

BOARD OF ADJUSTMENT
Meeting Minutes
January 25, 2023

MEMBERS PRESENT

Brandon Mund
Bobby Avary
Taylor Chafin
Jenny Wilson
Cynthia Foster

STAFF PRESENT

Nathan Brown, Assistant City Attorney
Christopher Looney, Director
Planning & Development Services
Matthew Simmont, Planning Manager
Mary Lovell, Senior Planner
Colton Barker, Assistant Planner
Evin Wilson, Assistant Planner

1. CALL TO ORDER

Vice-Chair Mund called the meeting to order at 6:02 pm.

2. ROLL CALL

Roll was called, and a quorum declared.

3. APPROVAL OF MINUTES

Motion by Member Wilson, seconded by Member Chafin, to approve the minutes of the Board of Adjustment Regular Meeting of December 21, 2023. Motion carried (5-0-0).

4. INDIVIDUAL ITEMS FOR CONSIDERATION

A) ZB23-0018 Hold a public hearing and consider a request for a variance to Section 106-14(b)(5)(d) to allow the placement of a high-profile monument sign in the “M-1” Light Industrial District, currently addressed at 1225 Rivertree Drive. (Applicant: Southwest Texas Sign Service, Mary Gorman; Owner: AZTX1, LLC; Case Manager: Colton Barker)

Colton Barker presented the staff report and stated Section 2.2-3(a) of the Zoning Ordinance states the BOA may authorize a variance from the zoning regulations only upon finding all of the following facts:

- 1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states “The surrounding businesses in the area have larger freestanding signs so to stay competitive AutoZone is requesting a 20ft overall height freestanding sign for their property to be more visible in the area.” Staff notes while the property does not have enough frontage along SH 46 to allow for the placement of a high-profile monument sign, alternate sign types are allowed based on the properties M-1 zoning and frontage along SH 46.); **and**
- 2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states “The surrounding businesses in the area all have multiple signs on their properties, including wall signs and larger freestanding signs.” Staff notes that wall signs are exempt from regulations or permits under Chapter 106-10(a)(19) and that other sign types are allowed on the subject property based on the M-1 zoning and frontage along SH 46. The substantial property right to develop and operate the proposed AutoZone in M-1 zoning and advertise the business is not removed due to the minimum frontage requirement for the high-profile monument sign type. All high-profile monument signs along SH 46 must comply with all the design requirements of Chapter 106-14(b)(5).); **and**
- 3) That the granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property within the area;** (The applicant states “The proposed freestanding sign for AutoZone will not be detrimental to the public health, safety or welfare or injurious to other surrounding properties. Other businesses in the area have freestanding signs so the freestanding sign for AutoZone would not take away from the other businesses.” Staff acknowledges the impact to the surrounding area is likely minimal as the proposed sign complies with all other design requirements of Chapter 106 and could be allowed on the property as proposed with an additional 200 feet of frontage along SH 46.); **and**

- 4) **Granting of the variance will not have the effect of preventing the orderly use of other lands within the area in accordance with the provisions of this Chapter;** (The applicant states “The granting of the variance would not prevent the orderly use of other properties in the area since other businesses already have existing freestanding signs.” Staff notes that while granting the proposed variance does not appear to pose a potential negative effect preventing orderly use of other land within the area, neighboring properties will still be required to comply with all the requirements of Chapter 106 for new sign construction.); **and**
- 5) **That an undue hardship exists;** (The applicant states “This property is surrounded by easements so had to work with NBU to find a location on site that would even be allowed to place a freestanding sign. There was an approved encroachment agreement made that NBU agreed on a location that AutoZone could place a freestanding sign on site”. Staff acknowledges the recorded easement encroachment agreement with NBU to place the proposed sign within the 25-foot utility easement but has not identified an undue hardship of the land itself that prevents the property’s ability to construct an alternate sign to advertise the AutoZone development.); **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states “The granting of the sign variance will be in harmony with the purpose of the City regulations. The city code does allow for larger freestanding signs so it is not that the request is for something the code does not allow at all but AutoZone would like to stay competitive with surrounding businesses.” Staff notes the intent of the minimum frontage requirement for high-profile monument signs is to ensure adequate spacing of these larger sign types along SH 46 and to prevent an overabundance of large signs on commercial property fronting the roadway.)

Vice-Chair Mund asked if there were any questions for staff.

Discussion followed regarding the variance request and the location of the proposed sign within a recorded NBU easement on the property.

Vice-Chair Mund invited the applicant to speak.

Mary Gorman, elaborated on her request.

Discussion followed on the design of the proposed sign, potential hardships affecting the property, and sign type requirements, and other existing signs in the area.

Vice-Chair Mund opened the public hearing and asked if anyone would like to speak.

No one spoke.

Vice-Chair Mund closed the public hearing and asked if there was any discussion or a motion.

Discussion followed on responses in objection to the request.

The request for a variance to Section 106-14(b)(5)(d) to allow the placement of a high-profile monument sign in the “M-1” Light Industrial District, currently addressed at 1225 Rivertree Drive was denied due to the lack of a motion.

B) ZB23-0016 Hold a public hearing and consider a request for a variance to Section 106-14(b)(5)(d) to allow the placement of a high-profile monument sign in the “C-1” Local Business District, currently addressed at 971 FM 306. (Applicant: U.S. Signs, Lydell Toye; Owner: OTG Investments, LLC; Case Manager: Colton Barker)

Colton Barker presented the staff report and stated Section 2.2-3(a) of the Zoning Ordinance states the BOA may authorize a variance from the zoning regulations only upon finding all of the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states “The setback distance for permitted development has placed the business in excess of 102’ from major highway exposure. TXDOT road dedication

for future expansion (50') and platted building setbacks and Fire Lane designations (52') were all required. Updated Sign Ordinances since platting have affected the property in an adverse way." Staff notes the property was platted into its current configuration with approximately 166 feet of frontage along FM 306 in 2004, and the New Braunfels Sign Ordinance was adopted by the City in 2008. The Broad-Vue Terrace Unit 1 Plat shows a 25-foot build line setback, a 20-foot utility and drainage easement located at the front of the property, and the approved construction documents for the development show a 24-foot fire lane toward the front of the property.); **and**

- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states "Our commercial development as well as all other developments surrounding the property are either retail or office spaces. As a commercial development adequate signage to offer our services to the public is extremely important for the sales of our goods as it also is with all other surrounding businesses." Staff notes that other sign types are allowed on the subject property based on the C-1 zoning and frontage along FM 306. The substantial property right to operate the coffee kiosk in C-1 zoning and advertise the business is not removed due to the minimum frontage requirement for the high-profile monument sign type.); **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property within the area;** (The applicant states "It will not be in anyway concerning the question above." Staff acknowledges the impact to the surrounding area is likely minimal as similar signs exist in the area and the proposed sign complies with all other design requirements of Chapter 106 and could be allowed on the property as proposed with an additional 134 feet of frontage along FM 306.); **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other lands within the area in accordance with the provisions of this Chapter;** (The applicant states "It would not in anyway at all." Staff notes the sign is proposed to be set farther back from the property line than required by nearly 50 feet and that while granting the proposed variance does not appear to pose a potential negative effect preventing orderly use of other land within the area, neighboring properties will still be required to comply with all the requirements of Chapter 106 for new sign construction.); **and**
- 5) **That an undue hardship exists;** (The applicant states "Yes, there is and it was not self-created, personal or financial. At the time that the land was originally platted (2004) sign ordinances were different and since platting have been updated creating a new minimum frontage distance. At the time of platting had this been a question it could have been addressed accordingly. Realizing that things are continually changing and that ordinances are usually in the best interest for all, situations are such that a new minimum frontage distance (although maybe with good intentions) can tremendously and adversely affect a future property and development. Either taking great strides when creating ordinances by addressing every possible situation which could be a very cumbersome process which is probably not feasible or simply allowing flexibility within final ordinances such that when in our case ordinance changes made can be considered by staff and could possibly not be as detrimental to a future development and a variance would then be a consideration as a last resort saving everyone the time and expense. TXDOT was granted road dedication for future expansion of highway and an adjoining developer was required to place a Fire Lane access at the front of development which is now required to continue across the front of the tract requesting this variance. As such, it has now pushed a signage opportunity back 102' from the outer edge of the existing main traffic lanes. If the property were located as most businesses are in close proximity to the roadway, we would be requesting a monument sign as preference. The extreme setback as well as the minimum frontage requirement that was not in place at the time of platting is the real issue so approval of a pylon sign remedy's this hardship." Staff acknowledges the unique circumstance created by the platted 25-foot setback line and 20-foot utility easement as well as the required 24-foot fire lane in determining the proposed location of the requested sign but has not identified any other undue hardship of the land itself that prevents the property's ability to construct an alternate sign type to the one requested to advertise the On the Grind coffee kiosk.); **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states "Yes, it would. It would also be very consistent with surrounding businesses and their signage. Some of which I understood from the previous meeting were not even permitted. we are trying to do the right thing for both the city, community as well as our long-term business." Staff notes the intent of the minimum frontage requirement for high-profile monument signs is to ensure adequate spacing of these larger sign types along higher trafficked

roadways such as FM 306 and to prevent an overabundance of large signs on commercial property fronting the roadway. Staff also acknowledges the presence of other large commercial signage in the area that were constructed prior to the adoption of the sign code and are considered nonconforming, were constructed under an approved conditional sign permit, or constructed without an approved building permit.)

Vice-Chair Mund asked if there were any questions for staff.

No one spoke.

Vice-Chair Mund invited the applicant to speak.

Lydell Toye elaborated on the request.

Discussion followed on potential alternatives to the requested sign, conditions of the subject property, challenges with the sign ordinance regulations, other existing signs in the area, sight triangle visibility, and dimensions of the proposed sign.

Vice-Chair Mund opened the public hearing and asked if anyone would like to speak.

The following individual spoke in favor of the request: Michael Garrott.

Vice-Chair Mund closed the public hearing and asked if there was any discussion or a motion.

Motion by Member Wilson, seconded by Member Chafin, to approve the request for a variance to Section 106-14(b)(5)(d) to allow the placement of a high-profile monument sign in the "C-1" Local Business District, currently addressed at 971 FM 306, with the condition that the pole covering be removed from the proposed sign. Motion carried. (4-0-1) with Member Foster was in opposition.

C) ZB23-0017 Hold a public hearing and consider a request for a variance to Section 106-14(a) to allow the placement of a high-profile pole sign in the "C-3" Commercial District, currently addressed at 1320 River Road. (*Applicant: U.S. Signs, Lydell Toye; Owner: Juniper Ventures of Texas, LLC; Case Manager: Colton Barker*)

Colton Barker presented the staff report and stated Section 2.2-3(a) of the Zoning Ordinance states the BOA may authorize a variance from the zoning regulations only upon finding all of the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states "Loop 337 & River Rd Highway was elevated to around 40' from grade. Existing 25' sign and entire gas station cannot be seen driving east or west on loop 337." Staff acknowledges the visibility issues regarding this property and the now elevated Loop 337. Sec. 106-14(b)(3)(a) does allow additional sign height for high-profile pole signs but only for properties with street frontage along IH-35. Sec. 106-14(b)(5)(a) allows for additional sign height for high-profile monument signs for properties along Loop 337, however staff notes that the proposed sign is considered a high-profile pole sign and not a high-profile monument sign, therefore, the additional sign height allowance for properties with street frontage along Loop 337 for high-profile monument signs, as well as the additional sign height allowance for properties with street frontage along IH 35 for high-profile pole signs, would not apply to the proposed sign.); **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states "To let customers know where the Shell Station is located along Loop 337. Since freeway has been elevated, store sales have decreased by 40% overall." Staff notes that other sign types are allowed on the subject property based on the C-3 zoning and frontage along Loop 337. The substantial property right to operate the Shell gas station in C-3 zoning and advertise the business is not removed by not being able to place a pole sign that exceeds the allowed height, sign area, and setback distance of sign types that are allowed on the property.); **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property within the area;** (The applicant states "None whatsoever."

Staff notes that the property is not platted and does not have any recorded easements, but that the proposed location of the sign would be within close proximity of an existing small electrical pole connected to a building on the neighboring property. Chapter 106-18(3) states that all signs shall maintain a minimum clearance from electric power lines of ten feet horizontally and ten feet vertically, or as may otherwise be required by the utility provider.); **and**

- 4) **Granting of the variance will not have the effect of preventing the orderly use of other lands within the area in accordance with the provisions of this Chapter;** (The applicant states “No.” Staff notes that the proposed location of the sign is within 5 feet of the property of an adjacent property within the typical property line setback of 5 feet.); **and**
- 5) **That an undue hardship exists;** (The applicant states “No.” Staff notes that the difference in grade from the now elevated Loop 337 and the preexisting Shell station is approximately 36 feet. Loop 337 was elevated in 2022 and was not initiated by the property owner.); **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states “Yes.” Staff notes that the allowance for additional sign height along substantial roadways such as Loop 337 and IH 35 is intended to mitigate the negative impact between commercial developments effected by elevated roadways. However, Chapter 106 only allows pole signs similar to the sign area and height of the proposed sign on properties with street frontage along IH 35, and the subject property does have limited visibility from the roadway due to the elevation difference.)

Vice-Chair Mund asked the height of the requested sign.

Discussion followed on the design of the requested sign, and the properties relation to the elevated Loop 337,

Vice-Chair Mund invited the applicant to speak.

Lydell Toye, elaborated on the request.

Discussed followed on height requirements of the sign ordinance, and how the property has been affected by the elevation of Loop 337, and the location of the proposed sign on the property.

Vice-Chair Mund opened the public hearing and asked if anyone would like to speak.

No one spoke.

Vice-Chair Mund closed the public hearing and asked if there was any discussion or a motion.

Discussion followed on hardships affecting the property, design requirements, and other signs in the area.

Motion by Member Foster, seconded by Member Wilson, to approve the request for a variance to Section 106-14(a) to allow the placement of a high-profile pole sign in the “C-3” Commercial District, currently addressed at 1320 River Road at the requested sign area and height, with the condition that the sign be located a minimum of 5-feet from the property line. Motion carried (5-0-0).

D) ZB23-0021 Hold a public hearing and consider a request for variances from Section 144-5.1-3(c) to allow a reduction in the minimum required parking spaces and Sec. 144-5.1-1(f) Minimum dimensions and specifications for off-street parking facilities to allow a reduction in the required maneuvering space in the C-2 (General Business District), addressed at 161 East Bridge Street. (Applicant: Darren Classen; Owner: John and Ruth Suddarth; Case Manager: Mary Lovell)

Mary Lovell presented the staff report and stated Section 2.2-3(a) of the Zoning Ordinance states the BOA may authorize a variance from the zoning regulations only upon finding all of the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** (The applicant states: “The required parking for a commercial office with no foot traffic would require 4 designated parking spaces. The layout of the property does not allow for this to be achieved without the removal of a substantial number of mature trees. The property

has street parking and a driveway that will provide adequate parking for office staff only. Since the occupant will be a construction general contractor, most employees work on a job site not from the office. There is also a public parking lot immediately next door.”); **and**

- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states: “To install the required parking as per City of New Braunfels requirements would require to remove mature trees and landscape which contribute to the downtown historic enjoyment. To replace nature with pavement would diminish the value and the appeal of the property, not just to the owner, but to all surrounding properties.”); **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property within the area;** (The applicant states: “The granting of this variance will not be detrimental in any way to the surrounding area. The granting of this variance will be of benefit to the surrounding properties because it will help maintain the historical appeal and age of the area. To install a parking lot on this small property would decrease the appeal of the entire area.”); **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other lands within the area in accordance with the provisions of this Chapter;** (The applicant states: “The granting of this variance will in no way affect the surrounding properties as the property in its current state provides adequate parking for the office staff of this size building.” Staff notes that while granting the proposed variances does not appear to pose a potential negative effect preventing orderly use of other land within the area, other properties within the city are required to comply with all zoning requirements.); **and**
- 5) **That an undue hardship exists;** (The applicant states: “The existing structures and mature trees establish a hardship to install a parking lot. The trees and landscape would have to be removed and the lot is not large enough to provide healthy space for replacement trees and landscape. It would take 50 years to establish trees of the age that would have to be removed to install parking.”); **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states: “The granting of this variance would encourage the spirit and purpose of the City as it will allow a historical building to maintain the look and feel of the downtown area. Granting this variance would allow the appeal of the property and surrounding properties to remain.”)

Vice-Chair Mund asked if there were any questions for staff.

No one spoke.

Vice-Chair Mund invited the applicant to speak.

Darren Classen elaborated on the request and discussed hardship affecting the property.

Discussion followed on driveway width and parking requirements.

Vice-Chair Mund opened the public hearing and asked if anyone would like to speak.

No one spoke.

Mund closed the public hearing and asked if there was any discussion or a motion.

Motion by Vice-Chair Mund, seconded by Member Wilson, to take no action on the variance request from Section 144-5.1-3(c) to allow a reduction in the minimum required parking spaces and to approve the request for a variance from Sec. 144-5.1-1(f) Minimum dimensions and specifications for off-street parking facilities to allow a reduction in the required maneuvering space in the C-2 (General Business District), addressed at 161 East Bridge Street. Motion carried (5-0-0).

5. STAFF REPORT

No items.

6. ADJOURNMENT

Vice-Chair Mund adjourned the meeting at 6:59 pm.

Chair

Date