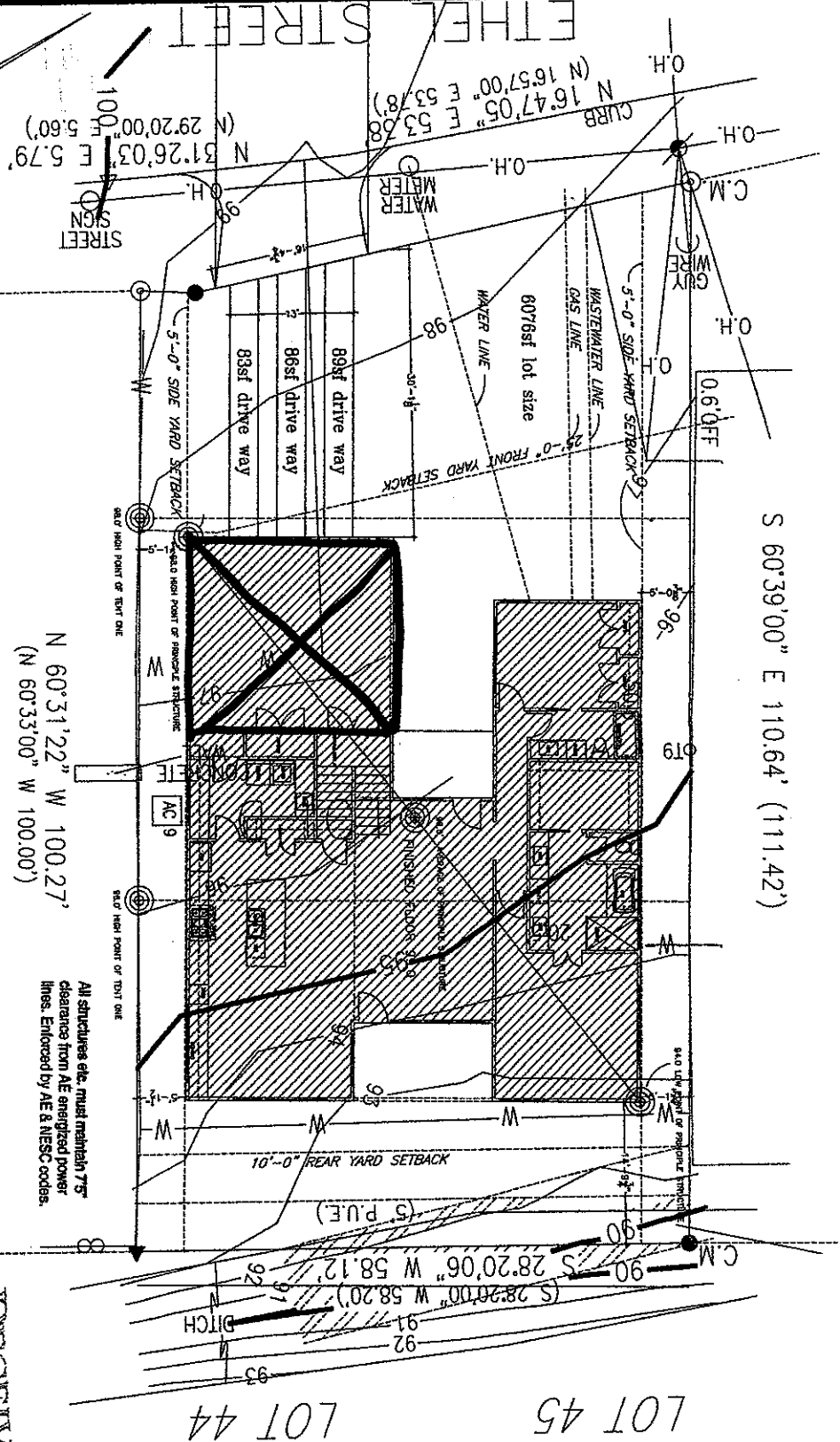
MOAZAM HOMERS CUSTOM
903 ETHEL STREET
AUSTIN, TEXAS

Stephen Zagorski, Architect AIA
P.O. Box 60106 Austin, Texas 78763 (512) 789-3239



AE APPROVED
APR 03 2013
RLS 93-4

RECEIVED
APR 05 2013
WATER & WASTEWATER UTILITY
CONSUMER SERVICES DIVISION



All structures etc. must maintain 7'5" clearance from AE energized power lines. Enforced by AIE & NESC codes.

From the office of
PERMIT PARTNERS, LLC
105 W. Riverside Dr. Suite 225
Austin, Texas 78704
David C. Cancialosi
512.593.5368. d.
512.494.4561 f.
david@permit-partners.com

City of Austin
Board of Adjustments
301 W. 2nd St
Austin, Texas 78704

RE: BOA Request for 44% FAR at 903 Ethel St.

Board of Adjustment Chair and Commissioners:

Please accept this separate communication as part of the applicant's formal BOA application requesting maintenance of 44% FAR in order to retroactively permit a partially converted carport into an enclosed garage.

I. Background and Request

In 2014 the current property owner added an overhead garage door to an existing carport in order to secure private belongings from burglaries not knowing:

- (a) a retractable garage door requires a permit per IRC standards (no structural work was performed)
- (b) in 2013 city staff incorrectly approved the new construction permit for the prior owner / builder to construct the spec house and attached parking area in question, and
- (c) the addition of retractable garage door would trigger a number of complicated FAR issues directly tied to COA staff's erroneous approval of the carport and eventual issuance of certificate of occupancy for the residence.

The current request is to maintain the retractable overhead garage door, enclose the adjacent (north facing) wall, and allow the site a 44% FAR as a result of enclosing a carport that adds zero additional footprint to the site.

In June 2014 the applicant requested that the RDCC allow the maintenance of 44% FAR. That request was denied as the Commission decided the case should be heard before BOA - despite the root issue triggering the FAR noncompliance being based in Subchapter F. At that hearing the applicant was notified by staff that the existing carport openings constructed per the approved permit plans were less than 80% open. This new issue added complexity to the case and, as mentioned, the RDCC deferred their decision to the BOA by denying the request despite both the FAR and 80% wall opening regulation being cited within Subchapter F and not the base SF-3 performance standards. The applicant did not initially seek BOA approval because the code section needing a waiver is within Subchapter F, not 25-2-492(d).

The applicant appealed that decision to City Council in September due to the fact that RDCC is charged with hearing Subchapter F-related waiver requests; however, their basis for denial was that the case was "...in the

wrong venue". The applicant appealed to Council's authority to overturn the denial. Council was sympathetic to the complexity of the case, but also deferred the decision to BOA per motion to deny via vote of 4-3.

II. New Construction Permit Approval and Subchapter F Code Section

In May 2013, the city approved permit application 2013-042477. This application proposed a single-family home with a covered parking area. The covered parking area is accessed via concrete ribbon strips. There is no formal parking area on these strips. The only parking area on site is within the as-built covered parking structure.

In the original 2013 application, the applicant references both a garage and carport at various times. The FAR calculations page describes a *garage* while the scope of work on the application's first page lists a *carport*. The FAR calculation sheet continues to count the parking area as a *garage* and proposes the 450 ft.² FAR credit in keeping with subchapter F 3.3.2 which allows FAR credits for various components of the home.

Although designed and built as a carport (per approved plans), it appears the builder was attempting to capture the 450 ft.² FAR credit associated with section 3.3.2(a) that states (paraphrased):

"A 450 square-foot FAR credit...is allowed...for a parking structure that is open on two sides if...the open sides are clear and unobstructed for at least 80% of the area measured below the top of the wall plate to the finished floor of the carport."

The builder built the parking area with an open face entry; the north facing wall to the left is (supposedly) at least 80% open. The opposite walls are fully enclosed, and the east facing wall is attached to the home providing interior entry into the home. (Please reference packet photos and public hearing presentation.)

However the City allowed the incorrect FAR credit calculation regarding allowable credit for *parking areas* as described in subchapter F. If the parking area is utilized as the *required parking area*, then section 3.3.2(b)(1) applies. Section 3.3.2(b)(1) speaks to the 200 ft.² credit used to meet the minimum parking requirements:

"... the following parking areas and structures are excluded from Gross floor area... B: up to 200 ft.²... an attached parking area if it is used to meet the minimum parking requirement... "

The correct calculation at time of permit approval should have allocated only a 200 ft.² credit towards the overall allowable FAR. This leaves a remaining 250 ft.² that needs to be applied to the overall site FAR. This is the genesis of the 44% FAR issue. When correctly calculated this increases the total FAR from 2429 ft.² to 2679 ft.², or 44% FAR.

III. Carport Wall Openings at Least 80% of Wall Area

The council summary item provided by PDRD also referenced violation of the 80% wall opening requirement for at least two sides of a carport. This may or may not be in your packet from COA staff. It should be noted that this issue was not known by the applicant at the time of application, and was only referenced as an item of neighborhood interest by staff the Friday before the RDCC hearing. Approximately 1 hour before the RDCC hearing, staff provided to the applicant via email a formal calculations worksheet reflecting how the two carport openings originally approved by 2013 COA permit are non-compliant with the 80% rule. This worksheet was the basis for determining that the carport failed to comply with the 80% open wall regulation. The RDCC utilized this worksheet as part of their reason for denial and ultimately suggesting the case should be heard by BOA. The applicant had no reasonable time to review this information nor respond to any neighborhood, staff, or RDCC concerns. It's understood that the neighborhood brought this to the attention of staff.

It is the applicant's opinion that the RDCC erred in it's understanding of the fundamental FAR issue triggered by addition of the overhead garage door. **Approving the FAR waiver obviates the need to seek approval for the regulation pertaining to the 80% carport wall opening (from RDCC or another board).** The RDCC was

fully aware the applicant intends to enclose the additional open wall. Doing so satisfies the 80% issue on that wall. The garage door does so on the adjacent wall because the structure then becomes a garage, and the 80% rule no longer applies.

The FAR waiver corrects everything in a common sense solution - thus the RDCC's motion to deny the FAR waiver and refer the case to BOA was erroneous. Having said that, the applicant appeals to the BOA to approve the 44% FAR variance due to the inherited hardships:

- a. Created by prior owner / builder via incorrect application
- b. Exacerbated by city of Austin's failure to correctly interpret, apply, and enforce applicable regulations during permitting and construction phases
- c. Lack of have available HVAC to remove from existing house to comply with .40 FAR
- d. Inability to provide tandem parking due to impervious cover limitations (current driveway is comprised of ribbons which were approved by 2013 new construction permit)
- e. Overly burdensome task to address 80% wall opening by enlarging existing carport walls – it's unknown what structural implications may arise.

From a reasonable use perspective, the overhead garage door was installed to continue using the covered parking area in a safe manner. The property owner bought the property with the expectation of little crime in the area. As such, she continued utilizing the parking area until two (2) separate burglaries occurred. The parking area stores typical items such as a vehicle, moped, children's toys, and other related items. The owner has a reasonable expectation to safety as well as protection of personal goods. Upon purchase of the property, the property owner could not have speculated that the carport would be burglarized twice in a single year.

In terms of area character and adverse impact, the property owner's only remedy is to enclose the remaining wall and create a garage similar to 5-6 existing homes on Ethel St. that also have garages. Should the Board approve this request to maintain the current footprint there is no change in mass and scale. There is no adverse impact. Given the proposal to enclose the walls (albeit one opening will have a retractable garage door) there should be no substantive discussion regarding the 80% wall opening because the entire point of the application is to enclose the walls.

IV. Neighborhood Outreach

Leading up to the July RDCC meeting, several attempts were made by myself to meet with appropriate Zilker NA representatives. Several emails and phone calls were made, but for reasons unknown to the homeowner or myself these requests to formally meet and discuss the case were not obliged by the NA planning and zoning representative(s). Some phone discussions were had, but the NA representative did not appear to understand the issue.

On July 2, 3-4 members of the Zilker NA attended the RDCC meeting and spoke in opposition to the request. On this particular matter, it is our opinion they do not represent the consensus of the surrounding neighbors or the neighborhood as a whole. Since the RDCC meeting, over 25 surrounding neighbors have written to the owner indicating their support of this appeal, some venting their frustration with ZNA politics, and the city permitting process as whole.

The ZNA proceeded to publish in their newsletter the owner's residence as an example of the issues surrounding illegal conversion of carports into garages by other builders with whom ZNA has had issues. Whether intentional or not, the utilization of the ZNA newsletter to increase neighbor opposition to the FAR request for a widowed mother of sick twins was certainly not in keeping with neighborly ways. And is most certainly an example of them utilizing a resource far greater than the regular citizen has at their disposal. Last, and most disheartening, a ZNA representative distorted the truth to City Council during the

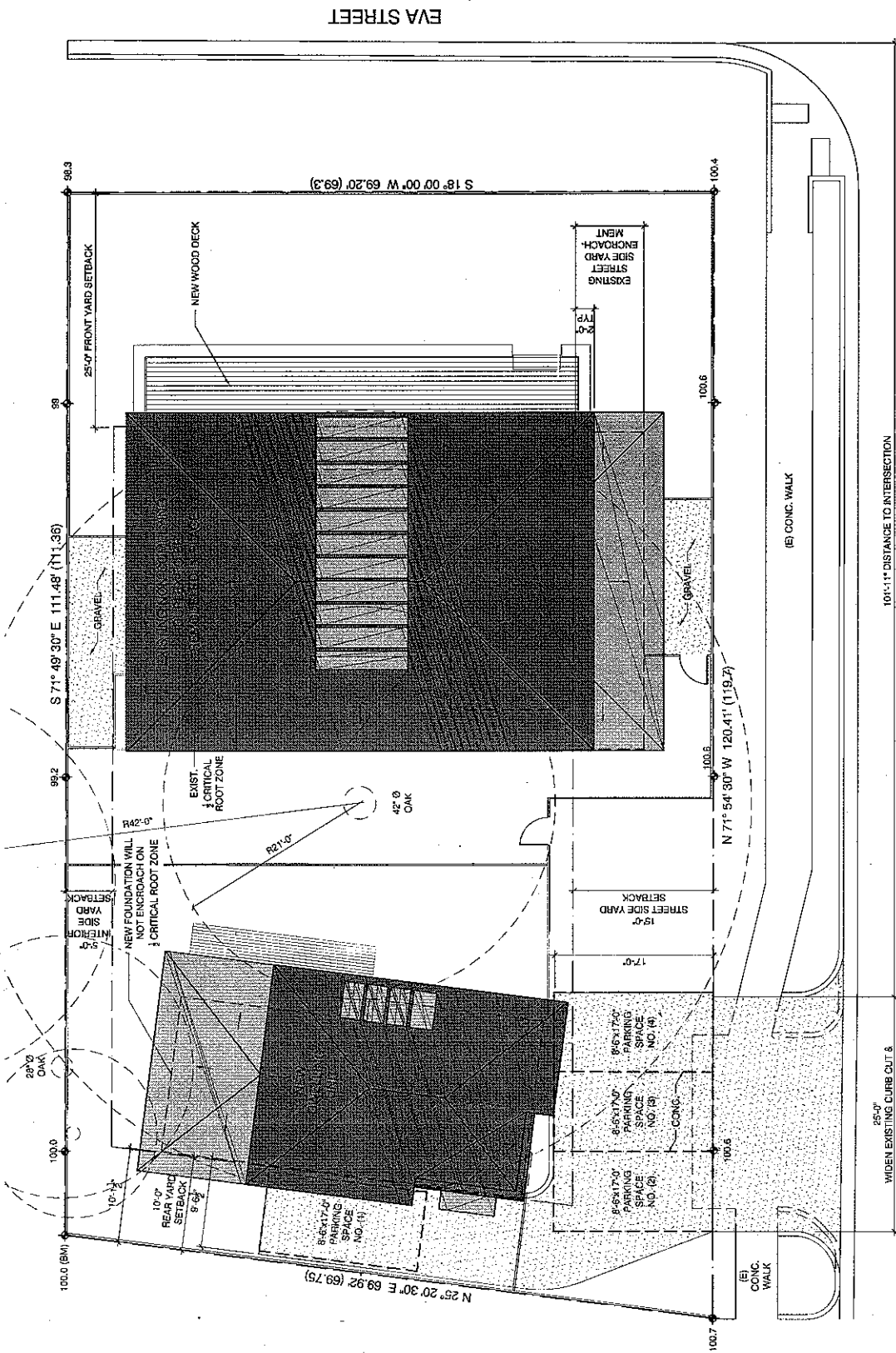
appeal hearing by stating the applicant and owner refused to meet with ZNA. The same individual later corrected his statement to Council via email after Council denied the case. For all we know, the correct information could have swayed council to better understand that the issue is one not created by a disingenuous developer, but one inherited by a lay person who repeatedly attempted to meet with ZNA. Despite the ZNA opposition, the applicant asks that the Board consider the amount of support provided by approximately 25 individual neighbors.

For the aforementioned reasons, the owner respectfully request the Board grant the waiver to allow 44% FAR in order to maintain the existing footprint approved by the city of Austin.

Sincerely,

David C. Cancialosi, Agent for owner

Cc: Ginny Catania



EVA STREET

ELIZABETH STREET

1 SITE PLAN
3/32" = 1'-0"

1414 EVA STREET
LOT 16 & S 23.1 FT. OF LOT 15 BLK 3A SWISHER ADDITION
KIMBER CAVENDISH

101'-11" DISTANCE TO INTERSECTION

25'-0" WIDEN EXISTING CURB OUT & CONCRETE APRON

MERZBAU
DESIGN COLLECTIVE
4001 E. 7TH STREET
AUSTIN, TEXAS 78702
PH. 512.454.8505
jca@merzbaudesign.com