

ZONING BOARD OF ADJUSTMENT CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
July 27, 2022

AGENDA TOPIC: Consideration and possible action on the Variance Application No. ZBOA 2022-06-22 from Damon Gray of D & A Gray Enterprises LLC, applicant and property owner, to grant the variances for the property located at 29105 Noll Road, Fair Oaks Ranch, TX, also listed as 29105 Noll Road, Boerne, TX in the Bexar County Property Records.

DATE: July 27, 2022

DEPARTMENT: Public Works and Engineering Services

PRESENTED BY: Katherine Schweitzer, P.E., Manager of Engineering Services
Lata Krishnarao, AICP, LEED ND, Consultant, Gunda Corporation

INTRODUCTION/BACKGROUND

Location: The subject parcel is located at 29105 Noll Road, south-east of the intersection of Noll Road and Dietz Elkhorn Road (see attached **Exhibit A: Location Map and Vicinity Map**). Street access to the property is provided from Noll Road. The site has an existing facility that is being used as a cabinet and custom woodwork shop.

The applicant is proposing an expansion of the existing facility from 2,900 square feet to 9,296 square feet, by constructing a new detached building of 6,396 square feet. The expansion requires additional parking to be provided. The current use of the property existed prior to adoption of the Unified Development Code (UDC) in 2019 and is a permitted use in this zone.

Current Zoning: Neighborhood Commercial

Current Use: Cabinet and custom woodwork shop

Property Size: 0.753 acres

Unified Development Code and Zoning Designation:

The purpose of adopting the Unified Development Code (UDC) is to promote the public health, safety, and welfare of present and future citizens of the City of Fair Oaks Ranch. The UDC uses zoning to regulate the development of land within the city to achieve balanced growth and quality of life as defined by the citizens. The zoning designation of the property determines the regulations that will be applicable to the development of the property. The subject property is zoned Neighborhood Commercial (**Exhibit B: Zoning Map**) and the use is permitted by right in this zone.

Platting: Any unplatted property must be platted prior to development. At the time of platting, any additional Right-of-Way (ROW) required as per the City's adopted Throughfare Plan needs to be dedicated. The property fronts on to Noll Road, a Local Street as per the Transportation Map (**Exhibit D**), which requires a total ROW width of 47'. The applicant is in the process of

platting this property. Because the current width of Noll Road is inadequate, additional ROW dedication will be required from this parcel during platting.

Nonconforming status: The subject property was developed prior to the adoption of the Unified Development Code (UDC), when City of Fair Oaks Ranch had no development standards. With the adoption of the UDC, standards for site development were introduced, including permitted uses, landscaping, screening, parking, paving, buffers, setbacks, etc. The property does not meet the current standards for access to parking lots, screening of parking lots, and parking setback from the street.

Properties, such as the subject parcel, that were developed prior to the adoption of the UDC (May 2, 2019) and do not meet the requirements of the UDC, are classified as nonconforming uses. The UDC defines nonconforming uses as:

Nonconforming uses are lawful uses within a zoning district that do not conform to the requirements of this UDC when it is adopted, or when any amendments thereto, take effect.

The intent of the UDC is to bring such uses into conformance as they redevelop. The existing use may continue in its current configuration, but any new enlargements or changes to the use must conform with the requirements of the UDC.

In this case, the applicant proposes to expand the existing facility without correcting the existing nonconformities or meeting the following requirements for the proposed alterations:

1. Access to the parking spaces: The applicant proposes to have all parking spaces perpendicular and immediately adjacent to the street. This direct access from the street is not permitted and can cause accidents from vehicles reversing onto the street. The UDC requires parking spaces be accessed by an aisle or driveway from a road.
2. Number of parking spaces: The parking spaces on site will be less than the required number of spaces.
3. Screening of parking areas from the street: Parking spaces will not be screened from the street, as required.
4. Parking setback from the street: Parking spaces will not have a 3' wide setback from the street, as required.

The applicant is therefore seeking Variances to deviate from these requirements to develop the property as shown on the Site Layout Exhibit (**Attachment 4**). In accordance to regulations, all real property owners within 200 ft were notified and notice of the public hearing was published prior to the Zoning Board of Adjustment (ZBOA) holding a public hearing. Staff has received five (5) public comment in favor of the request and three (3) in opposition. The Public Hearing was held at the June 22, 2022 ZBOA meeting after which the Board considered this request (Variance Application No. ZBOA 2022-06-22), and tabled action on this item to provide the applicant an opportunity to address the concerns that were discussed at the meeting. The applicants responses to the ZBOA's input and directives are listed below:

1. ZBOA was in favor of reducing the required parking spaces to enable preservation of existing trees on the north side.

Applicant's response - The parking requirement has reduced (24 spaces to 19 spaces) due to the decrease in building size. The applicant has proposed 11 spaces thereby requiring a

variance to reduce the parking spaces from 19 to 11.

2. Confirm the size of the buildings.

Applicants response - The proposed building size has been reduced to 6396 sq. ft. This has been indicated on the Site Layout Exhibit(**Attachment 4**).

Proposed building	6396 sq. ft.
Existing	2900 sq. ft.
Total	9296 sq. ft.

3. Meet the height requirement.

Applicants response - The Site Layout Exhibit (**Attachment 4**) indicates that the height of the proposed building as 20' whereas the response letter indicates that the height will be 16'.

Outstanding comment - *This needs to be clarified.*

4. Confirm that there will not be any outside storage.

Applicant's response - Addressed. Added a note on the Site Layout Exhibit (**Attachment 4**). Confirm that there will not be any outdoor activity.

Applicant's response - Addressed. However, the note that the applicant has referred to in the response letter is missing from the Site Layout Exhibit.

Outstanding comment - *Add a note on the Site Layout Exhibit that "no outdoor activity is permitted on site".*

5. Confirm that there will not be any noise generated due to any outside activity.

Applicant's response - Addressed. Added a note on the Site Layout Exhibit (**Attachment 4**).

6. Confirm that there will not be any outside lighting.

Applicant's response - Addressed. Added a note on the Site Layout Exhibit (**Attachment 4**).

7. Restrict the direct access from Noll Road and waiver of the landscaping screen requirement to existing garage doors only.

Applicant's response - Addressed. However, the note that the applicant has referred to in the response letter is missing from the Site Layout Exhibit (**Attachment 4**).

Outstanding comment - *Add a note on the Site Layout Exhibit that states "allow direct access from the street and waive the 3' parking setback and 3' tall landscape screening for the seven existing spaces and garage access as shown by the shaded area".*

8. Comply with the UDC requirements for new parking.

Applicant's response - Addressed.

9. Meet the required setback on the East.

Applicant's response - Addressed.

10. Provide fencing along east side.

Applicant's response - Addressed. The applicant confirmed that there is an existing eight foot tall masonry fence on the east side.

11. Provide acoustical walls on the side of the building facing residential.

Applicant's response - Addressed. Added a note on the Site Layout Exhibit (**Attachment 4**) Consider preservation of trees on the north side.

Applicant's response - Addressed. The Site Layout Exhibit (**Attachment 4**) was revised to save trees.

12. Meet the front setback of 20' for the addition.

Applicant's response - Addressed.

REQUESTED VARIANCES AND STAFF FINDINGS:

Based on the ZBOA's discussion and a preliminary review of the applicant's response and the revised Site Layout Exhibit (**Attachment 4**) received on July 19, 2022, the number of variances has reduced from six to four as listed below:

1. Variance from Section 6.7 (4) c – Allow access to parking directly from the street instead of from an aisle or a driveway.

The proposed site development does not provide driveway or aisle access to parking. All parking spaces will have access directly from the street and will use the public street to reverse a vehicle.

Finding: Per the Schematic Diagram below, it is staff's opinion that the Site Layout Exhibit (**Attachment 4**) and parking layout can be designed to meet this requirement. The applicant has not identified any constraints on the property that would prevent the applicant from meeting UDC requirements for parking access. The criteria in UDC Sec. 3.9 (9), do not apply and a deviation is not warranted. Adherence to this requirement will not prohibit or unreasonably restrict the utilization of the property.

2. Variance from Section 6.7, Table 6.2 – Reduce the number of parking spaces from 19 spaces to 11 spaces. The current required ratio is one space per 500 square feet of usable building area for the existing use. The facility expansion requires 19 parking spaces for the 9,296 square foot proposal while the applicant is proposing only 11 spaces. The applicant has not identified any constraints on the property that would prevent the applicant from meeting UDC requirements for parking.

Finding: It is staff's opinion that the site can be designed to meet this requirement by reducing the size of the new building which would require less parking spaces. The criteria in UDC Section 3.9 (9), do not apply and a deviation is not warranted. Adherence to this requirement will not prohibit or unreasonably restrict the utilization of the property.

3. Variance from the requirements of Section 6.8 (2) d – Eliminate the required 3’ parking setback from the street.

Finding: It is staff’s opinion that the site can be redesigned to accommodate the required parking setback ,therefore, this Variance is not warranted. The criteria in UDC Sec. 3.9 (9), do not apply and a deviation is not warranted. Adherence to this requirement will not prohibit or unreasonably restrict the utilization of the property.

4. Variance from Section 7.7 (1) – Eliminate the required 3’ high landscaping screening strip between parking and street. If Variance No. 1 is approved to allow direct street access to the parking area, no landscaping strip can be installed. There is room for landscape screening, however, the existing Site Layout Exhibit (**Attachment 4**) does not propose any screening.

Finding: It is staff’s opinion that the site can be designed to meet this requirement. The criteria in UDC Section 3.9 (9), do not apply and a deviation is not warranted. Adherence to this requirement will not prohibit or unreasonably restrict the utilization of the property.

VARIANCE REQUIREMENTS

The Zoning Board of Adjustment may authorize, in specific cases, a variance from zoning regulations, unless specified otherwise, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the regulation would result in unnecessary hardship, and so that the spirit of the regulation ordinance adopted hereunder is observed and substantial justice is done.

A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by the City’s zoning regulations. In order to make a finding of hardship and grant a variance from the zoning regulations, the Board must meet the findings laid out in Chapter 3.9 (9) of this Code.

No Variance will be granted unless the authorizing body finds that all of the following apply:

1. There are extraordinary or special conditions affecting the land involved such that strict application of the provisions of this Code will deprive the applicant of a reasonable use of its land. For example, a Variance might be justified because of topographic, or other special conditions unique to the property and development involved, while it would not be justified due to inconvenience or financial disadvantage;
2. The Variance is necessary for the preservation of a substantial property right of the applicant;
3. Granting of the Variance will not be detrimental to the public health, safety, or welfare, or injurious to other property in the area, or to the City in administering this Code;
4. Conditions that create the need for the Variance do not generally apply to other property in the vicinity;
5. Conditions that create the need for the Variance are not the result of the applicant's own actions;
6. Granting of the Variance would not substantially conflict with the Comprehensive Plan and the purposes of this Code; and
7. Because of the conditions that create the need for the Variance, the application of this Code to

the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

Insufficient Findings.

The fact that property may be utilized more profitably should a Variance be granted may not be considered, standing alone, as grounds for a Variance. Additionally, the following types of possible findings do not constitute sufficient grounds for granting a Variance:

1. Property cannot be used for its highest and best use;
2. There is a financial or economic hardship. There is a self-created hardship by the property owner his / her agent; or
3. The development objectives of the property owner are or will be frustrated.

Further limitation of authority:

May not grant a Variance when the effect of the Variance would allow any of the following:

1. The establishment of a use not otherwise permitted in the applicable Zoning District;
2. Increase the density of a use above that permitted by the applicable district;
3. A nonconforming use of land to be physically extended;
4. Change the Zoning District boundaries shown on the Official Zoning Map; or
5. Conflicts with any State or Federal regulations.

The ZBOA may choose to approve some or all of the requested Variances. The ZBOA may impose conditions on the approval of the Variance, as they seem appropriate, to mitigate any negative impacts on the surrounding properties or the City in general.

STAFF RECOMMENDATION:

Review of the site indicates that the requirements of the UDC in terms of access, landscape screening, parking setback from the street, and number of parking spaces can be met by re-designing the layout. In conclusion, it is staff's opinion that the requested Variances do not meet the criteria listed for findings of a hardship as per UDC Sec. 3.9 (9). The facility expansion can be redesigned with an appropriately-sized building to meet all the requirements of the UDC. The hardship appears to be self-created, is based solely on economic gain or loss, and will allow development of this parcel in a manner not permitted by the City's zoning regulations.

If ZBOA is in favor of granting any of these variances, staff recommends considering the following conditions to be added to the approval:

1. Add the following notes to the Site Layout Exhibit (**Attachment 4**):
 - a. All other requirements of the UDC and other applicable codes, not specifically mentioned in the variance request shall be met.
 - b. No outdoor activity is permitted on site.

- c. Allow direct access from the street and waive the 3' parking setback and 3' tall landscape screening for the seven existing spaces and garage access as shown by the shaded area.
2. Clarify the discrepancy in the building size between the Site Layout Exhibit (**Attachment 4**) and the response letter.
3. Variances are approved as shown on the Site Layout Exhibit (**Attachment 4**).
4. Other conditions of approval, if required by ZBOA.

RECOMMENDED MOTION:

Staff recommends that all four Variance requests be denied. The language for the motion must be an affirmative position. The votes may be in favor or in opposition. Each variance is considered separately. The ZBOA may approve any of the motions with conditions as they deem necessary. If the ZBOA needs additional information to make a decision, then the ZBOA may table action on the item.

Variance 1 - Motion: I make a motion to approve the following Variance as per the attached Site Layout Exhibit (**Attachment 4**) with the following conditions: (add any conditions that the ZBOA deems necessary):

Variance from Section 6.7 (4) c – Allow access to parking lots directly from the street and not from an aisle or a driveway.

Variance 2 - Motion: I make a motion to approve the following Variance as per the attached Site Layout Exhibit (**Attachment 4**) with the following conditions: (add any conditions that the ZBOA deems necessary):

Variance from Section 6.7, Table 6.2 – Reduce the number of parking spaces from 19 spaces to 11 spaces.

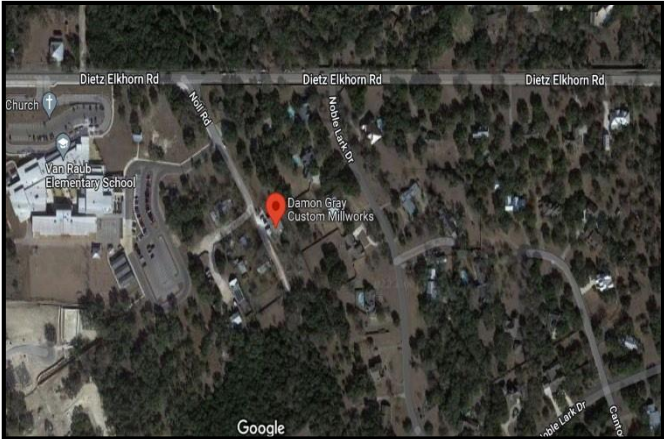
Variance 3 - Motion: I make a motion to approve the following Variance as per the attached Site Layout Exhibit (**Attachment 4**) with the following conditions: (add any conditions that the ZBOA deems necessary):

Variance from Section 6.8 (2) d – Eliminate requirement for a 3' parking setback from the street.

Variance 4 - Motion: I make a motion to approve the following Variance as per the attached Site Layout Exhibit (**Attachment 4**) with the following conditions: (add any conditions that the ZBOA deems necessary):

Variance from Section 7.7 (1) - Allow removal of the three feet high street screen required along the street to screen the parking area.

Exhibit A: Location Map and Vicinity Map

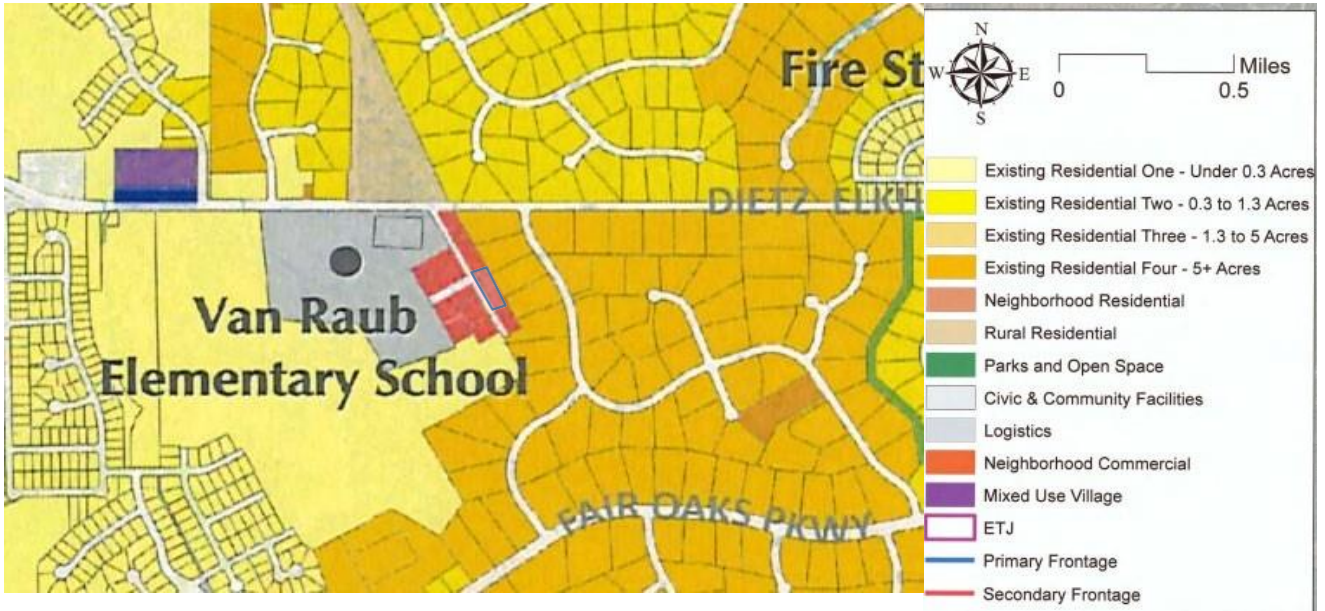


Source: Google



Source: Google

Exhibit B: Zoning Map



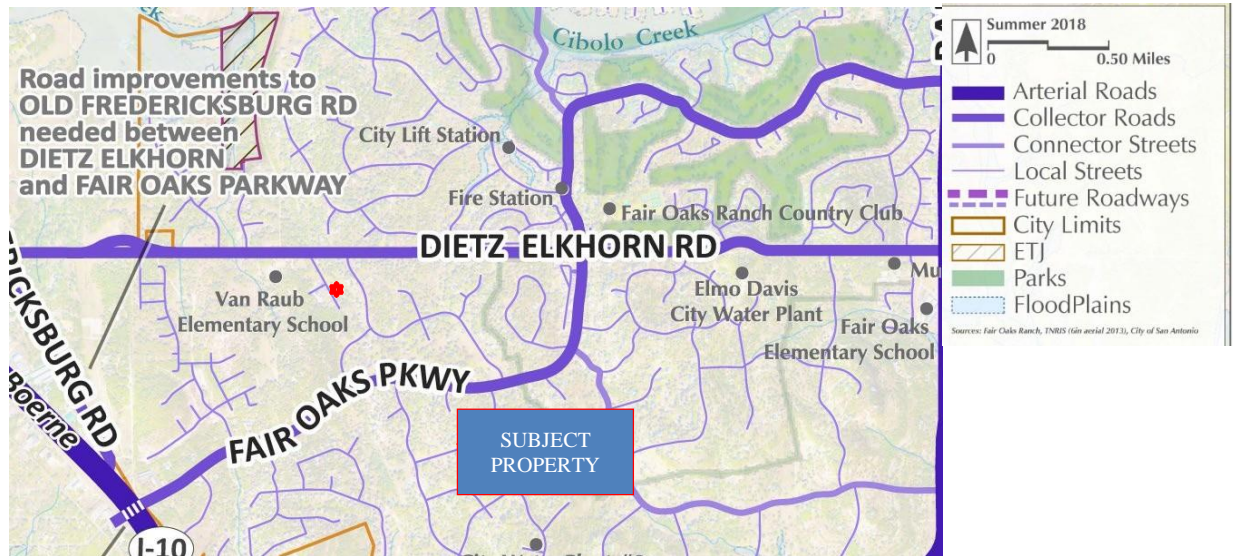
Source: City of Fair Oaks Ranch

Exhibit C: Existing Condition



Source: Google

Exhibit D: Transportation Map



Source: City of Fair Oaks Ranch

Attachments:

1. Universal Application
2. S20 Variance Specific Application Form
3. Letter of Intent
4. Site Layout Exhibit
5. Resubmittal Response Letter
6. Property Owner Response Map
7. Property Owner Comment Forms