

ZONING BOARD OF ADJUSTMENT CONSIDERATION ITEM

CITY OF FAIR OAKS RANCH, TEXAS

September 14, 2022

AGENDA TOPIC: Consideration and possible action on the Variance Application No. ZBOA 2022-09-14 from Ms. Carmen Groth, applicant, on behalf of the property owner, G Leon Family Partnership LTD to grant the variances for the property located at 28313 Leslie Pfeiffer Drive, Boerne, TX

DATE: September 14, 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 28313 Leslie Pfeiffer Drive, north-east of the intersection of I-10 Frontage Road and Leslie Pfeiffer Drive (see attached **Exhibit A: Location Map**). Street access to the property will be provided from Leslie Pfeiffer Drive. The property is platted, and the site is currently vacant.

The applicant is proposing a new restaurant of approximately 9,200 square feet and associated parking which is a permitted use in this zone.

CURRENT ZONING: Mixed Use Village

PROPOSED USE: New Restaurant

PROPERTY SIZE: 1.729 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 Mixed Use Village (**Exhibit B: Zoning Map**) and the use is permitted by right in this zone.

Purpose of Mixed Use Village: Section 6.8 (1) of the UDC states:

The Mixed Use Village District (MU) indicates 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. Sites in the MU district are appropriate for direct access to primarily Arterial, Collector streets and Local Connector Streets. Development standards in this district will require new buildings to create pedestrian friendly building frontages and generally conform

to a Hill Country Design aesthetic. Uses within this Zoning District include commercial (office, retail, and restaurant) with a variety of residential uses also permitted.

REQUESTED VARIANCES AND STAFF FINDINGS:

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 **Illustration 2: Schematic Diagram** below. Staff's review of each Variance is listed below:

1. Variance from Section 6.8 (1) b (i) – vary the 20' maximum setback requirement along Secondary Frontage (I-10 Frontage Road) to 55'.

The proposed front setback will be 55' to locate parking along I-10 Frontage Road. This will exceed the maximum setback limit along Secondary Frontage (I-10 Frontage Road) for Mixed Use Zone.

Finding: Per the **Illustration 2: Schematic Diagram Showing Compliance (prepared by staff)**, it is staff's opinion that the site can be redesigned to meet this requirement. The applicant has not identified any constraints on the property that would prevent the applicant from meeting this UDC requirement. 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 6.7 (5) (a)– Eliminate the required 3' high landscaping screening strip between parking and street.

There is room for landscape screening, however, the existing site plan does not propose any screening.

Finding: It is staff's opinion that the 3' high street screen can be provided by redesigning the site to meet this requirement as shown in **Illustration 2: Schematic Diagram Showing Compliance (prepared by staff)**. 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. Removal of this landscaping screen will result in no landscaping at all between the building and I-10 Frontage Road, which will adversely affect the character of the area.

3. Variance from the requirements of UDC Section 6.8 (1) (d) (i) - allow parking in front of the building, between the building and I-10 Frontage Road as well as between the building and Leslie Pfeiffer Drive.

The applicant is proposing double the parking spaces required. Current site plan proposes 93 parking spaces whereas the UDC requirement is only 47 spaces.

Finding: It is staff's opinion that site can be redesigned to meet this requirement as shown in **Illustration 2: Schematic Diagram Showing Compliance (prepared by staff)**. 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. Granting this Variance will be not in conformance with the purpose of the Mixed Use Village district, as stated in the UDC and Hill Country Design aesthetic.

VARIANCE REQUIREMENTS:

The Zoning Board of Adjustment (ZBOA) may authorize, in specific cases, a Variance from zoning regulations, unless specified otherwise, if:

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

A Variance **shall not be granted** to

1. relieve a self-created or personal hardship, nor
2. shall it be based solely on economic gain or loss, nor
3. 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:

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.

Staff Recommendation:

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 site can be redesigned 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. Staff recommends that if the ZBOA approves the variances, the following conditions be considered:

1. A 25 foot wide landscaped strip along the street frontages, with trees and shrubs as required by **Figure 7-16 (UDC Sec. 7.7)** below.
2. 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.
3. Shrubs: 3-foot landscaped vegetative screen composed of shrubs planted to be opaque at maturity (see **Figure 7-16**).
4. All other landscaping requirements shall be met.

RECOMMENDED MOTION:

Staff recommends that all three 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.

Variance 1 - Motion: I make a motion 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 (1) b (i) – vary the 20' maximum setback requirement along Secondary Frontage (I-10 Frontage Road) to 55'.

Variance 2 - Motion: I make a motion 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 6.7 (5) (a)– Eliminate the required 3' high landscaping screening strip between parking and street.

Variance 3 - Motion: I make a motion 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 the requirements of UDC Section 6.8 (1) (d) (i) - allow parking in front of the building, between the building and I-10 Frontage Road as well as between the building and Leslie Pfeiffer Drive.

UDC Sec. 7.7 (Figure 7-16)

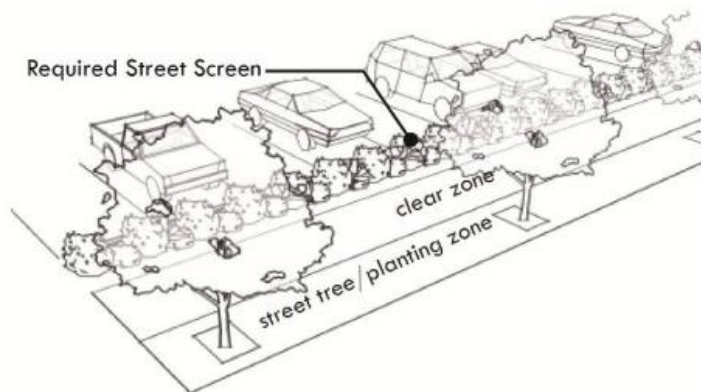


Figure 7-16 Illustration showing required Street Screen along all frontages with surface parking in the setback zone.

Illustration 1: Applicant's Proposal (Requested Variances Highlighted)

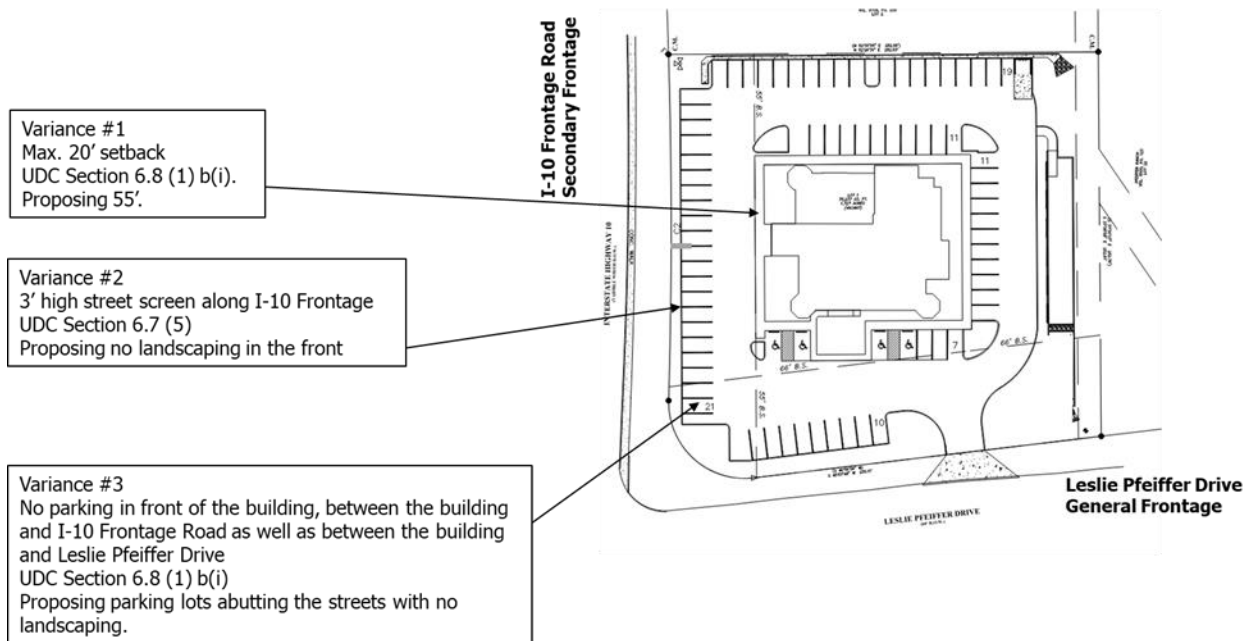


Illustration 2: Schematic Diagram Showing Compliance (Shared with the applicant in February 2022)

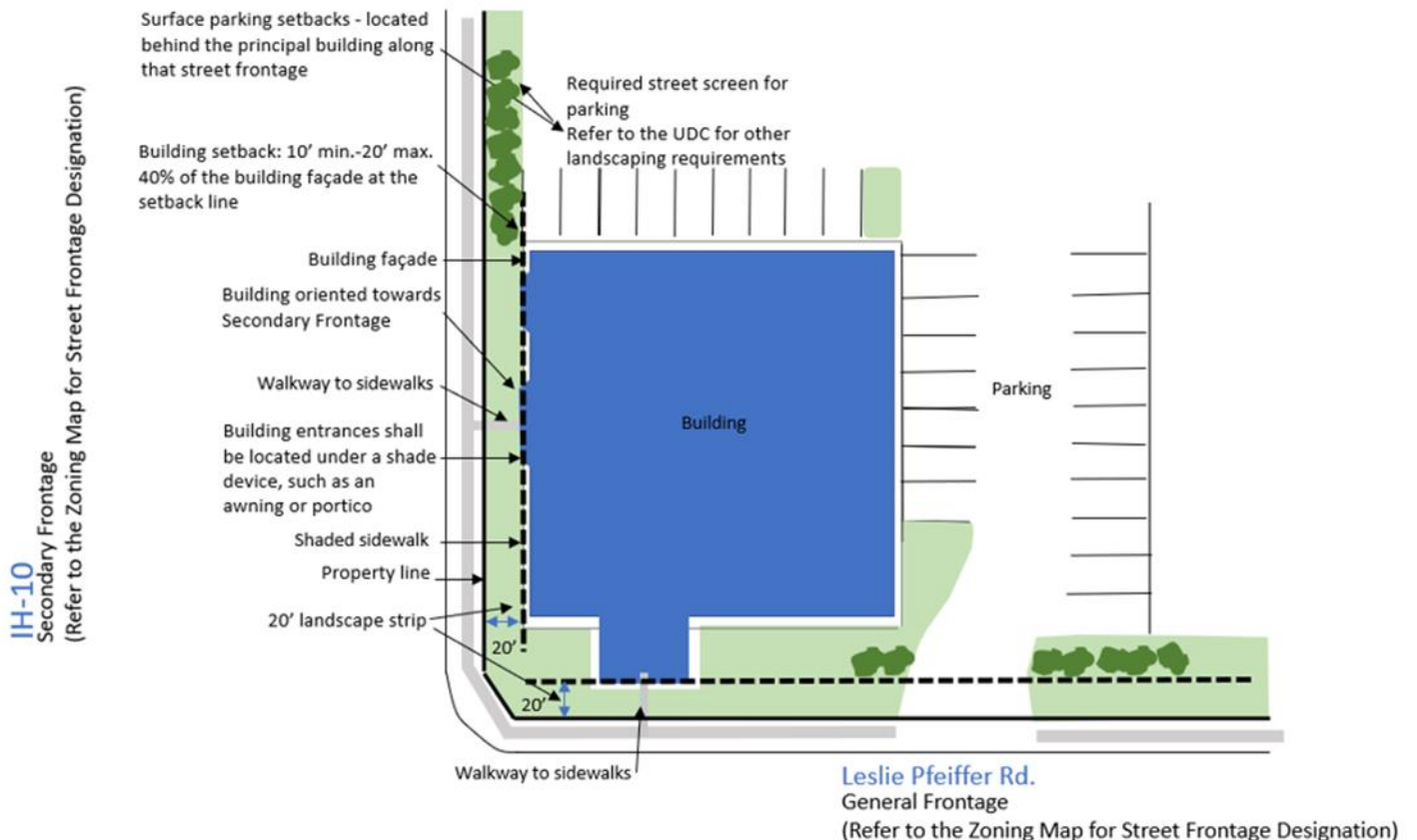


Illustration 3: Building Placement (UDC Sec. 6.8 (1) b) and Examples (UDC Sec. 7.8 (4))

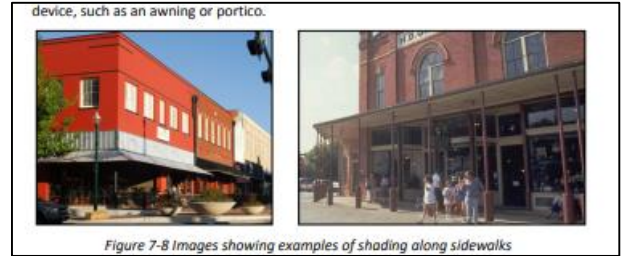
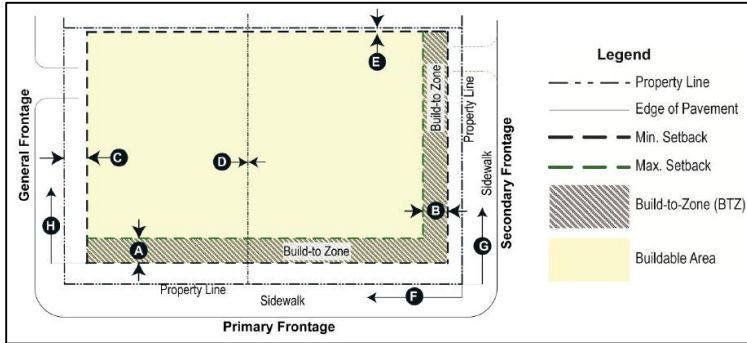
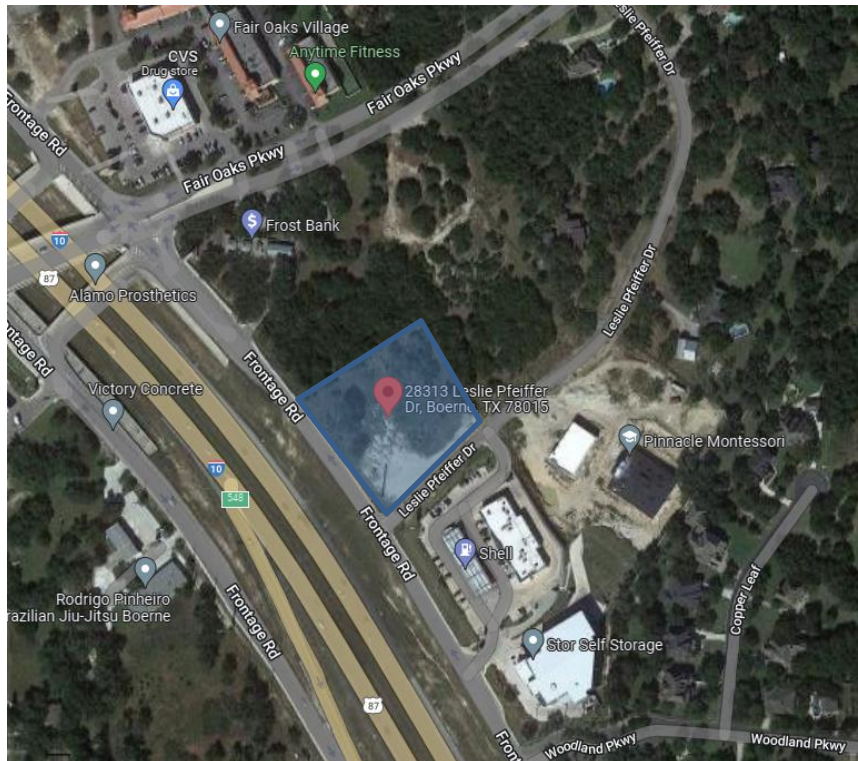
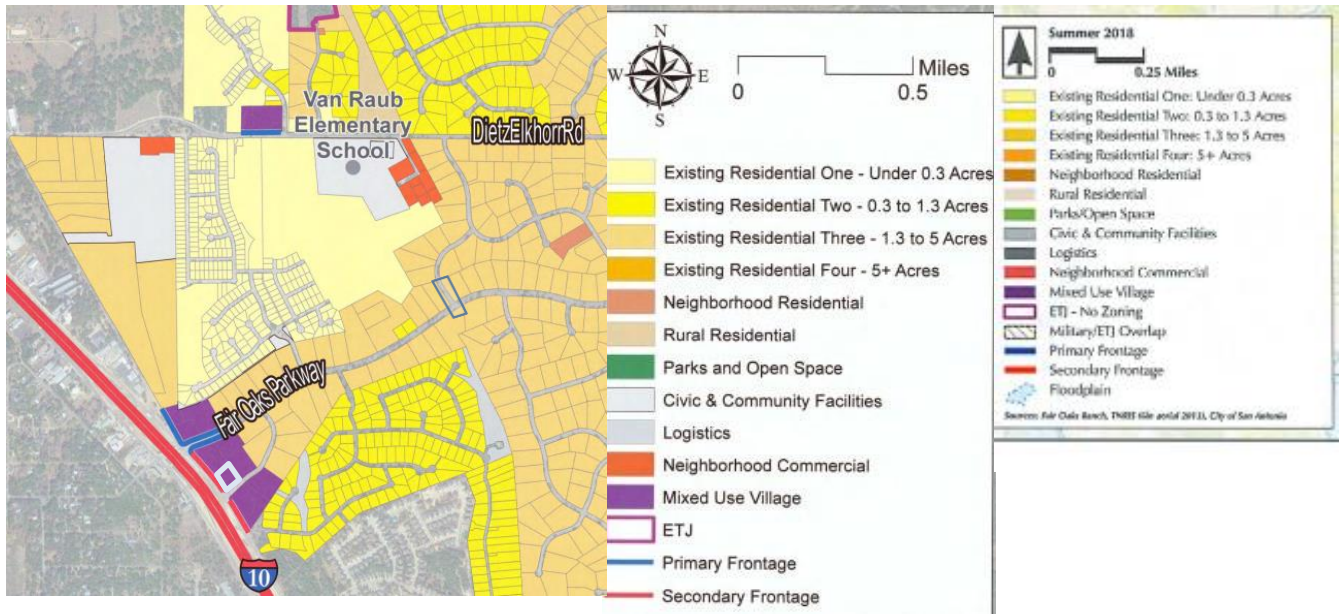


Exhibit A: Location Map



Source: Google

Exhibit B: Zoning Map



Source: City of Fair Oaks Ranch

Attachments:

1. Universal Application
2. S20 Specific Application
3. Letter of Intent (Applicant's confirmation of variances)
4. Site Plan
5. Notification Map