



ZONING BOARD OF ADJUSTMENT PUBLIC HEARING

CITY OF FAIR OAKS RANCH, TEXAS

March 28, 2022

AGENDA TOPIC: The Zoning Board of Adjustment of the City of Fair Oaks Ranch, Texas, will conduct a public hearing to receive public testimony and to take action on a request (Variance No. ZBOA 2022-01) from Damon Gray of D & A Gray Enterprises LLC, applicant and property owner, to grant the variances listed below 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.

1. Variance from the requirements of Section 6.7 (4) c - Allow access to parking lots directly from the street and not from an aisle or a driveway.
2. Variance from the requirements of Section 6.7, Table 6.2 - Reduction in the number of parking spaces from 23 spaces to 10 spaces. The current required ratio is one space per 500 sq. ft. of usable building area for Light Manufacturing/ Warehouse/ Logistics types uses.
3. Variance from street screening as per Section 7.7 (1) – Allow the three foot (3') high street screen that is required along the street to screen the parking area to be removed. If the Variance from the requirements of Section 6.7 (4) c is approved, this requirement will not be met.
4. Variance from the requirements of Section 6.8 (2) d - Allow reduction in the required 3' parking setback from the street to 0'. If the Variance from the requirements of Section 6.7 (4) c is approved, this reduction may be approved by staff as per Section 6.7 (7) b.

START DATE: March 28, 2022

DEPARTMENT: Public Works & Engineering Services

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

INTRODUCTION/BACKGROUND:

Prior to taking action on a variance request, the Zoning Board of Adjustment (ZBOA) is required to conduct a public hearing. The sequence for conducting the public hearing and taking action on the requested variances is as follows:

1. Chairman opens the public hearing
2. Staff presentation of the variance request
3. Applicant presentation of the variance request
4. ZBOA receives public testimony for/against the variance request with the Chairman serving as the presiding officer
5. Chairman closes the public hearing
6. ZBOA discuss the request, inclusive of asking questions of the applicant and staff.
7. ZBOA makes a motion and votes

CURRENT ZONING:

Neighborhood Commercial.

CURRENT USE:

Cabinet and custom woodwork shop.

PROPERTY SIZE:

0.753 acres

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 11,400 square feet, by constructing a new detached building of 8,500 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.

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 Plan (**Attachment 4**).

Variance: Variances allow the property owner to deviate from the requirements of zoning regulations in cases where the strict enforcement of the zoning regulation would cause undue hardship (other than financial) in the use and development of the property due to special circumstances unique to the property itself.

The Zoning Board of Adjustments (ZBOA) is authorized by Sec. 211.009 of the Texas Local Government Code (TXLGC) and by the UDC to grant Variances from zoning regulations, if the ZBOA finds that the Variance meets all three of the following criteria:

- a. Is not contrary to the public interest, and
- b. due to special conditions, a literal enforcement of the regulation would result in unnecessary hardship, and
- c. so that the spirit of the regulation ordinance adopted hereunder is observed and substantial justice is done.

Therefore, to grant a Variance, the ZBOA must find that the literal enforcement of the UDC requirements would result in **unnecessary hardship**. According to the UDC, a hardship shall not:

- a. be a self-created or personal hardship, nor
- b. be based solely on economic gain or loss, nor
- c. permit any person a privilege in developing a parcel of land not permitted by the City's zoning regulations.

Sec. 211.009 TXLGC states that the ZBOA may consider the following as grounds to determine whether compliance with the ordinance would result in unnecessary hardship:

- the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;

- compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;
- compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;
- compliance would result in the unreasonable encroachment on an adjacent property or easement; or
- the municipality considers the structure to be a nonconforming structure.

Findings: As per the UDC Sec. 3.9 (9), before granting the Variance, the ZBOA must find 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.

Additionally, in making the required findings, the ZBOA will take into account the nature of the proposed use of the land involved, the existing use of land in the vicinity, the number of persons who will reside or work in the proposed development, the possibility that a nuisance may be created, and the probable effect of such Variance upon traffic conditions and upon public health, convenience, and welfare of the vicinity.

Insufficient Findings: As per the UDC, the fact that property may be utilized more profitably if a Variance is granted may not be considered 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 or his/her agent; or
3. The development objectives of the property owner are or will be frustrated

Approvals: 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 REVIEW:

Preliminary 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 per the Schematic Diagram below. Staff's review of each Variance is 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 plan 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), listed earlier in this report, 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 23 spaces to 10 spaces. The current required ratio is one space per 500 square feet of usable building area for the existing use. The facility expansion requires 23 parking spaces for the 11,400 square foot proposal while the applicant is proposing only 10 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 per the Schematic Diagram below. The criteria in UDC Section 3.9 (9), listed earlier in this report, 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 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 plan does not propose any screening.

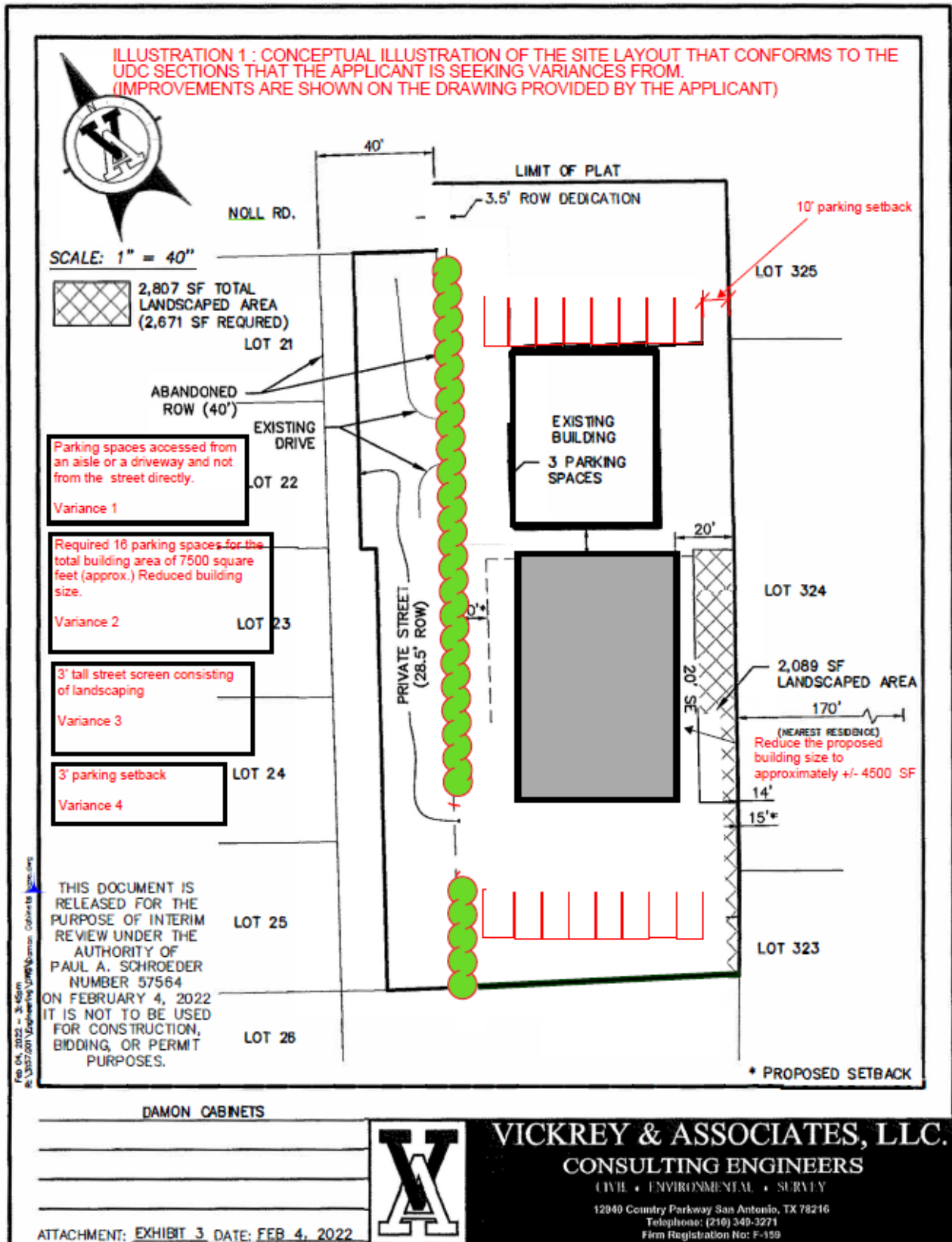
Finding: It is staff's opinion that the site can be designed to meet this requirement per the Schematic Diagram below. The criteria in UDC Section 3.9 (9), listed earlier in this report, do not apply and a deviation is not warranted. Adherence to this requirement will not prohibit or unreasonably restrict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

4. Variance from the requirements of Section 6.8 (2) d – Eliminate the required 3' parking setback from the street. (If Variance No. 3 is approved, staff may approve this request per Sec. 6.7 (7) b.)

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

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.

Schematic Diagram



PUBLIC COMMENTS:

All real property owners within 200ft were notified and notice of the public hearing has been published. Staff has received five (5) public comments in favor of the request and one (1) in opposition.

RECOMMENDATION/PROPOSED MOTION:

Staff recommends that all four Variance requests be denied. The recommended language for the motion is an affirmative position and the ZBOA may vote in favor or opposition. Each variance should be 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.

Motion 1: I move to approve the following Variance as per the attached site plan (**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.

Motion 2: I move to approve the following Variance as per the attached site plan (**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 23 spaces to 10 spaces.

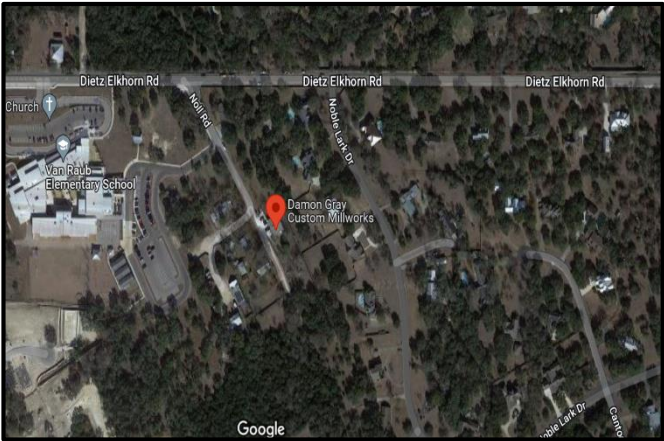
Motion 3: I move to approve the following Variance as per the attached site plan (**Attachment 4**) with the following conditions: (add any conditions that the ZBOA deems necessary):

Variance from Section 7.7 (1) – Eliminate requirement for a 3' high landscaping strip between parking area and street. If the Variance from the requirements of Section 6.7 (4) c is approved, this requirement will not be met.

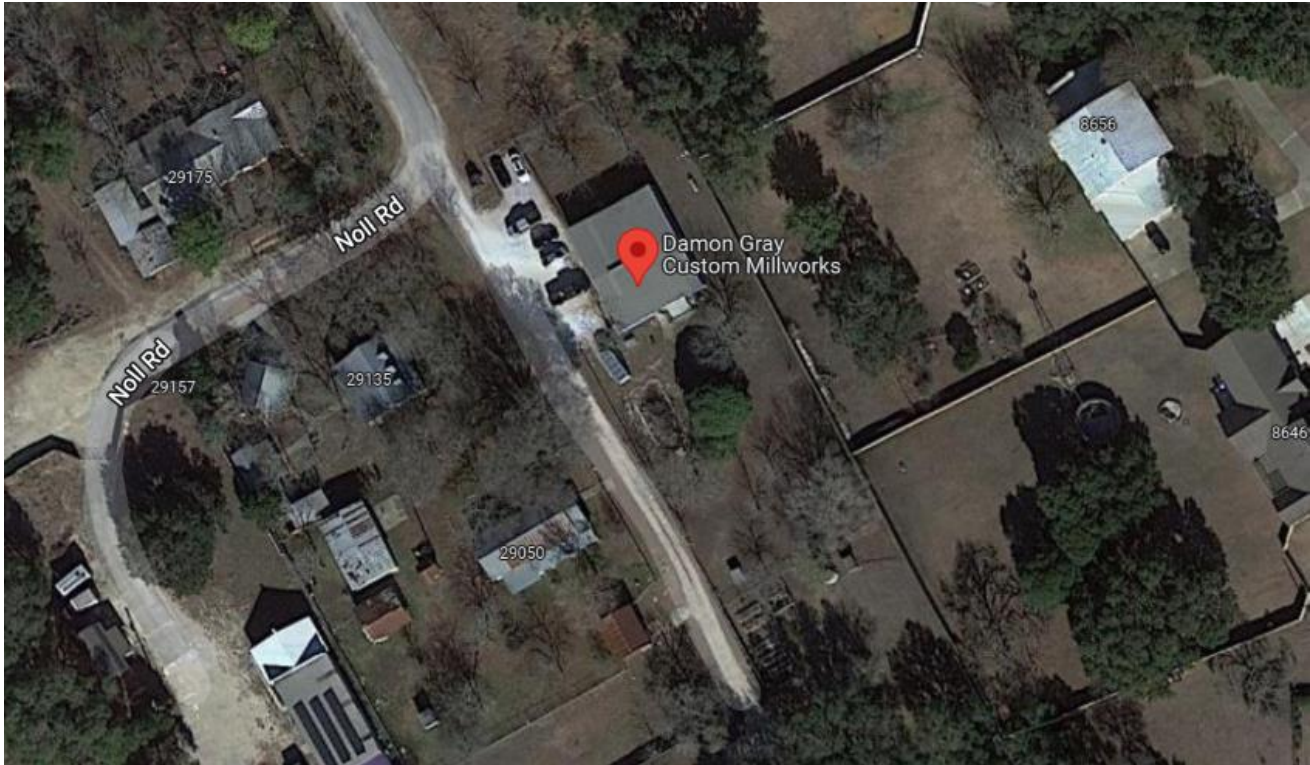
Motion 4: I move to approve the following Variance as per the attached site plan (**Attachment 4**) with the following conditions: (add any conditions that the ZBOA deems necessary):

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

Exhibit A: Location Map and Vicinity Map

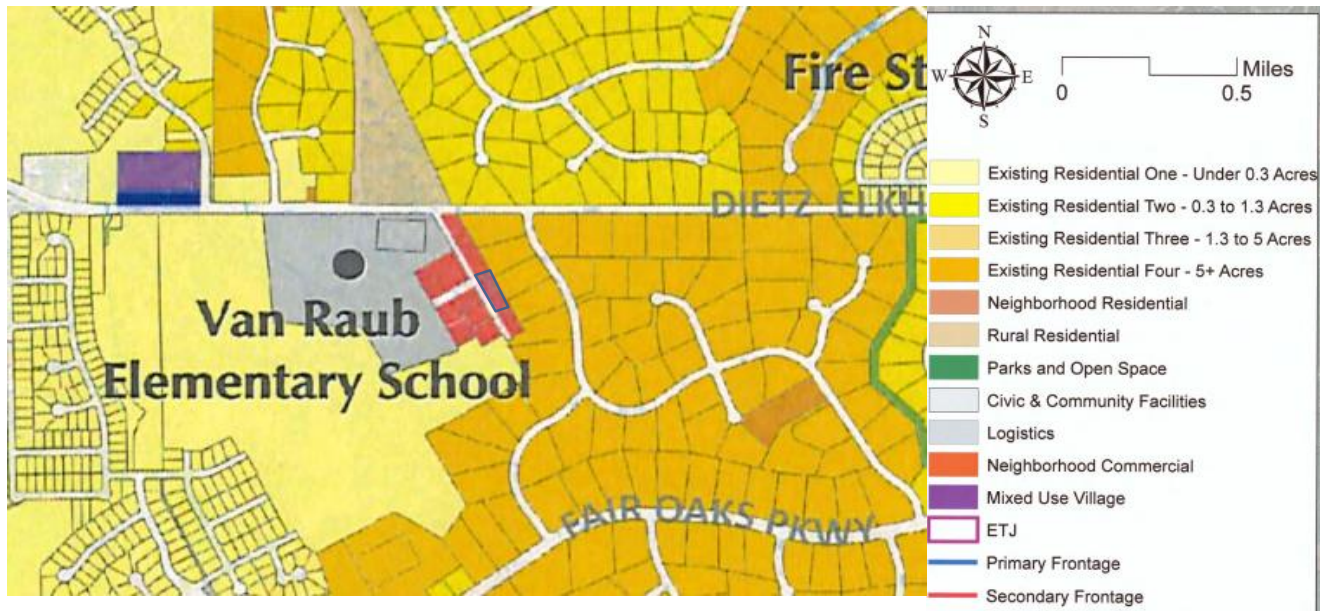


Source: Google



Source: Google

Exhibit B: Zoning Map



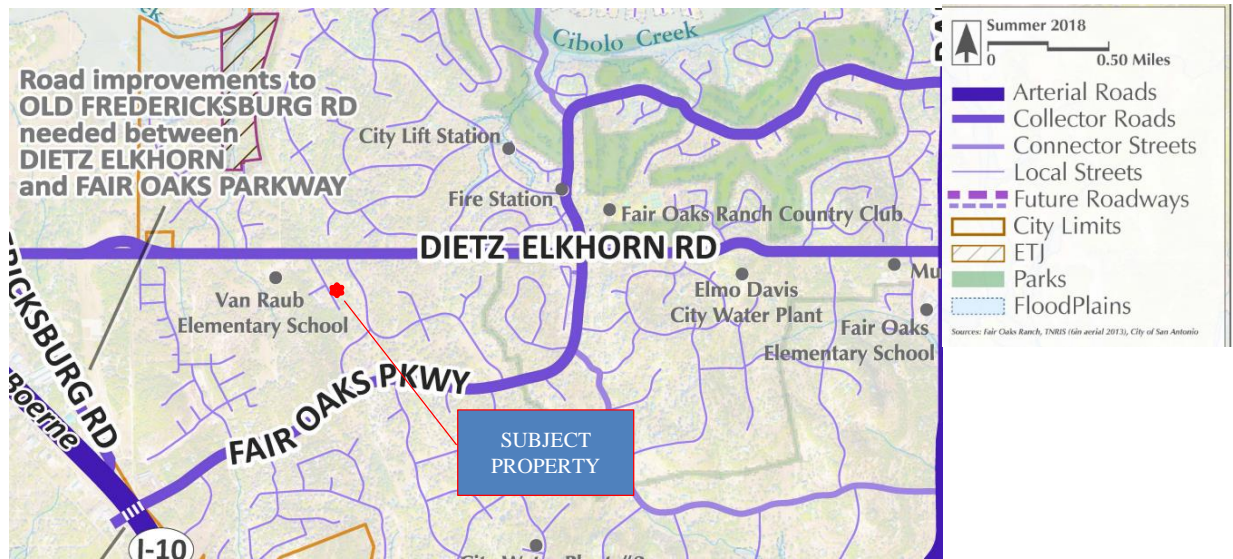
Source: City of Fair Oaks Ranch

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 Plan
5. Resubmittal Response Letter
6. Property Owner Response Map
7. Property Owner Comment Forms