

BOARD OF ADJUSTMENT
Meeting Minutes
February 22, 2024

MEMBERS PRESENT

John Coker
Bobby Avary
Taylor Chafin
Jenny Wilson

STAFF PRESENT

Frank Onion, Assistant City Attorney
Christopher Looney, Director
Planning & Development Services
Matthew Simmont, Planning Manager
Mary Lovell, Senior Planner
Dana Moses, Planner
Colton Barker, Assistant Planner
Caitlin Garrigus, Assistant Planner

1. CALL TO ORDER

Chair Coker called the meeting to order at 6:01 pm.

Chair Coker stated that only four of five Board Members were present and a unanimous vote by all present members would be required to approve any variance request. He then asked each of the applicants if they would like to proceed with the public hearing as scheduled and all applicants agreed to proceed.

2. ROLL CALL

Roll was called, and a quorum declared.

3. APPROVAL OF MINUTES

Motion by Member Avary, seconded by Member Wilson, to approve the minutes of the Board of Adjustment Regular Meeting of January 25, 2024. Motion carried (4-0-0).

4. INDIVIDUAL ITEMS FOR CONSIDERATION

A) ZB23-0023 Hold a public hearing and consider a request for a variance to Sec. 144-5.4 (e) Height. The height of the accessory building shall not exceed the height of the main building in the “B-1A” Conventional and Mobile Home District, currently addressed at 2523 Pahmeyer Road. (Applicant/Owner: Sandra Samayoa; 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 topography of the lot has a gradual slope being high on the left side and sloping to the right. The garage sits on approved slab on left side of the lot, creating a visual and physical differentiation between actual heights of the building peaks. The primary mobile home structure is shorter than the adjacent duplex residences.” Staff acknowledges that there exists a gradual slope to the property, however, the slope of the property has no bearing on the height difference between the accessory building and the primary dwelling as each is measured from grade.); **and**
- 2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states: “The right to use the land by property owner is in effect by means of enjoyment, development as well as storage of ones belongings not limited to but including tools, vehicles, home goods, RVs, trailers, materials and other items related to the improvement and wellbeing of the property owner. The variance will allow the owner to exercise their ability to pursue happiness and wellbeing as considered to adequate living space, relieved by storage in the metal building.” Staff acknowledges that while an accessory building does provide storage of one's various tools, vehicles or other items, meeting the height requirement would not impede such storage.); **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: “This variance does not pose a threat, danger, nuisance, annoyance or any other forms of negative detriment to

the public in any way. The safety and welfare of the public will benefit by way of proper storage of items such as paints, solvents, tools, etc.” Staff acknowledges that the granting of a variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the 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 variance will not impede or interfere with another property in any way. There are no easements or other forms of required access. The height of the building is not unusual or so tall as to block, inhibit or prevent another property’s function.” Staff acknowledges that the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter. Staff notes all neighboring properties are still required to comply with the height requirements for any new construction.); **and**
- 5) **That an undue hardship exists;** (The applicant states: “The hardship that exists is due to the lot layout and size, including the topography. This lot is long and narrow, requiring the placement of the building in a way to provide access to the main driveway. This poses a challenge in layout and effective cost implementation. The topography is sloped from left to right giving the appearance of a taller installed height than the mobile home principal building height that sits on the lower side of the lot.” Staff acknowledges that the property is slightly more narrow than adjacent properties and that the primary buildings on adjacent and nearby lots are greater in height than the applicant’s mobile home unit which serves as the primary building on the subject property. Staff notes that the topography on the subject property is not a factor in measuring the height of the structures due to all height is measured from grade.); **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states: “Granting this variance will be in synchronicity with the city and its developmental standards. The growth in the city is based on the development of structures in a cost effective manner, which this permit demonstrates as well as contributes to the city’s orderly growth. Granting this variance will continue to secure the beneficial interests of public life, health, and welfare in regard to the local community and to the needs of the property owner by reflecting the needs and desires of residences in the community.”)

Chair Coker asked if there were any questions for staff.

No one spoke.

Chair Coker invited the applicant to speak and asked if they would like to proceed with the hearing of the request.

Sandra Samayoa confirmed they would like to proceed and elaborated on the request.

Discussion followed on building permitting, the construction and height of the building, accessory structure regulations, and the types of homes in the area.

Chair Coker opened the public hearing and asked if anyone would like to speak.

The following individual spoke on the item: Taylor Pemstein.

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

Discussion followed on the building, permitting, property topography, lot configuration, and potential conditions on approval,

Motion by Member Chafin, seconded by Member Avary, to approve the request for a variance from Sec. 144-5.4 (e) Height. The height of the accessory building shall not exceed the height of the main building in the “B-1A” Conventional and Mobile Home District, currently addressed at 2523 Pahmeyer Road.

Member Wilson stated she would like to add a condition of approval to the motion that the granted variance not be transferable between property owners.

Member Chafin withdrew his original motion.

Motion by Member Wilson, seconded by Member Chafin, to approve the request for a variance from Sec. 144-5.4 (e) Height. The height of the accessory building shall not exceed the height of the main building in the "B-1A" Conventional and Mobile Home District, currently addressed at 2523 Pahmeyer Road, with the condition that the granted variance would not be transferable between property owners. Motion carried (4-0-0).

B) ZB24-0003 Hold a public hearing and consider a request for a variance to Section 106-14(b)(8)(a) to allow a subdivision entry sign that exceeds the maximum allowed height in the ZH-A Zero Lot Line Home District, located approximately 0.5 miles northeast of the intersection of SH 46 & FM 758. (Applicant: Horizon Design and Development, Inc.; Jon Robinson; Owner: Pulte Homes of Texas, L.P.; 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 "Due to the excessive setback from FM 758 to the proposed monument location, potential homebuyers, homeowners, and their guests will be unable to read the subdivision name. This will impede the Owners right to effectively market the community to potential homebuyers, will interfere with homeowners' right to easily identify their community, and will make it more difficult for visitors to readily enter the community from FM 758 in a safe and orderly manner. Allowing the sign variance will increase legibility of the community's name while still limiting the height and sign face area of the lettering to that stipulated in the City of New Braunfels development ordinances." Staff notes that subdivision entry signs are allowed by right at the entrance to any subdivision subject to the standards of Section 106-14(b)(8), where a maximum height of 6ft is allowed by right. The proposed sign meets the standards for subdivision entry signs in allowed sign area and minimum setback distance from property lines as proposed.); **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states "Due to a 25' TxDOT R.O.W. dedication, a 30' utility easement, and a 5' monument setback, the proposed entry feature at its closest corner is setback approximately 65' from FM 758. In order for the proposed monument to be visible from FM 758, the applicant requests a portion of the proposed monument to be constructed at 9'-4" height. The text of the sign body will meet the max height and area requirements of the City of New Braunfels. Only a portion of the structure is proposed to exceed the max 6' height limitation." Staff acknowledges the presence of the TxDOT ROW dedication, and multiple easements yet to be platted on the property. Staff also notes that the height of the proposed sign exceeds the allowed maximum height by 3 feet & 4 inches (~54%).); **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 "Granting this sign variance and allowing a portion of the monument structure to exceed the max 6' height requirement in the City of New Braunfels development ordinance will not be detrimental to the public health, safety, and welfare, or injurious to other properties. The proposed monument location is outside any clear vision easements and the proposed sign face remains within the allowable max height and area standards." Staff notes that the sign face of the proposed entry sign meets the sign area requirements of Section 106-14(b)(8)(a) but it is a portion of the overall sign structure that exceeds the maximum allowed height.); **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 "Granting this sign variance will not prevent orderly use of other properties within the area, nor will it prevent another property from complying with a regulation or ordinance. The proposed monument will be located entirely within a common area lot under the Owners ownership and maintained by the community HOA."); **and**
- 5) **That an undue hardship exists;** (The applicant states "The undue hardship necessitating this sign variance is the depth of the TxDOT R.O.W. and the utility easements, which set the proposed monument too far back from FM 758 to dully comply with the City of New Braunfels development ordinance and be effectively visible from FM 758."); **and**

- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states “Because the proposed sign face is within the max height and area standards allowable under the City of New Braunfels development ordinances, granting this sign variance is in harmony with the spirit and purpose of the City's regulations.”)

Chair Coker asked if there were any questions for staff.

No one spoke.

Chair Coker invited the applicant to speak.

Jon Robinson elaborated on the request.

Discussion followed on the design of the proposed sign, lot configuration, intersection visibility, and identifying a hardship.

Chair Coker opened the public hearing and asked if anyone would like to speak.

No one spoke.

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

Discussion followed on the location of the proposed sign as it relates to public right of way, and subdivision entry sign regulations.

Motion by Member Wilson, seconded by Member Avary, to approve the request for a variance from Section 106-14(b)(8)(a) to allow a subdivision entry sign that exceeds the maximum allowed height in the ZH-A Zero Lot Line Home District, located approximately 0.5 miles northeast of the intersection of SH 46 & FM 758. Motion carried (4-0-0).

C) ZB24-0004 Hold a public hearing and consider a request for a variance to Section 106-14(a) to allow a freestanding monument sign that exceeds the maximum allowed sign area in the C-1B General Business District, currently addressed 1349 SH 46 S. (Applicant: Executive Signs Enterprises, Inc., Erika Vazquez; Owner: The First National Bank of Sonora; 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 “Property is on corner lot and is not near any other properties. The proposed sign is well under the height allowance and is not located in the easement or right of way. This lot is allowed a monument of 28ft overall height and 225 sqft.” Staff notes that freestanding monument signs on properties with SH 46 frontage are allowed a maximum height of 10-feet and that the requested sign is proposed with a maximum height of 5-feet. The applicant refers to the allowed maximum height for high-profile monument signs (28-feet), which the subject property is not allowed by right due to a lack of sufficient street frontage along SH 46. (300-feet of frontage along SH 46 minimum)); **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** (The applicant states “The variance is necessary to allow the business adequate space to display/advertise their location. Doing so would not hinder any other property owners rights/usage. Instead of 28ft high; propose 5ft high and 24ft wide.” Staff notes the substantial property right to operate and advertise a business with a freestanding sign that meets the design requirements of Section 106-14(a) has not been removed. Staff also notes that the subject property is not allowed a freestanding high-profile monument sign due to the lack of sufficient street frontage along SH 46. The property is however allowed a freestanding monument sign at a maximum allowed sign area of 60-square-feet and maximum allowed height of 10-feet by right due to the property's C-1B zoning and frontage along SH 46.); **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 “Granting this variance will not cause detriment to the public or any other surrounding properties.”); **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 “Granting this variance will not prevent any other property from complying. The sign will not be located near any bordering properties and will not be in the easement.”); **and**
- 5) **That an undue hardship exists;** (The applicant states “No, there is no undue hardship.”); **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** (The applicant states “Yes, granting the variance will be in harmony with the city's regulations. The proposed sign is well under the height allowance and follows all guidelines with the exception of the background square-footage. Would like low profile monument instead of high profile. sign has been designed to allow adequate space for the company logo without blocking views or impeding other properties rights.”)

Chair Coker asked if there were any questions for staff.

No one spoke.

Chair Coker invited the applicant to speak.

Terry Tschirhart elaborated on the request and provided the Board with an exhibit package to discuss.

Discussion followed on permanent sign regulation and the location of the subject property.

Chair Coker opened the public hearing and asked if anyone would like to speak.

No one spoke.

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

Motion by Member Chafin, seconded by Chair Coker, to approve the request for a variance from Section 106-14(a) to allow a freestanding monument sign that exceeds the maximum allowed sign area in the C-1B General Business District, currently addressed 1349 SH 46 S. Motion carried (4-0-0).

5. STAFF REPORT

Brief discussion followed on the need for revisions to the New Braunfels Sign Code and the need to fill a vacant seat on the Board of Adjustment.

6. ADJOURNMENT

Chair Coker adjourned the meeting at 6:54 pm.

Chair

Date