

L2  
1

**CITY OF AUSTIN**  
**Board of Adjustment/Sign Review Board**  
**Decision Sheet**

**DATE:** Monday, October 12, 2015

**CASE NUMBER:** C15-2015-0102

☐ Y ☐ Brooke Bailey  
☐ Y ☐ Michael Benaglio  
☐ Y ☐ William Burkhardt -2<sup>nd</sup> the Motion  
☐ N/A ☐ Eric Goff  
☐ Y ☐ Vincent Harding  
☐ Y ☐ Melissa Hawthorne - Motion to PP to 11/9/15  
☐ Y ☐ Don Leighton-Burwell  
☐ Y ☐ Melissa Neslund  
☐ Y ☐ James Valadez  
☐ OUT ☐ Michael Von Ohlen

**APPLICANT:** David Cancialosi

**OWNER:** Mark Kudela

**ADDRESS:** 1403 45TH ST Unit LOT10

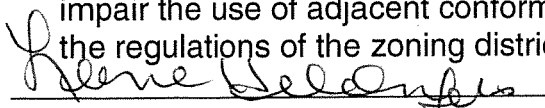
**VARIANCE REQUESTED:** The applicant has requested variance(s) from Section 25-2-492 (D) (Site Development Regulations) to:

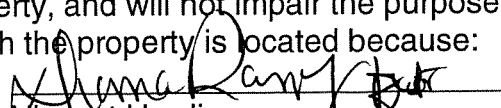
- A. decrease the front setback from 25 feet (required) to 21 feet (requested);  
and to  
B. decrease the minimum lot size from 5,750 (required) to 2,117 (requested);  
and to  
C. decrease the lot width from 50 feet (required) to 35 feet (requested)  
in order to construct a single family home in an "SF-3", Family Residence zoning district.

**BOARD'S DECISION:** POSTPONED TO September 14, 2015 AT THE APPLICANT'S REQUEST; SEPT 14, 2015 POSTPONED TO October 12, 2015 AT THE APPLICANT'S REQUEST; OCT 12, 2015 POSTPONED TO 11/9/15 BY STAFF TO RESOLVE PENDING AUSTIN ENERGY ISSUES

**FINDING:**

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:  
(b) The hardship is not general to the area in which the property is located because:
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:

  
Leane Heldenfels  
Executive Liaison

  
Vincent Harding  
Chairman

12  
2

**CITY OF AUSTIN**  
**Board of Adjustment/Sign Review Board**  
**Decision Sheet**

**DATE:** Monday, September 14, 2015

**CASE NUMBER:** C15-2015-0102

\_\_\_\_ Brooke Bailey  
\_\_\_\_ Michael Benaglio  
\_\_\_\_ William Burkhardt  
\_\_\_\_ n/a Eric Goff  
\_\_\_\_ Vincent Harding (Chair)  
\_\_\_\_ Melissa Hawthorne (Vice-Chair)  
\_\_\_\_ Don Leighton-Burwell  
\_\_\_\_ out Melissa Neslund  
\_\_\_\_ James Valadez  
\_\_\_\_ Michael Von Ohlen

**APPLICANT:** David Cancialosi

**OWNER:** Mark Kudela

**ADDRESS:** 1403 45TH ST Unit LOT10

**VARIANCE REQUESTED:** The applicant has requested variance(s) from Section 25-2-492 (D) (Site Development Regulations) to:

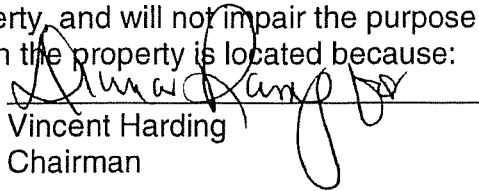
- A. decrease the front setback from 25 feet (required) to 21 feet (requested); and to
  - B. decrease the minimum lot size from 5,750 (required) to 2,117 (requested); and to
  - C. decrease the lot width from 50 feet (required) to 35 feet (requested)
- in order to construct a single family home in an "SF-3", Family Residence zoning district.

**BOARD'S DECISION:** POSTPONED TO September 14, 2015 AT THE APPLICANT'S REQUEST; SEPT 14, 2015 POSTPONED TO October 12, 2015 AT THE APPLICANT'S REQUEST

**FINDING:**

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:  
(b) The hardship is not general to the area in which the property is located because:
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:

  
Leane Heldenfels  
Executive Liaison

  
Vincent Harding  
Chairman

12  
3

**CITY OF AUSTIN**  
**Board of Adjustment/Sign Review Board**  
**Decision Sheet**

**DATE:** Monday, July 13, 2015

**CASE NUMBER:** C15-2015-0102

\_\_\_\_\_ Angela Atwood  
\_\_\_\_\_ Michael Benaglio  
\_\_\_\_\_ William Burkhardt  
\_\_\_\_\_ Vincent Harding  
\_\_\_\_\_ Melissa Hawthorne  
\_\_\_\_\_ Don Leighton-Burwell  
\_\_\_\_\_ Melissa Neslund  
\_\_\_\_\_ James Valadez  
\_\_\_\_\_ Michael Von Ohlen

**APPLICANT:** David Cancialosi

**OWNER:** Mark Kudela

**ADDRESS:** 1403 45TH ST Unit LOT10

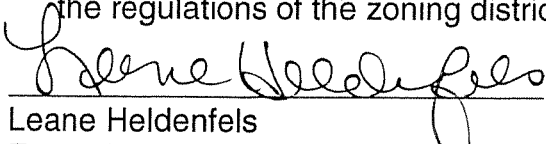
**VARIANCE REQUESTED:** The applicant has requested variance(s) from Section 25-2-492 (D) (Site Development Regulations) to:

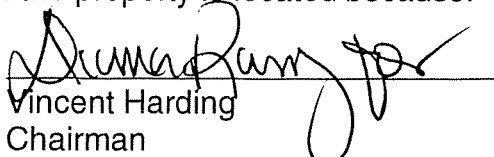
- A. decrease the front setback from 25 feet (required) to 21 feet (requested); and to
  - B. decrease the minimum lot size from 5,750 (required) to 2,117 (requested); and to
  - C. decrease the lot width from 50 feet (required) to 35 feet (requested)
- in order to construct a single family home in an "SF-3", Family Residence zoning district.

**BOARD'S DECISION:** POSTPONED TO September 14, 2015 AT THE APPLICANT'S REQUEST

**FINDING:**




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2. (a) The hardship for which the variance is requested is unique to the property in that:  
    (b) The hardship is not general to the area in which the property is located because:
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:

  
Leane Heldenfels  
Executive Liaison

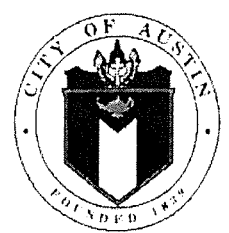
  
Vincent Harding  
Chairman

27/5



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

CASE#: C15-2015-0102  
Address: 1403 W 45TH ST



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 CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

1" = 200'

Revised

CASE# C15-2015-0102  
ROW# \_\_\_\_\_  
TAX# \_\_\_\_\_

12/5

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: 1403 W. 45<sup>th</sup> St

LEGAL DESCRIPTION: Subdivision – E. 35 st lot 10 Blk B

I/We David Cancialosi on behalf of myself/ourselves as authorized agent for Mark Kudela affirm that on May 18, 2015, 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)

X \_\_\_\_\_ ERECT \_\_\_\_\_ ATTACH \_\_\_\_\_ COMPLETE \_\_\_\_\_ REMODEL \_\_\_\_\_  
MAINTAIN

Erect single family residence and parking area in SF3 zoned lot.

1) Setbacks

Allow 21' front setback

2) Lot Size

Allow 2117 SF lot

3) Lot Frontage

Allow 35' lot frontage

in a SF3 district.

**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 owner is attempting to develop the site by erecting a single-family residence, but cannot do so due to the lot size and relative SF-3 performance standards. Literal application of the SF3 standards do not allow a reasonable use of the property despite the City of Austin assigning residential zoning to the site as far back as 1948 when it extended utility service to the site.

The city further recognized the site's legal status by approving a land status determination in 2010 (C8I-2010-0304). The owner has sought BOA approval in 2011 for similar requests and was denied. The owner recently sought a 245 Vested Rights determination and was denied.

The owner purchased the property in full reliance that the site could be developed. Failure to grant relief to a substandard lot that the City knowingly zoned and subsequently recognized as a legal tract prohibits any reasonable use on a property that is actively taxed by Travis County.

#### HARDSHIP:

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

The 2,117 SF lot is small by any standard. The property cannot allow construction of a reasonably sized single family residence without some degree of flexibility approved by the Board of Adjustments. The owner is asking the Board to recognize that the application of SF-3 zoning setbacks, lot width, and lot size requirements induce a significant hardship on this site.

The owner is proposing a simple 2 story residential structure on the site that will be in keeping with surrounding residential uses; however, a 21' front setback encroachment are also requested to facilitate a reasonable project. This will allow a reasonable side and rear yard area.

Further, the tract's 2,117 SF size cannot be amended via resubdivision at this point. There is no adjacent land to acquire.

The city's recognition of this site as a legal tract in 2010 and the city's prior application of A or AA zoning then SF-3 zoning further suggests a true hardships exists in that a property has a reasonable expectation to rely on entitlements applied by the Municipality.

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

There are no other know vacant lots with this issue in the immediate area

12/6

**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 project is a small residential project that proposes the least amount of impact on the site or adjacent properties

The proposed front and side setback encroachments are in keeping with existing legal non-complying structures found throughout the neighborhood as well as new homes that have been allowed to utilize setback averaging for front yard setback only.

Thus, there is no expected impairment of adjacent uses nor the purpose of the zoning regulations.

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<b>NOTE:</b> 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 David Cancialosi Mail Address 105 w. Riverside #225

City, State & Zip Austin Texas 78704

Printed David Cancialosi Phone 512-799-2401 May 18, 2015

**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 Mark Kudela

Printed Mark Kudela

L2  
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218

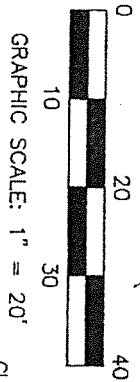
**BEARING BASIS:**  
THE SUBJECT PLAT FOR THIS SUBDIVISION DOES NOT REFERENCE ANY BEARINGS. BEARINGS FOR THIS SURVEY ARE BASED ON HOLDING THE WEST LINE OF THE ADJOINING PLAT (MURRAY SUBDIVISION - N30°10'00"E) AND USING THE RECORD INTERIOR ANGLE (89°15') AS SHOWN ON THE SUBJECT PLAT TO ESTABLISH A BEARING OF N59°05'00"W ALONG THE SOUTH LOT LINE OF LOT 9.

BLOCK 8 OF ROSEDALE "B"  
VOL. 3, PG. 191, P.R.T.C.T.

**ROSEDALE AVENUE  
(50' R.O.W. WIDTH)**

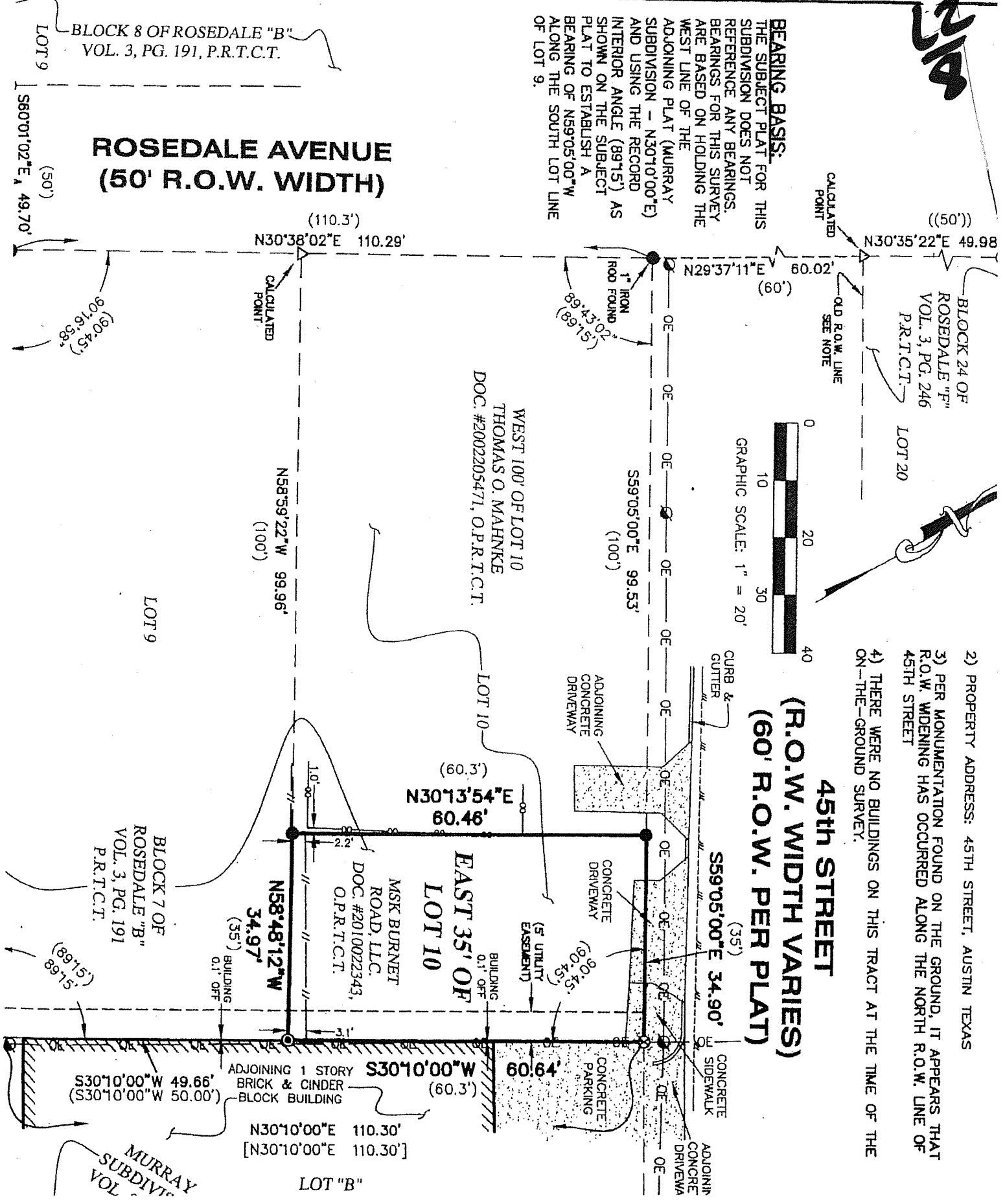
BLOCK 24 OF  
ROSEDALE "F"  
VOL. 3, PG. 246  
P.R.T.C.T.

LOT 20



- 2) PROPERTY ADDRESS: 45TH STREET, AUSTIN TEXAS
- 3) PER MONUMENTATION FOUND ON THE GROUND, IT APPEARS THAT R.O.W. WIDENING HAS OCCURRED ALONG THE NORTH R.O.W. LINE OF 45TH STREET
- 4) THERE WERE NO BUILDINGS ON THIS TRACT AT THE TIME OF THE ON-THE-GROUND SURVEY.

**45th STREET  
(R.O.W. WIDTH VARIES)  
(60' R.O.W. PER PLAT)**







**City of Austin**  
**Planning and Development Review**  
**Land Status Determination**  
**1995 Rule Platting Exception**

**December 01, 2010**

File Number: **C8I-2010-0304**

Address: **1403 W 45TH ST Unit LOT10**

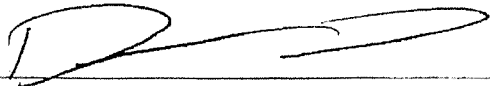
Tax Parcel I.D. # **0223021413 (portion)** Tax Map Date: **08/19/2009**

The Watershed Protections & Development Review has determined that this parcel, as described in the attached description and map, **IS EXCEPTED FROM THE REQUIREMENT TO PLAT** in accordance with the Land Development Code, Section 25-4-2(C), and is eligible to receive utility service.

The parcel of land consists of five acres or less, and is described as being **the east thirty-five feet (E35')** of Lot 10, Block 7, Rosedale B, called Tract 2 in the current deed, recorded on Feb 17, 2010, in Document #2010022343, Travis County Deed Records. This parcel existed in its current configuration on January 1, 1995, as evidenced by a deed recorded on Sep 29, 1972, in Volume 4418, Page 1107, Travis County Deed Records. The parcel was lawfully receiving utility service, as defined in Section 212.012 of the Texas Local Government Code, on January 1, 1995, as evidenced by water service on Aug 02, 1948. The parcel meets the requirements of the Land Development Code for roadway frontage and is located on an existing street.

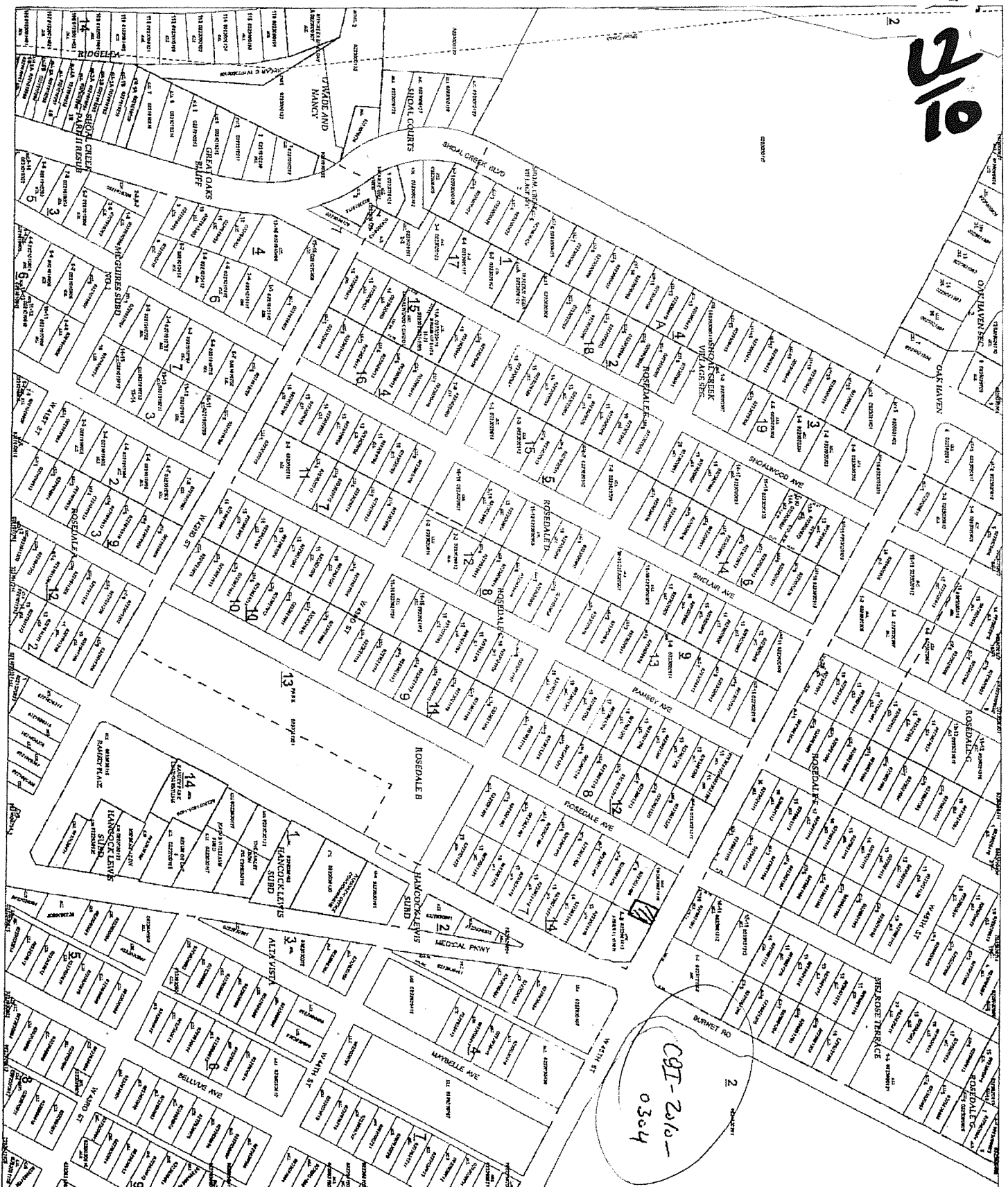
Additional Notes/Conditions:  
NONE

This determination of the status of the property is based on the application of Chapter 212, Municipal Regulation of Subdivisions and Property Development, Texas Local Government Code; and the City of Austin Land Development Code, Chapter 25-4, Subdivision. Recognition hereby does not imply approval of any other portion of the City Code or any other regulation.

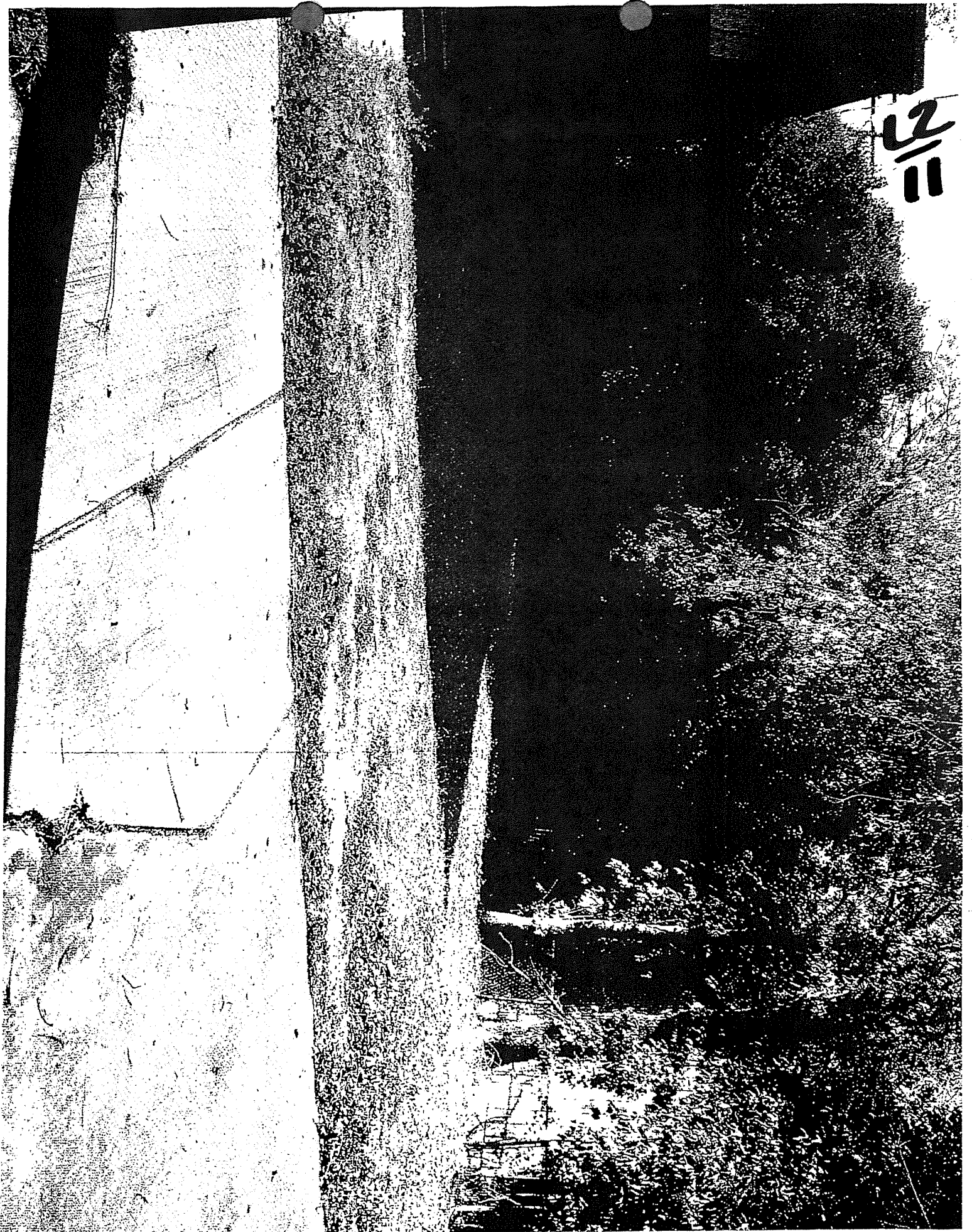
By:   
**Daniel Word**, Representative of the Director  
**Planning and Development Review**

12  
9

2/10



<p><b>22302</b></p>	<p>Revision Date 8/19/2009</p> <p>0 120 Feet</p>	<p>NAD_1983_StatePlane Texas_Central_FIPS_4203_Feet Projection: Lambert_Conformal_Conic</p> <p>Scale 1" = 100 feet map 1" = 100 feet map 1" = 100 feet map</p>	<p>The tax map was compiled solely for the use of TCAD. Areas depicted by these digital products are approximate, and are not necessarily accurate to mapping, surveying or engineering standards. Conclusions drawn from this information are the responsibility of the user. The TCAD makes no claims, promises or guarantees about the accuracy, completeness or adequacy of this information and expressly disclaims liability for any errors and omissions. The mapped data does not constitute a legal document.</p>	<p><b>Travis Central Appraisal District</b> 8314 Cross Park Drive Austin, Texas 78754</p> <p>P.O. Box 149012 Austin, Texas 78714</p> <p>Internet Address: <a href="http://www.travisad.org">www.travisad.org</a> Main Telephone Number: (512) 434-8317 Appraisal Information: (512) 434-8318 TDD: (512) 436-3326</p>
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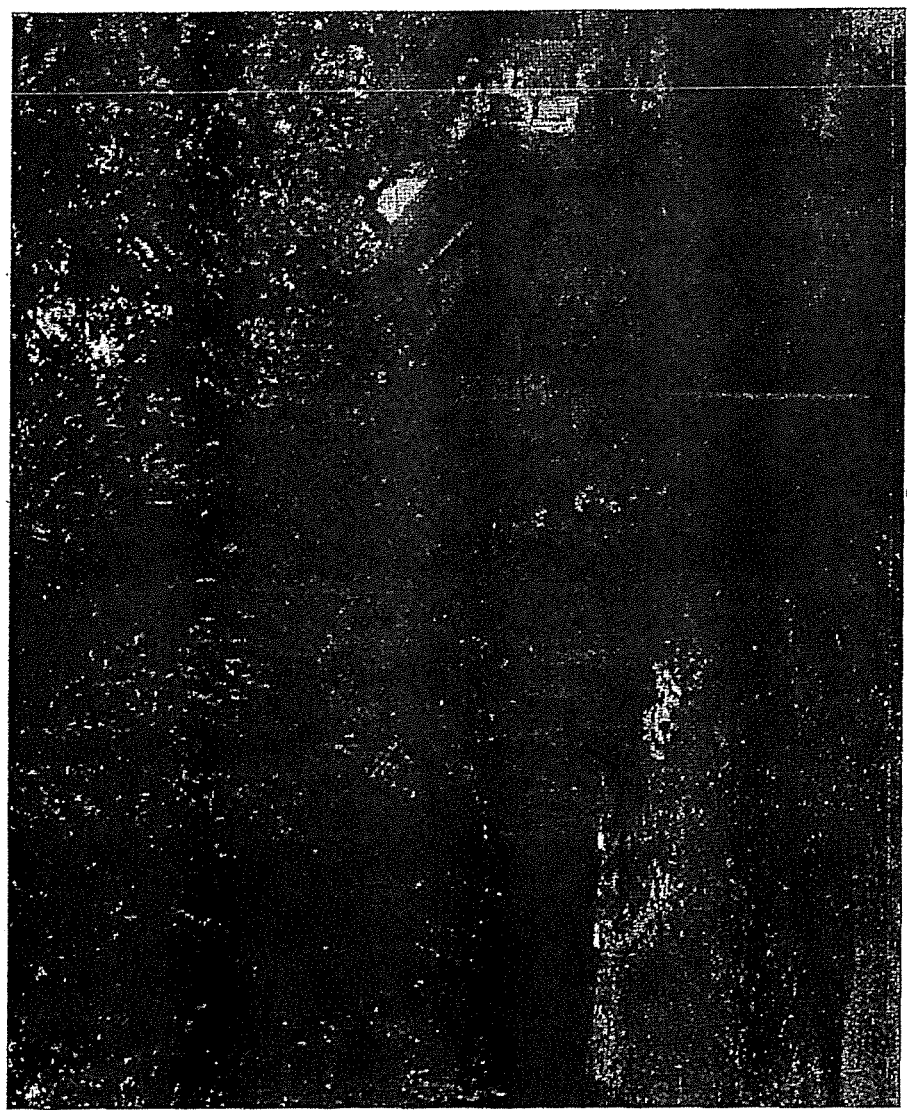


Google maps

Address 1416 West 45th Street

Address is approximate

**Save trees. Go green!**  
Download Google Maps on your  
phone at [google.com/gmm](http://google.com/gmm)



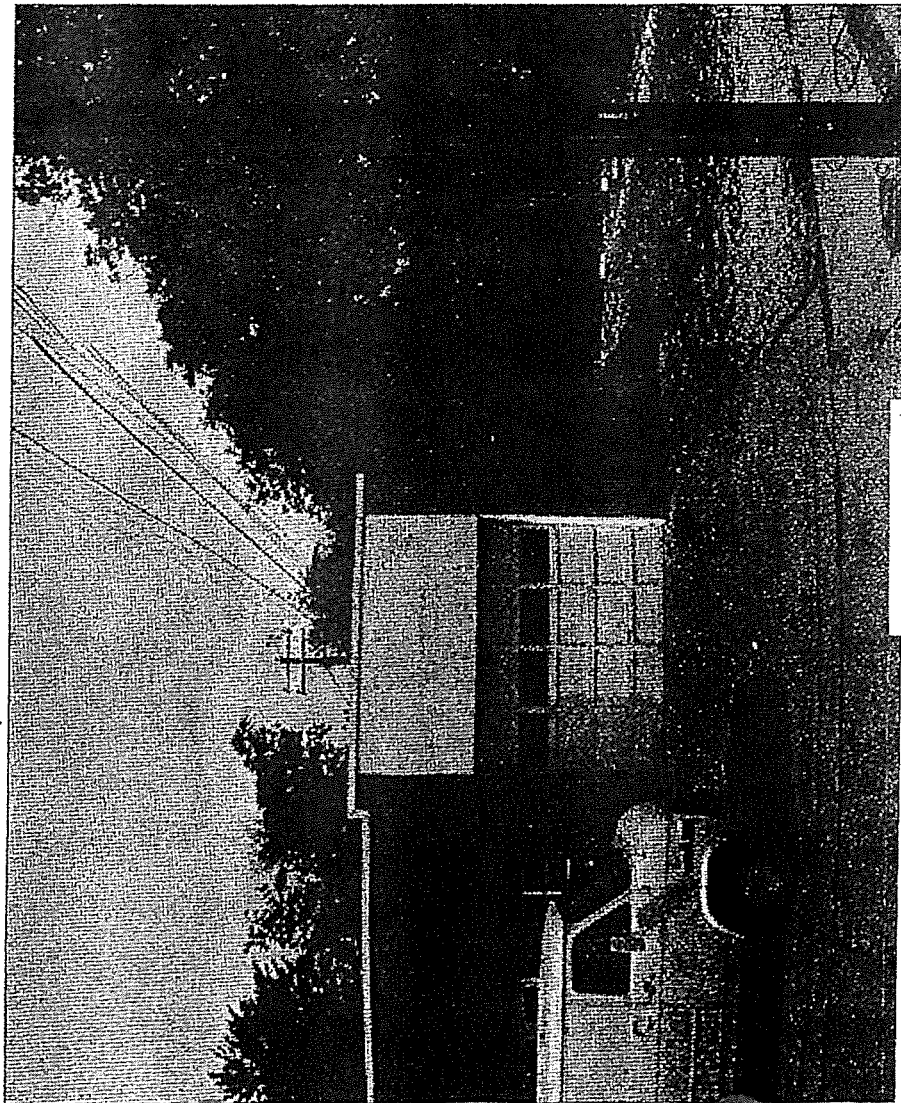
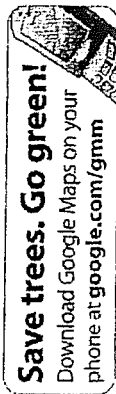
**LOT AND HOUSE TO EAST**

**12/12**

Google maps

Address 1416 West 45th Street

Address is approximate



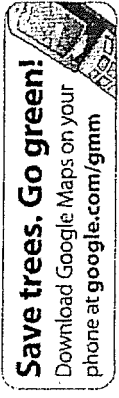
LOT TO WEST

12/13

Google maps

Address 1416 West 45th Street

Address is approximate



LOT: 1405 W. 45th St

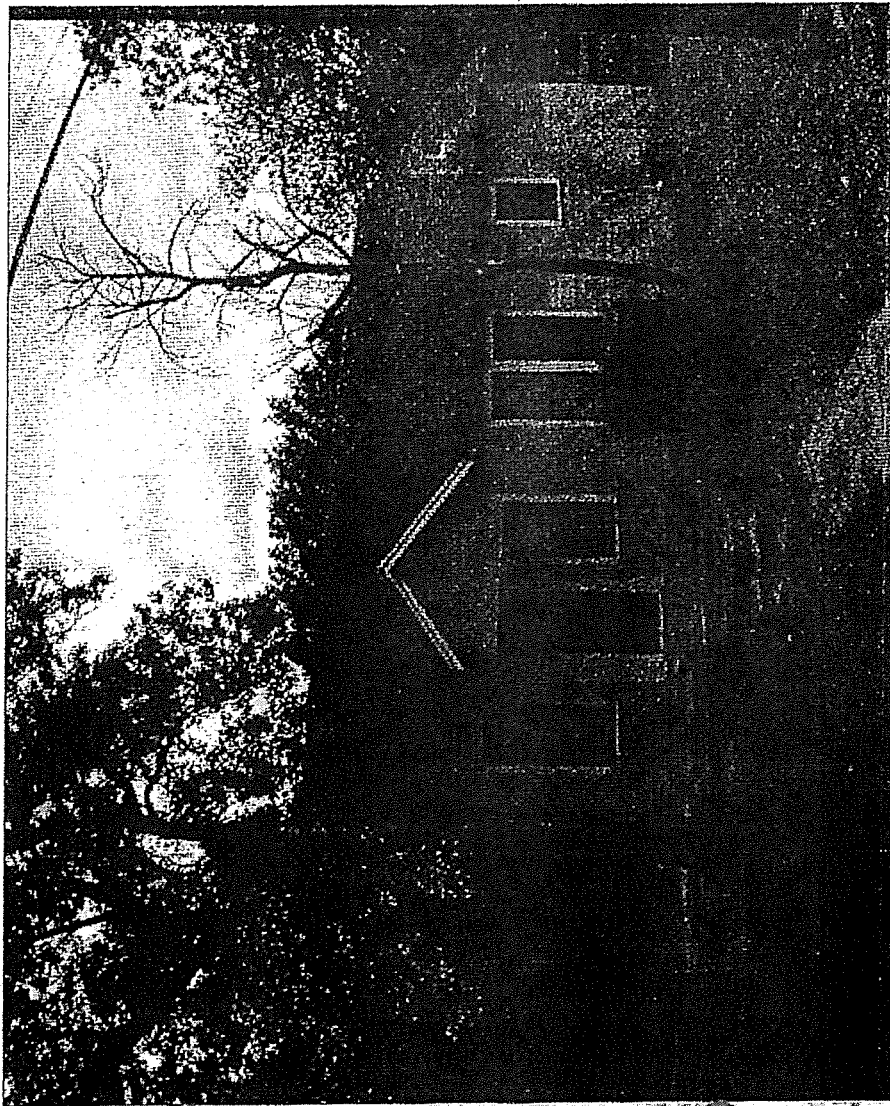
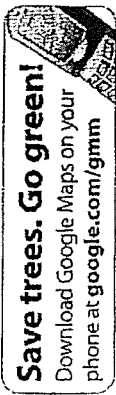
E/2



Google maps

Address 1416 West 45th Street

Address is approximate



HOUSE TO THE EAST  
OF LOT.

12  
15



12  
16



12  
17

**CITY OF AUSTIN**  
**Board of Adjustment/Sign Review Board**  
**Decision Sheet**

**DATE:** Monday, MARCH 9, 2011

**CASE NUMBER:** C15-2011-0002

☐ Y ☐ Jeff Jack  
☐ Michael Von Ohlen **ABSENT**  
☐ Y ☐ Nora Salinas  
☐ Y ☐ Bryan King **Motion to PP April 11, 2011**  
☐ Y ☐ Leane Heldenfels, Chairman  
☐ Y ☐ Clarke Hammond, Vice Chairman 2<sup>nd</sup>  
☐ N ☐ Heidi Goebel  
☐ Y ☐ Melissa Hawthorne

**APPLICANT:** Shaw Hamilton

**OWNER:** Mark Kudela

**ADDRESS:** 1403 45TH ST

**VARIANCE REQUESTED:** The applicant has requested a variance to decrease the minimum lot size requirement of Section 25-2-492 (D) from 5,750 square feet to 2,110 square feet in order to erect a single-family residence in an "SF-3", Family Residence zoning district.

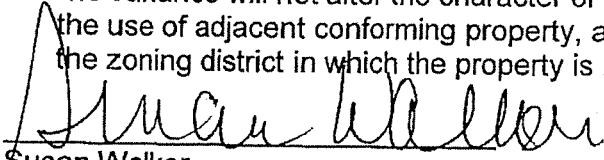
The applicant has requested a variance to decrease the minimum lot width requirement of Section 25-2-492 (D) from 50 feet to 34.97 feet in order to erect a single-family residence in an "SF-3", Family Residence zoning district.

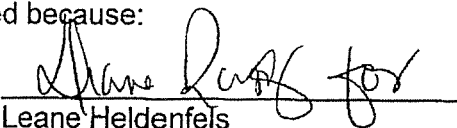
The applicant has requested a variance to decrease the minimum front street setback requirement of Section 25-2-492 (D) from 25 feet to 21 feet in order to erect a single-family residence in an "SF-3", Family Residence zoning district.

**BOARD'S DECISION:** Postponed to April 11, 2011 to meet with neighbors; Vote 6-1, POSTPONE TO APRIL 11, 2011

**FINDING:**

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:  
(b) The hardship is not general to the area in which the property is located because:
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:

  
Susan Walker  
Executive Liaison

  
Leane Heldenfels  
Chairman

# 2/8 PUBLIC HEARING INFORMATION

Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During a public hearing, the board or commission may postpone or continue an application's hearing to a later date, or recommend approval or denial of the application. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

A board or commission's decision may be appealed by a person with standing to appeal, or an interested party that is identified as a person who can appeal the decision. The body holding a public hearing on an appeal will determine whether a person has standing to appeal the decision.

An interested party is defined as a person who is the applicant or record owner of the subject property, or who communicates an interest to a board or commission by:

- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
- appearing and speaking for the record at the public hearing;

and:

- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

A notice of appeal must be filed with the director of the responsible department no later than 10 days after the decision. An appeal form may be available from the responsible department.

For additional information on the City of Austin's land development process, visit our web site: [www.ci.austin.tx.us/development](http://www.ci.austin.tx.us/development).

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice.

Case Number: C15-2011-0002 - 1403 West 45 Street  
Contact: Susan Walker, 512-974-2202  
Public Hearing: Board of Adjustment, March 9th, 2011

Melanie McHenry  
Your Name (please print)

4400 Burnett

☐ I am in favor  
☒ I object

Your address(es) affected by this application

*[Signature]*

Signature

28 Feb. 2011

Date

Daytime Telephone: 797-3647

Comments:

That lot is tiny! A cute little cottage might work there.

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor  
Susan Walker  
P. O. Box 1088  
Austin, TX 78767-1088

## PUBLIC HEARING INFORMATION

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- appearing and speaking for the record at the public hearing; and:
- occupies a primary residence that is within 500 feet of the subject property or proposed development;
- is the record owner of property within 500 feet of the subject property or proposed development; or
- is an officer of an environmental or neighborhood organization that has an interest in or whose declared boundaries are within 500 feet of the subject property or proposed development.

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Case Number: C15-2011-0002 - 1403 West 45 Street  
Contact: Susan Walker, 512-974-2202  
Public Hearing: Board of Adjustment, March 9th, 2011

**MORRIS HOWEVER**

Your Name (please print)

1407 W. 46th 78756

Your address(es) affected by this application

*[Signature]*

02 MAR. 11

Signature

Date

Daytime Telephone: 512.467.2626

Comments: **(A) WOULD RATHER SEE RESIDENCE**

**THAN EMPTY LOT**

**(B) FURTHERS CITY GOAL OF URBAN DENSITY**

**(C) ADJOINING LOT AT CORNER OF 45TH &**

**ROSEDALE SEEMS TO HAVE HIGH F.A.R., W/**

**NO LL EFFECT. THIS PROPOSED PROJECT**

**WOULD NOT NEGATIVELY AFFECT EXISTING RESI**

**THAT ADJOIN WEST SOUTHW SIDE.**

**THANKS SUSAN!**

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor  
Susan Walker  
P. O. Box 1088  
Austin, TX 78767-1088

**MY WIFE & I ARE  
32 YR. ROSEDALE  
RESIDENTS, BTW.**

**(3902 TONKAWA TR.)**

2/3

PUBLIC HEARING INFORMATION

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- and:
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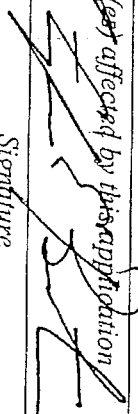
Case Number: C15-2011-0002 - 1403 West 45 Street  
Contact: Susan Walker, 512-974-2202  
Public Hearing: Board of Adjustment, February 14th, 2011

CHRISTOPHER E. BURTON

Your Name (please print)

4417 ROSEDALE AVENUE

Your address(es) affected by this application

 2-5-11

Signature

Date

Daytime Telephone: 512 - 586 - 4704

Comments: THIS LOT(S) IS DEFICIENT

OF 3,633 SQUARE FEET TO SUPPORT THIS

PROPOSED DEVELOPMENT. CURRENT CODE

WAS OKAYED TO PERMIT SUCH DEVELOPMENT.

~~THE~~ THE EXISTING "OFFICE

STRUCTURE" BOLDS MY PROPERTY WHICH

NEARLY IMPACTS MY PROPERTY VALUE. ADDITION

ALLY DEVELOPMENT IS NOT NEEDED AS THERE

IS ENOUGH AVAILABLE SPACE IN ROSEDALE.

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Susan Walker  
P. O. Box 1088  
Austin, TX 78767-8810

# 2/12

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Case Number: C15-2011-0002 - 1403 West 45 Street

Contact: Susan Walker, 512-974-2202

Public Hearing: Board of Adjustment, February 14th, 2011

MARK BRADLEY WILSON

Your Name (please print)

☐ I am in favor  
☒ I object

4402 ROSEDALE AVE, AUSTIN, TX 78756

Your address(es) affected by this application

 2/10/2010

Signature

Date

Daytime Telephone: 536-3035

Comments:

This is a tiny sliver of land that is completely inappropriate for a single family residence. In addition to variances for lot size and setbacks, building anything of these size on it would make a mockery of the subdivision standards.

If you use this form to comment, it may be returned to:

City of Austin-Planning & Development Review Department/ 1st Floor

Susan Walker

P. O. Box 1088

Austin, TX 78767-8310

Walker, Susan

12  
22

From: [redacted] on behalf of Chris Allen [redacted]

Sent: Friday, February 11, 2011 8:06 AM

To: Walker, Susan; shaw hamilton

Subject: c15-2011-0002 1403 W. 45th St.

Susan (with cc: to Shaw Hamilton):

Given the unusually short notice to the NA and the adjacent neighbors for this case, it would seem appropriate for staff to initiate a postponement of the hearing. Notices were received on Tuesday and Wednesday for a hearing set for next Monday, which does not allow us reasonable time to properly study the situation.

Let me know ASAP if there is any issue with postponement, as we would need to get word out to quite a few people.

Shaw- this could have been avoided by giving the NA a heads up when you started the process. We could have discussed this with you and the adjacent neighbors weeks ago and the hearing could have proceeded as planned, regardless of notice from the City.

Thank you!

Chris Allen  
Chair, RNA zoning comm.

Chris Allen  
architect  
some assembly required  
[www.somearchitect.com](http://www.somearchitect.com)  
(12) 467-2888  
[chris@somearchitect.com](mailto:chris@somearchitect.com)

See Revised

CASE # 015-2011-0002  
ROU-10535830  
TP-0223021410

12/23

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.**

1403  
STREET ADDRESS: 1405 West 45<sup>th</sup> st

LEGAL DESCRIPTION: Subdivision – Rosedale B

Lot(s) east 35 ft. of lot 10 Block B Outlot \_\_\_\_\_ Division \_\_\_\_\_

I/We Shaw Hamilton on behalf of myself/ourselves as authorized agent for

Mark Kudela affirm that on Dec. 14, 2010, hereby apply for a hearing before the Board of

Adjustment for consideration to:

ERECT – ATTACH – COMPLETE – REMODEL – MAINTAIN

Erect a new single family home:

Variance requested : \_\_\_\_\_ Lot size 2117 sq. ft. Lot frontage 34.97 ft.

~~Rear setback 9' 11 1/2"~~ FRONT SETBACK 21'

in a SF-3 district.

(zoning district)

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 Lot was established in 1948 prior to regulations and needs relief from strict enforcement of the regulations in order to make this lot developable.

**HARDSHIP:**

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

[REDACTED] The property to the east is commercial, [REDACTED] the entire property would be a compatibility setback. [REDACTED] The property to the west is single family and have no desire to buy.

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

This is the only small lot left in this area that is not developed. The remainder of lots in this area meet the minimum lot size and are fully developed. This is an older area of town that was developed in 1930's and 1940's

**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 area is a combination of single family and commercial uses. Both roadways adjacent to this lot are well traveled (45<sup>th</sup> St and Burnet Rd.) The driveway is already existing on 45<sup>th</sup> St. for this lot and would not impact adjacent properties.

**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:

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:

12  
24



L2  
25

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 6301 Mercedes Bend

City, State & Zip Austin, Texas 78759

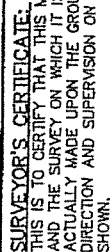
Printed Mark Kudela Phone (512) 554-3150 Date 11/3/2010

**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 6301 Mercedes Bend

City, State & Zip Austin, Texas 78759

Printed Mark Kudela Phone (512) 554-3150 Date 11/3/2010



12/15/2010 DATE

RAYMOND, R.F., JR.  
TEXAS REGISTRATION NO. 5811

**GENERAL NOTES:**

- 1) THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF A TITLE COMMITMENT AND WOULD BE SUBJECT TO ANY AND ALL EASEMENTS, CONDITIONS OR RESTRICTIONS THAT A CURRENT TITLE COMMITMENT MAY DISCLOSE.
- 2) PROPERTY ADDRESS: 43TH STREET, AUSTIN TEXAS
- 3) PER MONUMENTATION FOUND ON THE GROUND, IT APPEARS THAT R.O.W. WIDENING HAS OCCURRED ALONG THE NORTH R.O.W. LINE OF 45TH STREET
- 4) THERE WERE NO BUILDINGS ON THIS TRACT AT THE TIME OF THE SURVEY.

BLOCK 24 OF  
ROSEDALE "F"  
VOL. 3, PG. 246

103

✓	2	OLD R.O.W. LINE	SEE NOTE
---	---	-----------------	----------

**BEARING BASIS:** THE SUBJECT PLAT FOR THIS SUBDIVISION DOES NOT REFERENCE ANY BEARINGS. THE BEARINGS FOR THIS SURVEY ARE BASED ON HOLDING THE WEST LINE OF THE ADDJOINING PLAT (MURRAY SUBDIVISION - N30°10'00"E) AND USING THE RECORD INTERIOR ANGLE (89°13') AS SHOWN ON THE SUBJECT PLAT TO ESTABLISH A BEARING OF N59°05'00"W ALONG THE SOUTH LOT LINE OF LOT 9.

WEST 100' OF LOT 10  
THOMAS O. MAHNKE  
DOC. #2002205471, O.P.R.T.C.T.

EAST 35' OF  
LOT 10  
MSK BURNET  
ROAD, LLC.  
DOC. #2010022343,  
O.P.R.T.C.T.

ROSEDALE AVENUE  
(50' R.O.W. WIDTH)

61079

BLOCK 7 OF  
ROSEDALE "B"  
VOL. 3, PG. 191  
P R T C T

BEARING BASIS—SEE NOTE  
(N59°05'00"W 135')  
N59°05'00"W 135.33'

LOT 13

**SURVEY OF THE  
EAST 35' OF  
LOT 10, BLOCK 7  
ROSEDALE "B"  
City of Austin,  
Travis County, Texas**

**4WARD**  
Land Surveying

A Limited Liability Company  
PO Box 90875, Austin Texas 78709  
www.4Wardls.com (512) 554-3371

1999

$$\frac{12}{26}$$

27  
27  
27

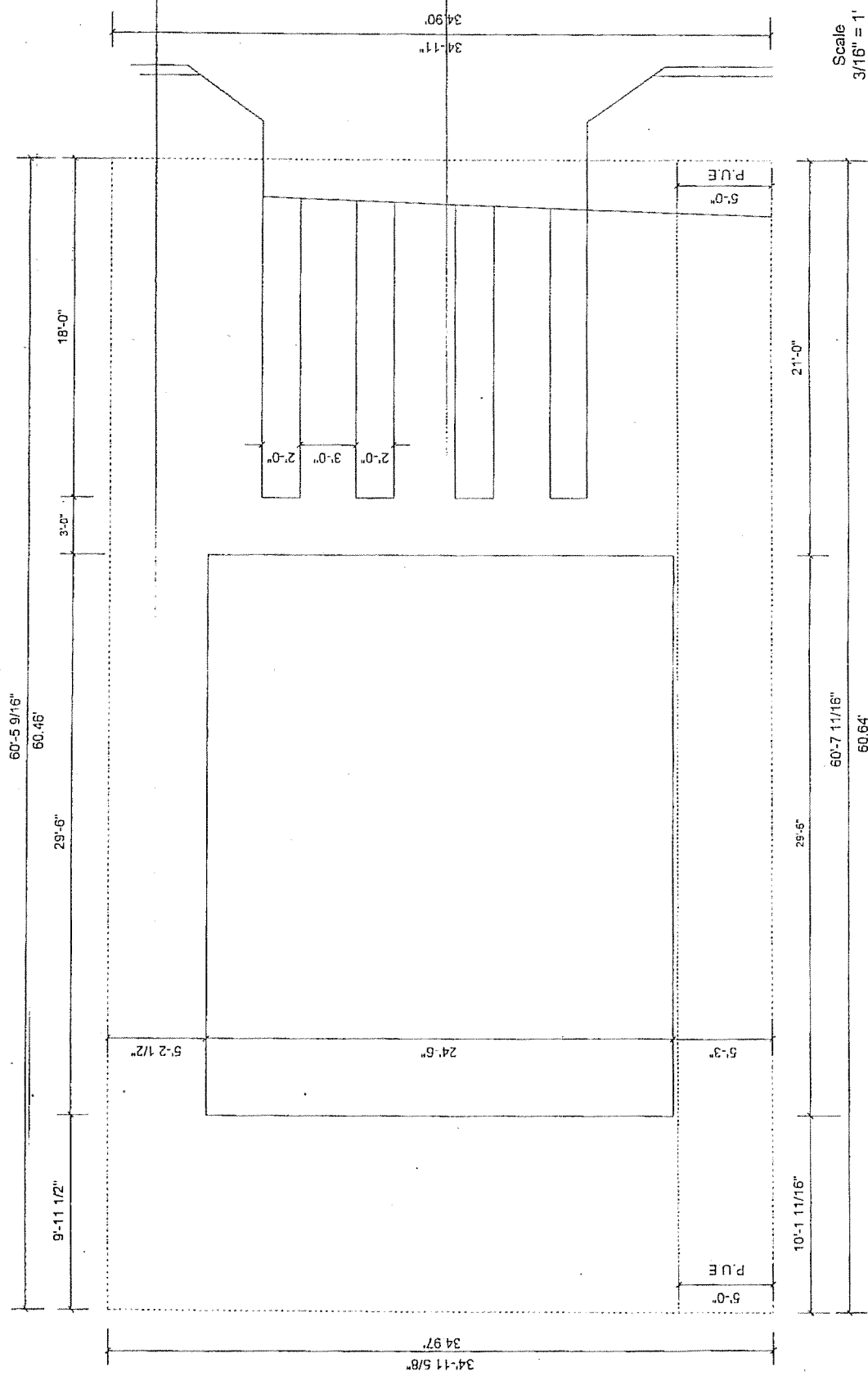
8 Site

Proposed residence  
h Street

Wayne Bar  
Compan

5114 Belco  
Woods #5  
Austin, Tex  
78759

335-2833 F  
413-5845  
451-730



Scale  
3/16" = 1'

**Heldenfels, Leane**

---

**From:** C L Evans <[REDACTED]>  
**Sent:** Tuesday, July 07, 2015 3:49 PM  
**To:** Heldenfels, Leane  
**Subject:** Re: Question on Rezoning Variance Request - Case C15-2015-0102 - 1403 W. 45th St

L2  
28

Thanks Leane. I think the variance requester should have to agree to a re-zoning requirement in order to have their variance request approved.

I do not see that there is space for a single family residence in the small space to the west of the commercial/auto repair address. There is another residence on the corner of 45th and Rosedale. It is a residential multi dwelling lot with a small house facing 45th at and very close to the lot line with the 1403 45st address being considered for variance.

I may not be able to attend the scheduled hearing due to another commitment but I would appreciate it if you would add my questions and concerns to the proceedings.

My address is 4403 Rosedale (just for the record)

Thanks !

CL Evans  
Sent from my iPhone

On Jul 7, 2015, at 2:09 PM, Heldenfels, Leane <[Leane.Heldenfels@austintexas.gov](mailto:Leane.Heldenfels@austintexas.gov)> wrote:

Hi Mr. Evans – the current zoning is CS – Commercial Services, and the neighboring property use is commercial/auto repair.

The lot requesting the variance is a small lot to the west of the auto repair lot.

The zoning would not change with this variance request, that would be required under a separate re-zoning action in order to accommodate a single family home as planned for the lot.

Perhaps the owner will undertake the rezoning if they are successful in getting these lot design variances.

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Case Number: C15-2015-0102, 1403 W. 45<sup>th</sup> St.

Contact: Leane Heldenfels, 512-974-2202

Public Hearing: Board of Adjustment, July 13th, 2015

DR. TIMOTHY J. WELLIK

Your Name (please print)

☐ I am in favor  
☒ I object

4310 MEDICAL PARKWAY #120 Austin, TX 78756

Your address(es) affected by this application

Timothy J. Wellick, DOS 7/7/15

Date

Daytime Telephone: 512-451-5183

Comments: THIS PROPERTY IS LOCATED NEAR

A VERY BUSY SIGNAL LIGHT INTERSECTION

I DON'T THINK ADDING A SMALL

LOT NEAR THE 45<sup>th</sup> & BURNET ROAD

INTERSECTION IS A SAFE IDEA!!

I AM NOT IN FAVOR OF REPURPOSING

THE SIZE OF THIS LOT TO SQUEEZE

ANOTHER HOME AT THIS LOCATION

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City of Austin-Development Services Department/ 1st Floor

Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

Fax: (512) 974-6305

Scan & Email to: [leane.heldenfels@austintexas.gov](mailto:leane.heldenfels@austintexas.gov)

2912

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**Contact:** Leane Heldenfels, 512-974-2202

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DR. TIMOTHY J. WELLIK

Your Name (please print)

☐ I am in favor  
☒ I object

4310 MEDICAL PARKWAY #120 AUSTIN, TX 78756

Your address(es) affected by this application

Timothy J. Wellick, DDS

Signature

7/7/15

Date

Daytime Telephone: 512-451-5183

Comments: THIS PROPERTY IS LOCATED NEAR

A VERY BUSY SIGNAL LIGHT INTERSECTION

I DON'T THINK ADDING A SMALL

LOT NEAR THE 45<sup>th</sup> & DUGANET ROAD

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I AM NOT IN FAVOR OF REQUESTING

THE SITE OF THIS LOT TO SQUEEZE

ANOTHER HOUSE AT THIS LOCATION

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Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

Fax: (512) 974-6305

Scan & Email to: [leane.heldenfels@austintexas.gov](mailto:leane.heldenfels@austintexas.gov)

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**Contact: Leane Heldenfels, 512-974-2202**

**Public Hearing: Board of Adjustment, July 13th, 2015**

*CHRISTOPHER E. BURTON*

Your Name (please print)

*4417 ROSEDALE AVENUE*

☐ I am in favor  
☒ I object

Your address(es) affected by this application

*[Signature]*

Signature

Date

Daytime Telephone: *512-586-4904*

Comments: *I HAVE CONCERNS ABOUT SAFETY,*

*SECURITY AND PRIVACY AS WELL*

*AS INCREASED TRAFFIC AND*

*PARKING ON ROSEDALE AVE FROM*

*CUSTOMERS AND EMPLOYEES OF THE*

*DEVELOPER'S BUSINESSES OPERATING*

*ON BURNET ROAD. THE PLOT OF LAND IS*

*NOT LARGE ENOUGH TO BE DEVELOPED.*

*THERE IS NO HAZARD ~~BE~~ <sup>BE</sup> ~~THE~~ <sup>THE</sup> ~~DEVELOPMENT~~ <sup>DEVELOPMENT</sup> ~~WILL~~ <sup>WILL</sup> ~~BE~~ <sup>BE</sup> ~~CAUSE~~ <sup>CAUSE</sup> ~~ROSEDALE.~~ <sup>ROSEDALE.</sup>*

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City of Austin-Development Services Department/ 1st Floor

Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

Fax: (512) 974-6305

Scan & Email to: [leana.heldenfels@austintexas.gov](mailto:leana.heldenfels@austintexas.gov)

*WLF*



