ZBA08-00087 1409 Pintoresco Drive Joe and Mary De Angelis

Applicants request a Special Exception under Section 2.16.050 L (15 years or more, Side yard setback) and a Variance from Section 20.12.040 (Yards, Side yard setback) in an R-3 zone.

This would permit the existence of a 5' by 20' structure that encroaches 5' into the northerly side yard setback in an R-4 zone.

The required side yard setback is 5 feet in an R-3 (Light Density Residential) zone.

BACKGROUND

The applicant was cited in 2006 and again in 2008 for building an enclosed storage in his side yard without permit. The applicants are requesting to keep the 5' by 20' attached structure that is located to within 0' of the northerly side property line.

The applicants are requesting the Special Exception for a portion of the existing structure that they claim was there when they purchased the house in 1989. The 1986 aerial shows a very small white object at the corner of the house, projecting slightly into the front, which could be a roof or a concrete slab. The 1996 aerial is not clear but appears to show the same small roofed area at the corner of the house plus the addition of driveway area. The 2003, 2006 and 2007 aerials show a roofed structure that continues at the front roofline of the house and appears to be the existing 5' by 20' structure located to within 0' of the side property line.

The applicants are requesting a Variance to keep the 5' by 20' structure. There are no topographic or special conditions inherent in the lot that prevent reasonable use of the lot. The condition of the structure located to 0' of the side property line is self-imposed by the applicant.

CALCULATIONS

Required side yard setback = 5'
Requested side yard setback = 0'

STAFF RECOMMENDATION

Staff recommends denial of the request for the Special Exception because the applicant has not proved that the structure existed prior to his purchase of the house in 1989.

Staff recommends denial of the Variance as the Variance is not due to special conditions inherent to the property itself. Literal enforcement of the ordinance would not create an unnecessary hardship as defined in Section 20.02.1128 of the El Paso City Code which states *"unnecessary hardship means a hardship by reason of exceptional shape of a lot, exceptional topographic conditions, or other exceptional physical conditions of a parcel of land. Unnecessary hardship shall not include personal or financial hardship or any other hardship that is self-imposed."*

The Zoning Board of Adjustment is empowered under Section 2.16.050 L to:

"Permit the encroachment into the required yard setbacks for structures; provided, however, that the applicant can prove the following conditions:

1. The encroachment into the required yard setback has been in existence for more than fifteen years; and,
2. Neither the applicant nor current property owner is responsible for the construction of the encroachment; and,
3. Neither the applicant nor the current property owner owned the property at the time the encroaching structure was constructed or built; and,
4. The encroachment, if into the required front yard setback, does not exceed fifty percent of the required front yard setback; and,
5. The encroachment does not violate any other provision of the Municipal Code."

ITEM #5

The Zoning Board of Adjustment is empowered under Section 2.16.030 to:

"Authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done."

The following questions should be carefully considered in order to grant a variance:

1. Is the variance consistent with public interest?

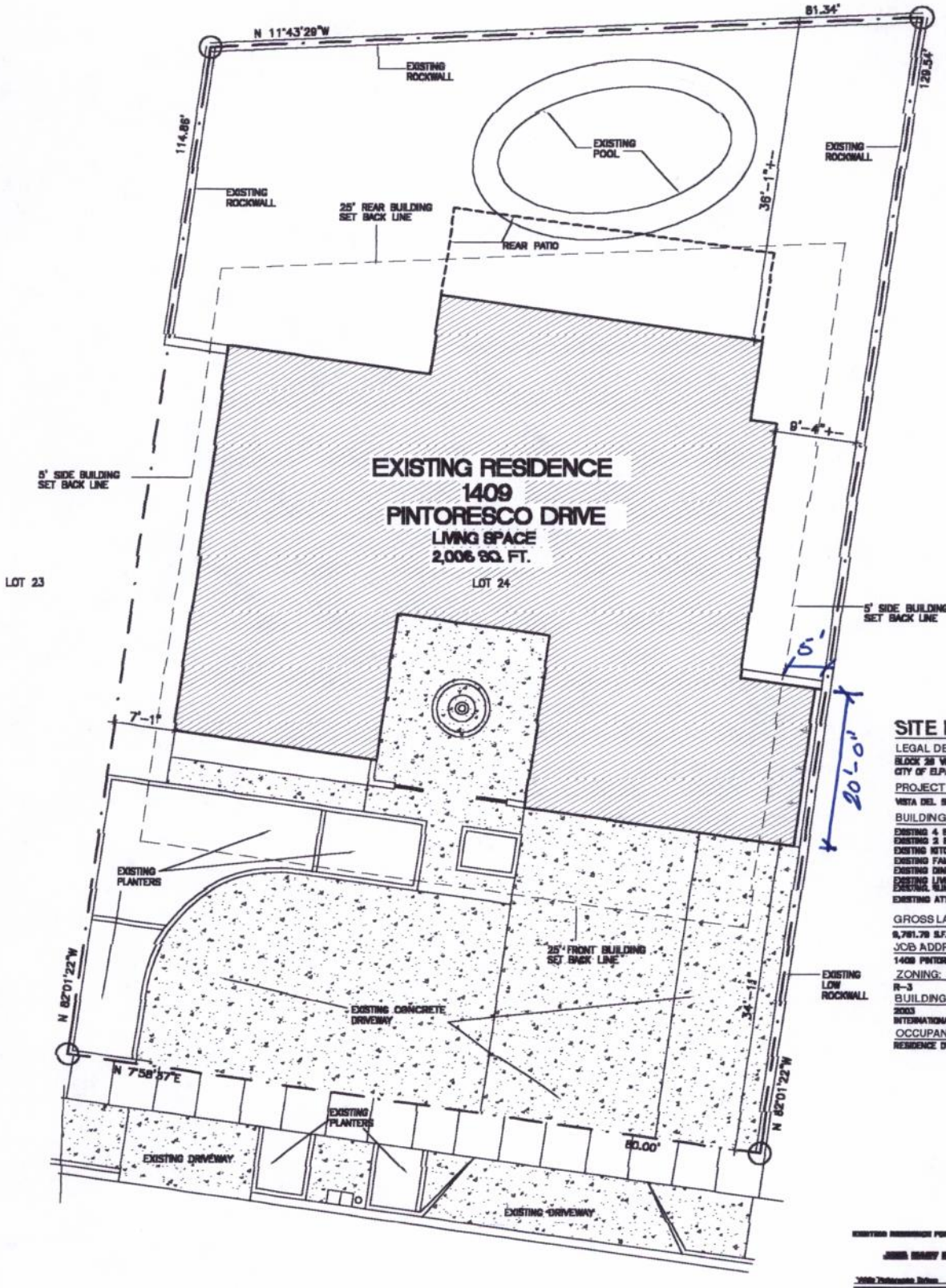
2. Is the need for the variance due to special conditions?

3. Would a literal enforcement of the ordinance create an unnecessary hardship?

4. Would the spirit of the ordinance be observed and substantial justice done if the variance is approved?

APPENDIX A: Findings – Variances

INQUIRY		FINDINGS
Is the request for a variance owing to special condition inherent in the property itself? If yes, **CONTINUE** If no, **STOP** ↓		The property is/has … (e.g., odd-shaped, unusual topography, etc.)
Is the condition one unique to the property requesting the variance? If yes, **CONTINUE** If no, **STOP** ↓		The condition is unique to this property.
Is the condition self-imposed or self-created? If yes, **STOP** If no, **PROCEED** ↓		The condition necessitating the request was not created by the property owner.
Will the literal enforcement of the zoning ordinance result in an unnecessary hardship? If yes, **CONTINUE** If no, **STOP** ↓		Strict enforcement of the zoning ordinance would impose a hardship above that suffered by the general public.
Will the hardship prevent any reasonable use whatsoever? If yes, **CONTINUE** If no, **STOP** ↓		Without the grant of the requested variance, the property owner would be deprived of the right to use his property. Financial considerations alone cannot satisfy this requirement.
Would the grant of the variance be contrary to public interest? If yes, **STOP** If no, **CONTINUE** ↓		
Is the request within the spirit of the ordinance and does it further substantial justice? If yes, **CONTINUE** If no, **STOP** ↓		



SITE DATA

LEGAL DESCRIPTION:
BLOCK 28 VISTA DEL SOL LOT 24
CITY OF ELPASO, ELPASO COUNTY TEXAS

PROJECT LOCATION:
VISTA DEL SOL SUBDIVISION #8

BUILDING DESCRIPTION:
EXISTING 4 BEDROOM RESIDENTIAL HOME
EXISTING 2 BATHS
EXISTING KITCHEN
EXISTING FAMILY ROOM
EXISTING DINING ROOM
EXISTING LIVING ROOM
EXISTING MAIN ROOM
EXISTING ATTACHED DOUBLE GARAGE AND STORAGE

GROSS LAND AREA:
9,781.78 S.F. OR .2241 ACRES

JOB ADDRESS:
1409 PINTORESCO DRIVE

ZONING:
R-3

BUILDING CODE:
2003
INTERNATIONAL RESIDENTIAL BUILDING CODE

OCCUPANCY:
RESIDENCE DWELLING

1409 PINTOTRESCO DRIVE
(60' R.O.W.)

SITE PLAN

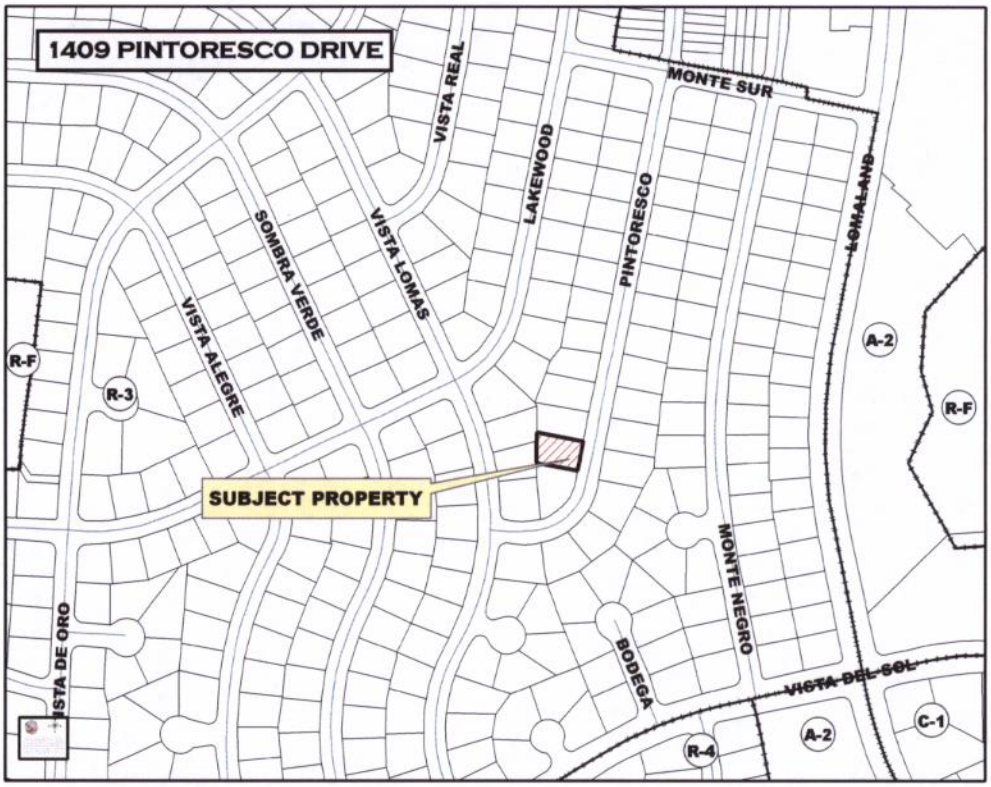
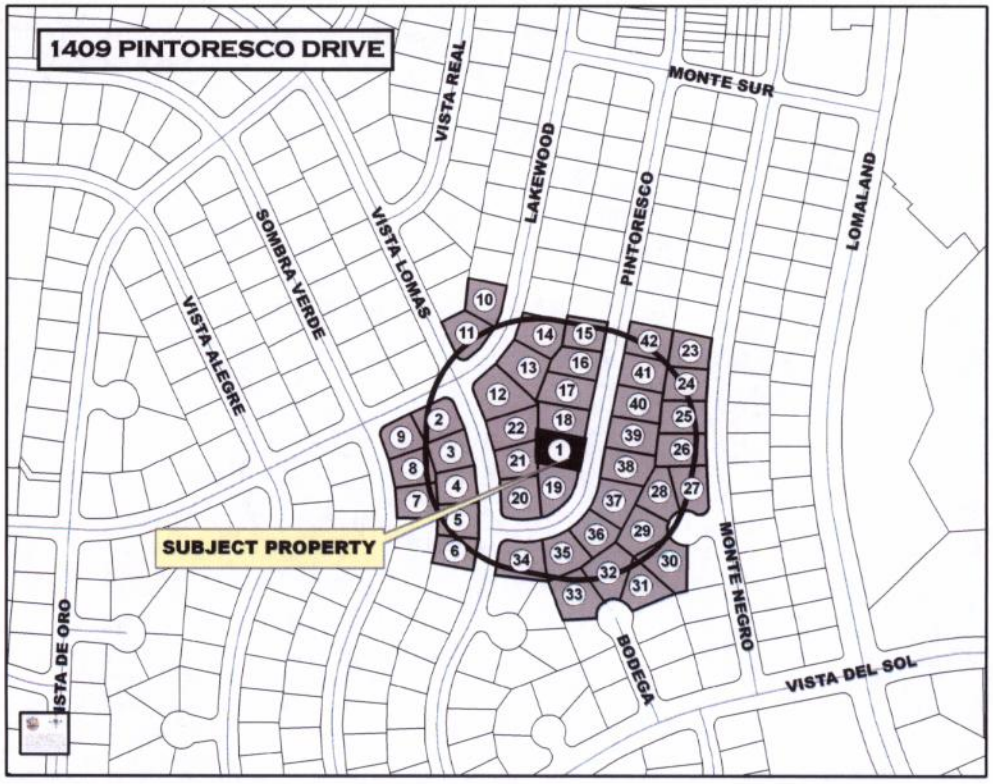
SCALE: 1/8"=1'-0"

SHEET TITLE
SITE PLAN

MASTER PLAN DESIGNS

C-1.0

ZONING MAP



NOTIFICATION MAP