



AGENDA ITEM SUMMARY FORM

MEETING DATE: June 24, 2026

PREPARED BY: Otis T. Spriggs, AICP, Development Services Director

AGENDA CONTENT: Conduct a public hearing, discussion, and take possible action on a request for a variance to the Code of Ordinances, Section 28:110 (2), which prohibits a canopy less than 15' of any public street right-of-way. The proposed canopy was damaged by a recent storm, and will be reconstructed at a distance less than the requirement; the subject property is located at 728 W. Mulberry St.

AGENDA ITEM SECTION: Public Hearings and Action Items

BUDGETED AMOUNT: N/A

FUNDS REQUESTED: N/A

FUND: N/A

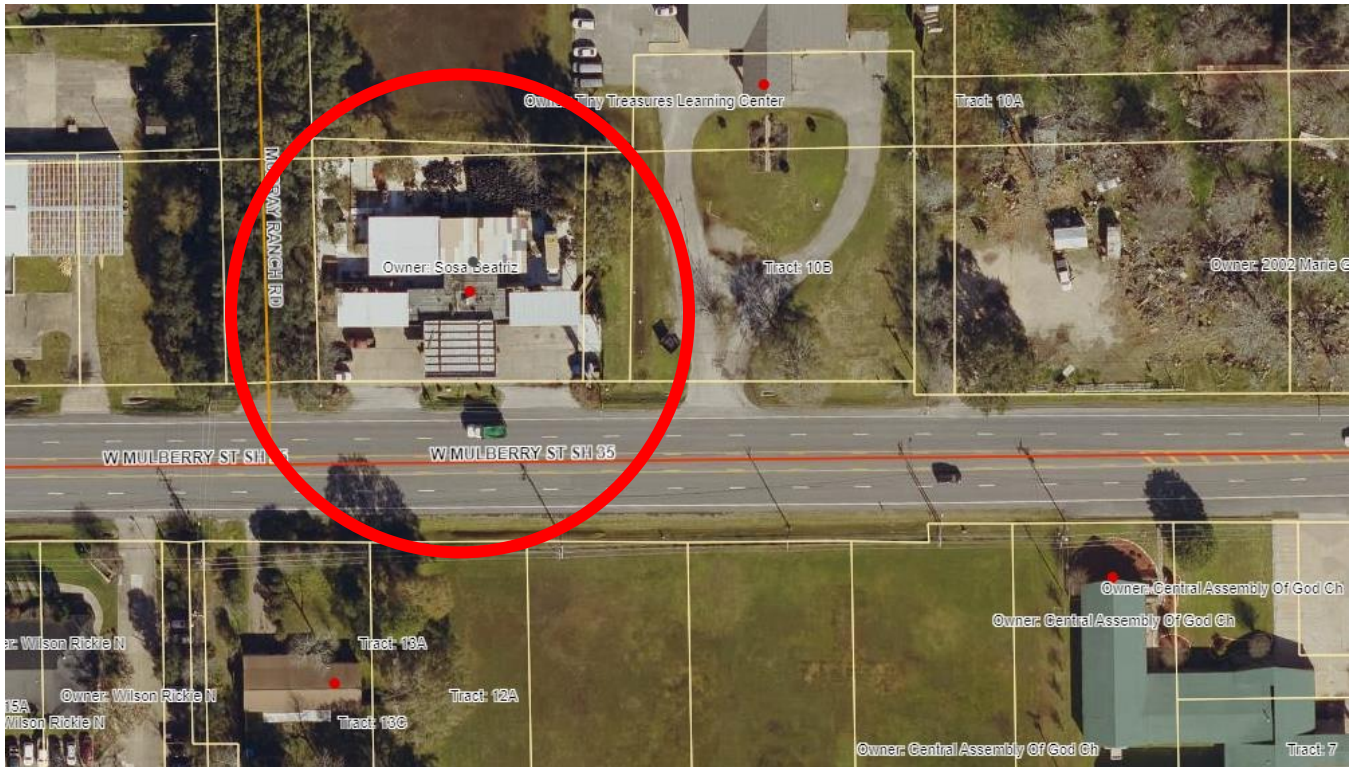
EXECUTIVE SUMMARY:

The applicant filed a variance request to the Code of Ordinances, Sec. Code of Ordinances, Section 28:110 (2), which prohibits a canopy of less than 15' of any public street right-of-way. The proposed canopy was damaged by a recent storm, and will be reconstructed at a distance less than the requirement; the subject property is located at 728 W. Mulberry St.

Applicant, Jose Sosa, is requesting a variance to rebuild a 49'x37' (approx..) front canopy that was previously destroyed due to hurricane Beryl. The original canopy existed for over 30 years. The applicant hopes to rebuild a more heavy-duty one with additional support posts, and a heavier gauge metal to keep customers and employees out of the rain & sun.

The original canopy distance from the TXDOT right of way appeared to be approximately 5 ft. from the right of way. Staff cautions and recommends that the new canopy should at least to the same setback distance and by no means shall encroach into any right of way or highway easement.

Staff processed this application and scheduled the public hearing at the request of the applicant. Property owners within 200 ft. of the property were notified and the legal notice was posted in the local newspaper.



Aerial Map



Photo of original carport

Zoning Code / Variance Analysis:

Sec. 28-23. Board of adjustment (BOA). F. (2). No variance shall be granted without first having given public notice and having held a public hearing on the variance request in accordance with subsection (h) of this section and unless the board of adjustment finds:

- a. **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 his/her land; *The original canopy was destroyed due to the weather event-Beryl, and the applicant hopes to place it generally in the same location.***
- b. **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; *The original canopy was destroyed due to the weather event-Beryl, and the applicant hopes to place it generally in the same location. This type of canopy is customary for this type of use.***
- c. **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;**

Staff confirms that the variance will not cause any detriment to public health and safety.

- d. **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; and**

Staff confirms granting the variance will not interfere nor prevent the orderly use of other land within the area.

- e. **That a finding of undue hardship exists.**

Such findings of the board of adjustment, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the board of adjustment meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this chapter so that public health, safety and welfare may be secured, and that substantial justice may be done.

Staff agrees the findings of undue hardship in granting this canopy setback variance are properly established.

In order to grant a variance, the Board of Adjustment must make written findings that an undue hardship exists:

Staff concurs that the difficulty caused is neither financial in nature, self-imposed nor generally affecting all or most properties in the same zoning district (it was disaster-related); and the relief sought will not injure the permitted use of adjacent conforming property; and the granting of a variance will be in harmony with the spirit and purpose of these regulations.

RECOMMENDATION:

Staff recommends that the Board of Zoning Adjustment finds that a hardship exists and grants the setback variance to the Code of Ordinances, Sec. Code of Ordinances, Section 28:110 (2), for the canopy replacement at 728 W. Mulberry.

Sample Motion:

1: *The Board of Zoning Adjustments has established findings of fact and determines that a hardship has been proven for the requested variance to the Code of Ordinances, Sec. Code of Ordinances, Section 28:110 (2), for the canopy replacement at 728 W. Mulberry.

**Board of Zoning members may vote Nay to DENY the petition due to findings that hardship is not demonstrated or such variance will adversely impact the general planning area.*