

1533 Upson

Zoning Board of Adjustment — September 16, 2024



CASE NUMBER: PZBA24-00035
CASE MANAGER: Luis Zamora, (915) 212-1552, ZamoraLF@elpasotexas.gov
PROPERTY OWNER: Paul Cicala
REPRESENTATIVE: Jose G. Flores
LOCATION: 1533 Upson Dr. (District 8)
ZONING: R-4/H (Residential/Historic)
REQUEST: Variance from Section 20.10.030 and Section 20.12.020
PUBLIC INPUT: None received as of September 12, 2024

SUMMARY OF REQUEST: Applicant requests a Variance under Section 2.16.030 to allow to legalize the encroachment of an existing detached ADU (Accessory Dwelling Unit) and deck into the required 10-foot side street setback required per El Paso City Code Section 20.12.020 and into the required 60-foot front setback required per El Paso City Code Section 20.10.030 in an R-4/H (Residential/Historic) zone district.

SUMMARY OF STAFF'S RECOMMENDATION: Staff recommends **APPROVAL** of the variance request.

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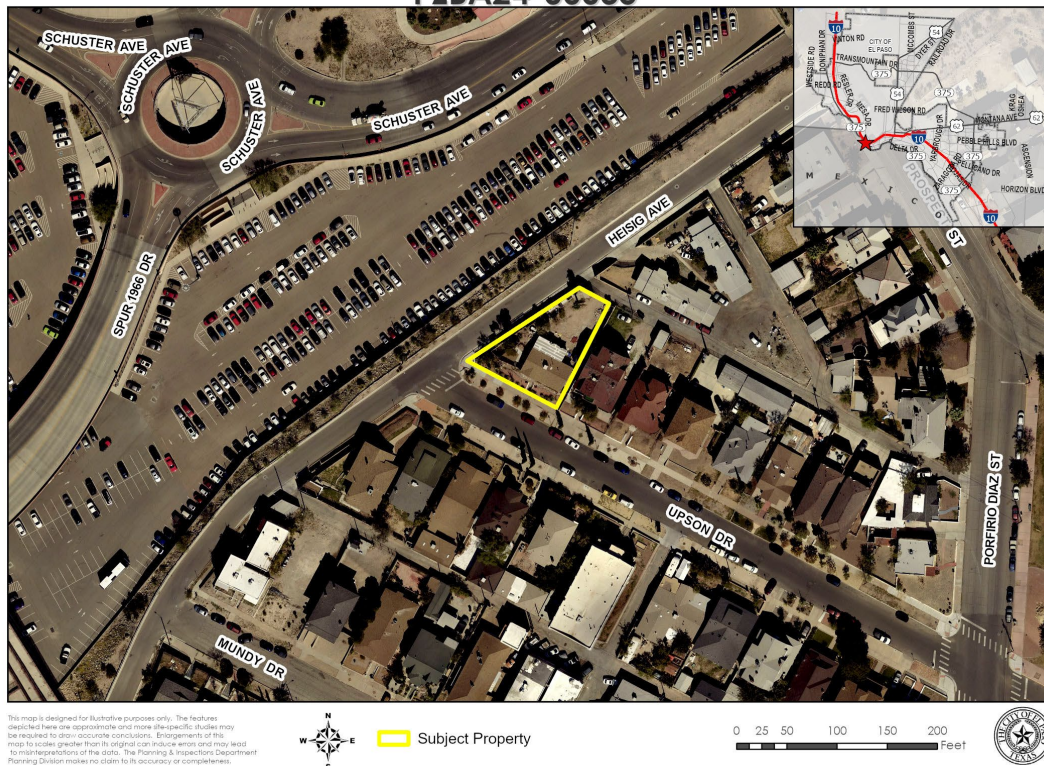


Figure A. Aerial of Subject Property & Immediate Surroundings

DESCRIPTION OF REQUEST: The applicant is requesting a variance under Section 2.16.030 to allow to legalize the encroachment of an existing ADU (Accessory Dwelling Unit) and deck into the required 10- foot side street setback required per El Paso City Code Section 20.12.020 and into the required 60-foot front setback required per El Paso City Code Section 20.10.030 in an R-4/H (Residential/Historic) zone district.

BACKGROUND: The required side street setback is 10 feet in the R-4 (Residential) zoning district. The required front yard setback for accessory structures (including ADU) is 60 feet from the front property line. Per El Paso City Code Section 20.10.030, detached accessory structures located on the side of a home, shall comply with the required district setbacks and be at least 5 feet away from the main building.

The applicant requests a variance to allow the detached accessory structure to remain on the location based on an unnecessary hardship as no vision issues being are being created by encroaching into the side street setback as the property has topographical constraints as well as the addition being done to an existing underground bunker, which the improvements being located below ground at the house grade.

Definition of Unnecessary Hardship, Section 20.02.1128:

“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.

CALCULATIONS:

	REQUIRED	REQUESTED
Side Street Setback*	10 Feet	0 Feet
Front Setback for Accessory Structures (20.10.030)*	60 Feet	12 Feet

*Regulations applicable to accessory structures

ANALYSIS: Staff recommends approval of the Variance request. There are special conditions inherent to the subject property that would entitle it to a Variance and would allow for the encroachment of existing ADU and deck into the required 10-foot street side setback as well as allow it to be within 12 feet for the front property line. It is further found that the hardship is inherent to the property and to the existing construction being underground.

COMPLIANCE WITH EL PASO CITY CODE SECTION 2.16.030

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:

Questions	Does the Request Comply?
1. Is the need for the variance due to special conditions?	Yes. Property is on higher ground than finished road. The existing structure and new construction added are located partially underground mostly visible due to the elevation difference between the property and the finished street.
2. Would a literal enforcement of the ordinance create an unnecessary hardship?	Yes. Given the structure being located partially underground, literal enforcement of the ordinance would require the removal of such existing structure in addition to removal of existing added construction, creating a hardship to the property owner.

3. Is the variance consistent with public interest?	Yes. The request does not harm the public interest nor inhibits public safety of neighboring residents. Moreover, existing construction and modifications will require review and approval of the Historic Landmark Commission.
4. Would the spirit of the ordinance be observed and substantial justice done if the variance is approved?	Yes. The property will be allowed to keep the construction of an existing underground structure to include the existing illegal construction added to it.

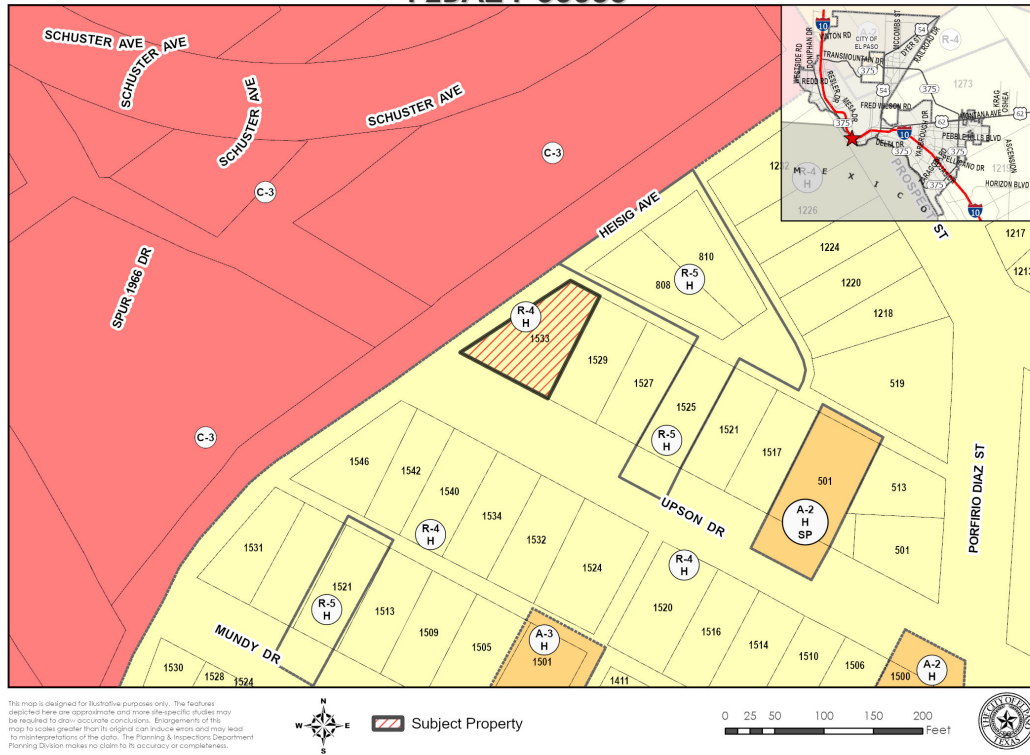
PUBLIC COMMENT: Public notice was sent on September, 5, 2024 to all property owners within 300 feet of subject property. The Planning Division has not received any communications in support or opposition to the special exception request.

ZONING BOARD OF ADJUSTMENT OPTIONS: The purpose of the Zoning Ordinance is to promote the health, safety, morals and general welfare of the City. The Zoning Board of Adjustment (ZBA) may authorize in specific cases a variance from the terms of the zoning ordinance (Title 20) or as specified in (Title 21) SmartCode 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. In evaluating the request, the ZBA may take any of the following actions:

1. **Approval** of the variance request, finding that the request is in in harmony with the spirit and purposes of Titles 2 and 20, including the preservation of the essential character of the district in which the property is located, that the public convenience and welfare will be substantially served, and that the use of neighboring property will not be substantially injured. **(Staff Recommendation)**
2. **Approval with Modifications** of the variance request to bring the request into conformance as provided in El Paso City Code Titles 2 and 20 as the board deems appropriate.
3. **Denial** of the variance request, finding that the request does not conform to the review criteria as provided in El Paso City Code Titles 2 and 20.

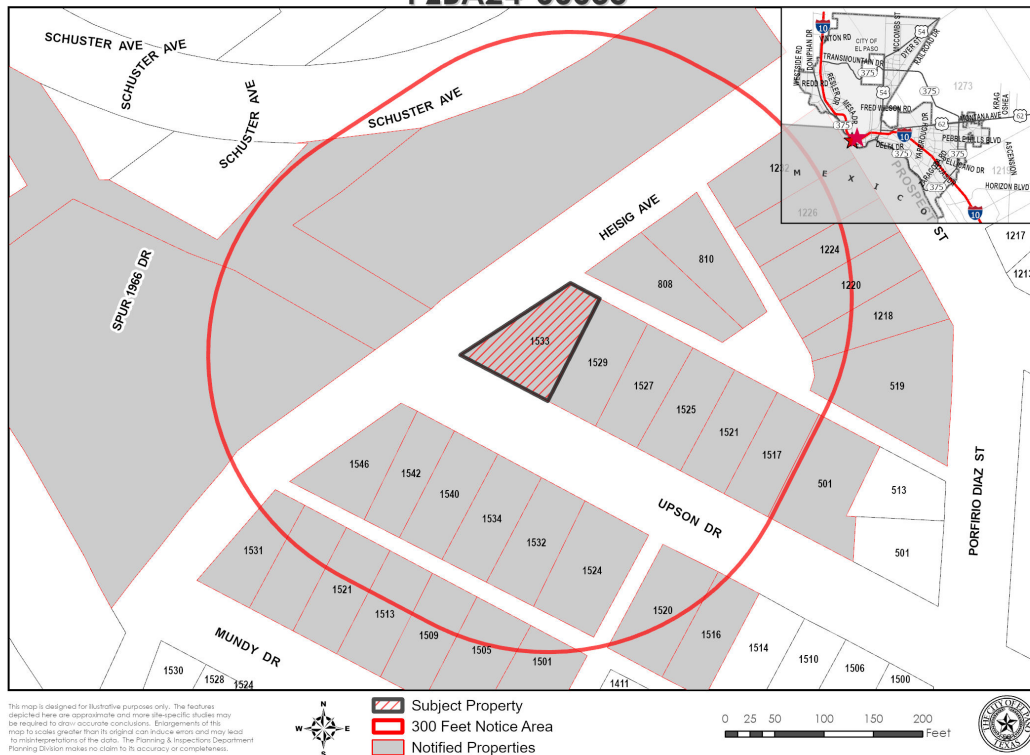
ZONING MAP

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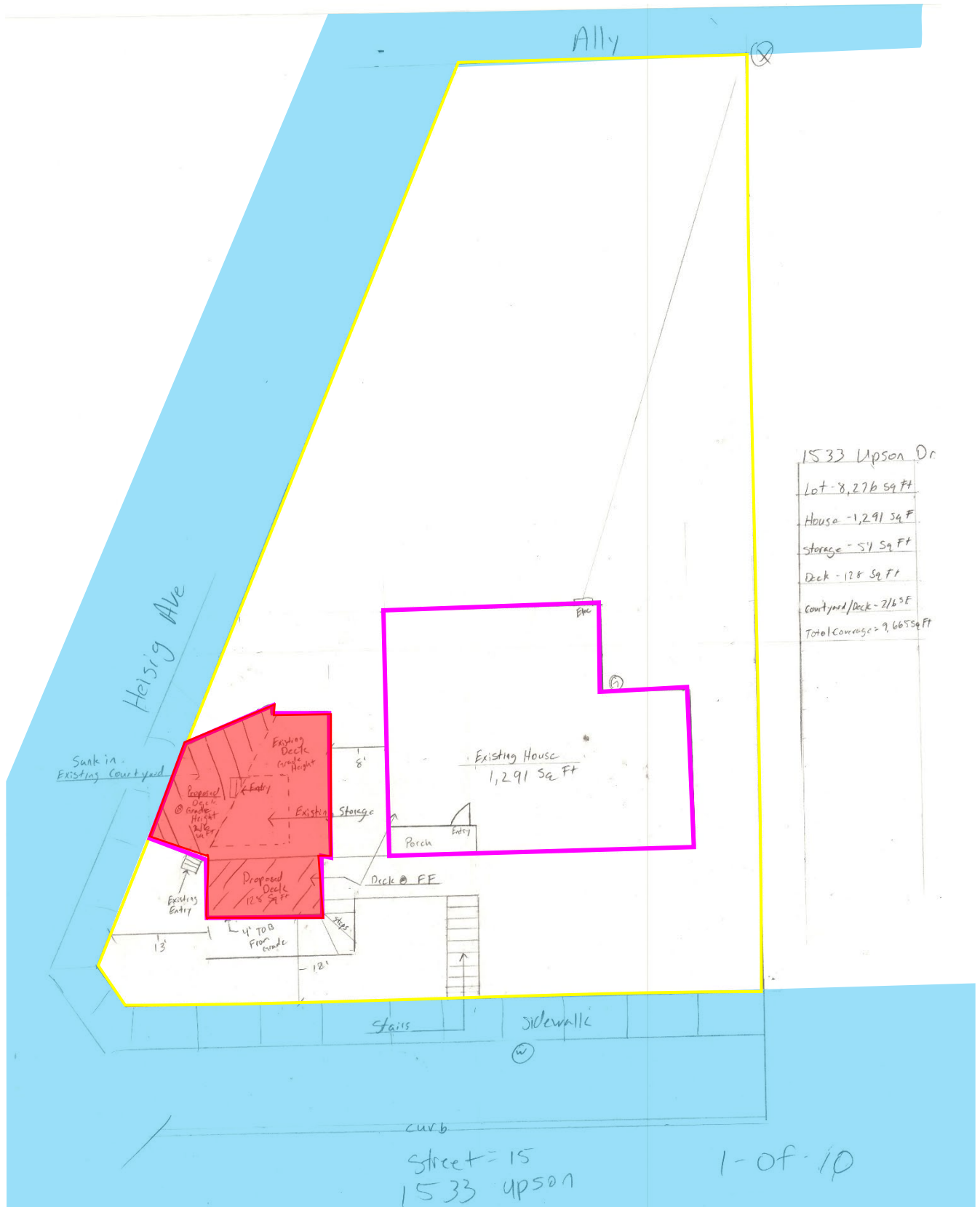


NEIGHBORHOOD NOTIFICATION MAP

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SITE PLAN



PICTURES





