

## **STAFF REPORT**

**To:** Zoning Board of Adjustment  
**From:** Public Works and Engineering Department  
**Date:** May 15, 2024  
**Re:** Variance Application No. ZBOA 2024-01 from the applicant Cude Engineers, on behalf of property owners Gerald W Rentz Jr. and Lisa Rentz, to grant the variances listed below for the property located at 8923 and 8979 Dietz Elkhorn Road, Boerne, TX. (Located within the City Limits of Fair Oaks Ranch)

### **SUMMARY:**

The applicant is proposing a development that will consist of a childcare facility located at 8923 and 8979 Dietz Elkhorn Road, northwest of the intersection of Dietz Elkhorn and Elkhorn Ridge (see **Exhibit A: Subject Property Aerial Map**). The developer plans to plat and subdivide the 4.289-acre parcel into two lots, the first being approximately 2 acres and the second being approximately 2.289 acres. The Childcare Facility (Prep School) will be located on the western 2-acre lot which will be accessed from Dietz Elkhorn Rd.

The purpose of the City's 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 permitted uses and development regulations that will be applicable to the development of the property.

**Zoning Designation:** The subject property is zoned Mixed Use Village (MU) (see **Exhibit B: Zoning Map**). Uses within this zoning district include commercial (office, retail, and restaurant) with a variety of residential uses also permitted. Section 6.8 (1) of the UDC states the MU zone includes areas within the City of Fair Oaks Ranch where the city encourages a mixture of uses that create pedestrian scaled commercial and residential development at major nodes in the city that generally conform to a Hill Country Design aesthetic. MU district is considered appropriate for sites that have direct access to primarily arterial, collector and connector streets. Development standards in this district require new buildings to create pedestrian friendly building frontages by locating the building closer to the streets and provide pedestrian access to the building from the street.

**Proposed Use:** The proposed childcare facility is permitted by right with conditions in this zone. The conditions include meeting minimum state requirements for such facilities, registration with the State of Texas, locating outdoor play areas behind front building lines and screening play areas adjacent to residential properties.

**UDC Requirements:** In UDC Chapter 6 Zoning Regulations, subsection 6.8 (1) (b) (i) Zoning Districts for Mixed Use Village, there are requirements for max building setback for primary frontages, which is 20 feet. Under section 6.8 (1) (d) (i), the UDC requires all surface parking to be located behind the principal building.

**Variances Requested:** On April 09, 2024, the applicant submitted a complete variance application (see **Exhibit C: Variance Application**) seeking to vary the maximum setback of the building and locational requirements for the parking lot. The following table shows a comparison of the requirements and the variances requested.

|                                                                                                  | Required by the UDC | Proposed by the applicant                        |
|--------------------------------------------------------------------------------------------------|---------------------|--------------------------------------------------|
| Build-to Zone (maximum building setback requirement) along Primary Frontage (Dietz Elkhorn Road) | 20'                 | 140'                                             |
| Surface parking in the area located between the building and the Dietz Elkhorn Road.             | Not permitted       | Between the building and the Dietz Elkhorn Road. |

The applicant has provided a site plan for the proposed childcare facility (see **Exhibit D: Site Plan**) which will include a frontage building setback of 140 feet from Dietz Elkhorn Rd. The site plan shows the parking lot and loading area (drop-off/pick-up) located within the 140-foot setback area which will separate the building and Dietz Elkhorn Road.

**SITE HISTORY:**

The 4.289-acre property is located at 8923 and 8979 Dietz Elkhorn Road and was divided into three lots through meets and bounds back in 2006 and 2007. The subject property is not platted and contains a single-family residential structure. The property is currently zoned as Mixed Use Village. No other variances or zone changes have been requested previously.

**REASON FOR THE REQUEST:**

The applicant is requesting the variances to allow for construction of a daycare/childcare facility of approximately 13,500 square feet as shown in the site plan.

**PUBLIC NOTICES/COMMENTS:**

All Public Hearing notification requirements have been met. Newspaper notice was published in the Boerne Star newspaper on April 28, 2024 and mailed notices were sent to all property owners within 200 feet of the subject property (see **Exhibit E: Notification Map**) on April 27, 2024. In addition, a sign was posted along the right-of-way frontage of the subject property by the applicant on April 28, 2024. Although only limited responses have been received as of the date of agenda packet publication (see **Exhibits F and G**), staff will provide all responses at the Public Hearing.

### **CRITERIA FOR REVIEW:**

In accordance with UDC Section 3.9 (9) Variance, the ZBOA may grant requests for a variance or exception to zoning-related development requirements in the Code. To grant a variance, it must find that the literal enforcement of the Code would result in unnecessary hardship, and that the spirit of the Code will be served by granting the variance. In determining whether to grant a variance, the ZBOA may take into account the nature of the proposed land use, the existing 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 effects on traffic conditions and public health and welfare.

No variance should be granted unless the authorizing body finds that all 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.
8. 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:
  - a. Property cannot be used for its highest and best use;
  - b. There is a financial or economic hardship. There is a self-created hardship by the property owner his / her agent; or
  - c. The development objectives of the property owner are or will be frustrated.

The ZBOA 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.

**POSSIBLE ACTIONS:**

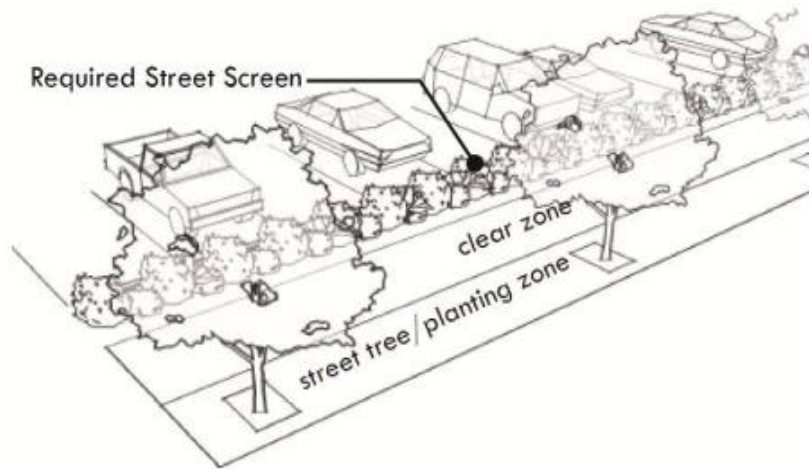
The ZBOA may choose to approve some or all of the requested variances. The ZBOA may impose conditions on the approval of the Variance, as they deem appropriate, to mitigate any negative impacts on the surrounding properties or the City in general. The ZBOA may also take action if additional information is needed from staff or the applicant.

**STAFF RECOMMENDATION:**

The proposed building and site development will not meet the intent of the MU district, which is to require new buildings to create pedestrian friendly building frontages by being located closer to the street, and generally conform to a Hill Country Design aesthetic. However, the existing character of the general area is semi-rural in nature and adjacent single family residential structures along Dietz Elkhorn are located farther than 20 ft. from the right of way (most are 65-105 ft. from edge of ROW). A larger setback on this parcel will be similar to the existing nearby buildings and be compatible with the existing character of single-family residential use of the area. In addition, a larger setback would provide an opportunity to save existing trees along Dietz Elkhorn.

If the ZBOA recommends in favor of the variances, staff recommends that the following conditions be considered:

1. The development shall follow the layout in the attached Site Plan.
2. The sidewalk shall extend the entire length of the parcel and tie into the sidewalk at Elkhorn Ridge to promote pedestrian connectivity.
3. Provide a 25 foot wide landscaped strip and screening along all street frontages as per UDC Sec. 7.7 below:
  - a. Street trees: Spacing shall be an average of 30 feet on center. The minimum caliper size for each tree shall be 2 inches and shall be a minimum of 8 feet in height at planting. Each tree shall be planted in a planting area no less than 36 sq. feet. Species shall be native or adapted species selected from the Approved Plant List, found in Appendix B of the UDC.
  - b. Shrubs: 3-foot landscaped vegetative screen composed of shrubs planted to be opaque at maturity (see Figure 7-16).



*Figure 7-16 Illustration showing required Street Screen along all frontages with surface parking in the setback zone.*

4. Preserve existing trees within 25' from the front property line.
5. All other UDC requirements shall be met.

### **Exhibits**

- A. Subject Property Aerial Map
- B. Zoning Map
- C. Variance Application
- D. Site Plan
- E. Notification Map
- F. Property Owner Response Map
- G. Property Owner Comment Forms