

***City of Riverside
Board of Zoning Appeals Meeting***

***April 27, 2021
7:00 P.M.***

Members Present: Chuck Childers, Chairman
Jerry Richardson
Tim Schneider
Reece Timbrook

Members Absent: none, one open position on BZA

Staff Present: Nia Holt, Zoning Administrator
Gary Burkholder, Community Development Director
Katie Lewallen, Clerk of Council

CALL TO ORDER: Chairman Childers called the City of Riverside Board of Zoning Appeals meeting to order at 7:00 p.m.

ROLL CALL: Mr. Childers, present; Mr. Richardson, present; Mr. Schneider, present; and Mr. Timbrook, present.

APPROVAL OF MINUTES: Chairman Childers motioned to approve the meeting minutes of February 23, 2021. Mr. Schneider seconded. On call of the roll: Mr. Childers, yes; Mr. Schneider, yes; Mr. Richardson, yes; and Mr. Timbrook, yes. **Motion carried.**

HEARING OF APPEALS:

- A. BZA Case # 21-0003 – 32 Woodman Drive (Parcel I39 00114 0043) – B-2, General Business District**
- **Variance from the City of Riverside Unified Development Ordinance to allow a reduction in the required landscape buffer area and to increase the maximum permitted sign area as identified in UDO Section 1113.07(D)(5); 1115.09(G)(3)(A).**
 - **Minimum Landscape Buffer**
 - **Maximum Sign Area**

Ms. Holt briefly reviewed the variances requested. The applicant is proposing to construct a gas station with a convenience store. The proposed development complies with all other requirements of the UDO, but these variances are needed to move the project forward. The property is the proposed Circle K. She presented a zoning map, an aerial map, and site plan of the parcel. The plan showed where the proposed signs would be with more signs on the canopy along with the landscape area and design. She, also, presented the elevation and site photos of the property as it is next to the McDonald's and the Flying Ace Car Wash. She reviewed the

standards for approval. She added that both variances are substantial as indicated in the staff report. Staff finds the requested variances are adequately justified and meets the standards of review. Staff recommends approval.

Chairman Childers opened the public hearing. Mr. Roger DeHoek, real estate development manager for Circle K, took the oath to give sworn testimony. He stated he was there to answer any questions along with two others that are part of the property development. No one had any questions. Chairman Childers closed the public meeting at 7:08 pm.

Discussion was held among board members. All agreed that it was a straight forward request.

Chairman Childers reviewed the findings of fact for Case #21-0003b, minimum lot width. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the presumption that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would not yield a reasonable return and that there cannot be a beneficial use of the property without the variance. The BZA finds that the variance request is reasonable based on the location of the proposed development and proximity to the shopping center. (Chairman Childers indicated that he is referring to this part of the case as the sign, #21-0003b – the sign size). The BZA finds the requested variance is substantial since the request to increase the maximum sign area by 28% or 47.9 sq. ft. The BZA finds that the essential character of the neighborhood **would not** be substantially altered by granting the variance. The proposed use will have no effect on the adjoining properties. The BZA finds that the owner's predicament **could** be obviated through some method other than variance with conforming signage. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. They also take into consideration the city's zoning staff recommends granting the variance. The BZA finds that the appellant **has** met the burden of showing that practical difficulties exist for a variance as requested.

On a motion by Mr. Childers, seconded by Mr. Timbrook, it was moved that the variance be granted as requested. On call of the roll: Mr. Childers, yes; Mr. Richardson, yes; Mr. Timbrook, yes; and Mr. Schneider, yes. **Motion carried.**

Chairman Childers reviewed the findings of fact for Case #21-0003a, the landscape buffer. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the presumption that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would yield a reasonable return and that there can be a beneficial use of the property without the variance. The BZA finds that the variance request for a reduction in the landscape to construct a walkway on the property is consistent with the city's walkability goals. The BZA finds the variance requested **is** substantial since the request will reduce the landscape buffer by 49% or 4.96 feet. The BZA finds that the essential character of the neighborhood **would not** be substantially altered by granting the variance as requested. The proposed use will have no effect on adjoining properties. The BZA finds that the owner's predicament **could not** be obviated through some method other than

variance. The current design of the landscape buffer allows for a walkway and is consistent with a design of adjacent commercial properties. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance; the sidewalk along Woodman Drive is consistent with the city's goals. The BZA also takes into consideration that the city's zoning staff recommends granting the variance. The BZA finds that the appellant **has** met the burden of showing that practical difficulties exist.

On a motion by Mr. Childers, seconded by Mr. Schneider, it was moved that the variance be granted as requested. On call of the roll: Mr. Childers, yes; Mr. Schneider, yes; Mr. Richardson, yes; and Mr. Timbrook, yes. **Motion carried.**

B. BZA Case # 21-0004 – 4876 Airway Road (Parcel I39 00114 0044) – B-2, General Business District

➤ **Variance from the City of Riverside Unified Development Ordinance to increase in the maximum permitted sign areas identified in UDO Section 1115.09(G)(3)(a).**

▪ **Maximum Sign Area**

Ms. Holt stated this case is similar to #21-0003 but only for the sign variance. They are asking to increase the maximum permitted sign area. The property was once the Burger King on Airway Road, but is now being developed into a Flying Ace Car Wash. They are putting a sign on the front of the façade and rear of the façade. She presented a zoning map, an aerial map, and site plan highlighting the variance area. She, also, presented elevations of an image of the proposed sign along with site photos including front and back and other properties in the area. She reviewed the standards of approval and indicated because of the proximity to the shopping center a sign on the rear of the building is appropriate though it is a substantial variance, but they do have a code, which permits a building entrance facing a street frontage such as the drive that goes into the Airway Shopping Center for the second sign. She added that several businesses have this feature. Staff finds the request variance to be adequately justified and meets the standards of approval.

Chairman Childers opened the public hearing. Mr. Jarrod Norton, Morrison Sign Company representative, who is producing and installing the sign at this location, took the oath to give sworn testimony. He stated he is there to answer any questions and added that staff did a great job on presenting the information. No one had any questions. Chairman Childers closed the public hearing at 7:19 pm.

Discussion was held among board members. All felt the information was straight forward.

Chairman Childers reviewed the findings of fact for Case #21-0004. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would not yield a reasonable return and that there cannot be a beneficial use of the property without the variance. The BZA finds that the variance is reasonable based on the location of the proposed development and the proximity to a shopping

center. They find the variance to be substantial since the request is to increase maximum sign area by 79% or 42.92 sq. ft. UDO 1115.09(G)(3)(c) grants relief in situations where building entrance is clearly visible on more than 50% of street frontage, a wall sign may be located on a non-building entrance wall. The rear of the car wash faces the shopping center drive lanes. The BZA finds that the essential character of the neighborhood **would not** be substantially altered, and the proposed sign would have no effect on adjoining properties. The BZA finds that the owner's predicament **could not** be obviated through some method other than by the requested variance. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. They also take into consideration that the city's zoning staff does recommend granting the variance as requested. The BZA finds the appellant **has** met the burden of showing that practical difficulties exist.

Chairman Childers motioned that the variance be granted as requested. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried.**

C. BZA Case # 21-0005 – 32 Woodman Drive (Parcel I39 00114 0043) – B-2, General Business District

- **The appeal of an administrative decision regarding a variance request for two ground signs on a premise.**
 - **UDO Section 1105.15(A) and 1115.09(G)(3)(A)**
 - **One Ground Sign on a Premise**

Chairman Childers stated this is not a variance request, but an appeal of an administrative decision regarding a sign variance. It is his understanding that the city's position is they do not have the authority to grant a variance that would be directly opposed to the code, which allows only one ground sign. The BZA is being asked to decide if the city is right or if the applicant is right.

Ms. Holt stated this is an appeal of an administrative decision regarding a sign variance request to allow for two ground signs on a premise, the Circle K lot. She provided the background on the appeal and what is permitted. She presented a zoning map, an aerial map, and site plan that showed the proposed first and second signs. They would have two ground signs advertising the pricing. She presented staff's decision based on the definition of a variance which may be granted allowing deviations from the height, mass, setback, parking, or other dimensional requirements. She indicated the sign standard also has an objective to eliminate visual clutter within the city. Additionally, only one ground or projecting sign shall be permitted on a premises. Staff's opinion is that it is a design element and not a dimensional variation. Staff does not believe the number of ground signs permitted on a premise can be modified through the variance process. She stated the BZA's actions are either to affirm or reverse, in part or in whole, the zoning administrator's decision that states that the appellant cannot apply for a variance, as variances are currently defined in UDO Section 1105.15 for a second sign on the premise.

Mr. Timbrook asked if this not dimensional but design, do they have any source of remedy to appeal to? Ms. Holt replied there is nothing in the current code other than this appeal process. Mr. Schneider stated it looks like the reason for two signs is because of traffic flow; one is for north/south traffic and the other for east/west traffic. Chairman Childers stated that staff is

saying, correctly in his opinion, that they do not have the authority for a second sign. They can vary the code, but they cannot create it. They should not be addressing this. While he appealed, the BZA has no jurisdiction over this. Mr. Burkholder replied that they do have the jurisdiction to appeal the zoning administrator for the interpretation of the code. He provided background and stated it is a deficiency of the code. They want to be able to grant waivers when it comes to design standards. In this instance, the code being correctly interpreted does not give zoning the jurisdiction, but the BZA does have the option of disagreeing with staff's interpretation. Ms. Holt added that if they overturn staff's decision that will give the applicant the right to apply for the variance. Chairman Childers replied for the BZA to overturn staff on this would be illegal and improper and the city in the charter gave itself the right to sue them. There aren't remedies for everything. Mr. Schneider stated that it sounds like they do not have any choice. Mr. Timbrook said they have a choice and could say it is dimensional. Chairman Childers stated they have never had a situation like this where someone is requesting the BZA to decide if the city is correct that a sign can be added to a variance; it cannot be, legally.

Mr. Burkholder stated the appeal is staff's interpretation of the code relative to dimensional and design; is their interpretation correct. The BZA can rule on that. Ms. Holt added they can do it in part or in whole. Chairman Childers stated he looked back through all his records and found one case similar. It had to do with an insurance company on Woodman. He wanted to change the sign face, but in the research that the sign was not on his property. He was unable to move it to his property as he already had a sign so he had to get approval from the landowner where the sign was located. Discussion was held on whether it was a dimensional variance or a design variance. Chairman Childers replied it is a sign and it has nothing to do with how big it is or how small it is. He explained that if there was a majority vote present to grant this; it is illegal, improper, and the city could sue them. They would be a rogue BZA. They would be making up a law; they can't do that. The applicant would need to lobby the city to be less strict on the ground sign. There is nothing dimensional about this. The BZA does not have the authority to allow a second sign. Mr. Schneider commented he is just looking at it from a perspective of if they have codes and guidance that is limiting them, is there a way they can say yes, but what he is hearing they do not have a way. In the future, they need to correct the code. Chairman Childers stated it is up to council to make this change. Mr. Timbrook stated this is an unusual situation and he doesn't feel like this is a norm they look at. This is a corner situation, and they hear a lot of those. They can't even get to hear that because they are looking at a legal challenge. Chairman Childers stated that even if they agreed the city was wrong, they cannot do a variance tonight. They would have to come back for that. Mr. Richardson agreed with the chairman stating he does not think they can make a ruling on this.

Chairman Childers opened the public hearing. Mr. DeHoek stated he had been listening and if a decision can't be made he understands and respects that. The reason for the application is that they are on a corner lot and would like to have signage as close to the access points as they can. They have curb cuts on Airway and Woodman Drive. No one else wished to speak. Chairman Childers closed the public hearing at 7:40 pm.

Chairman Childers stated that the Board of Zoning Appeals jurisdiction and power is granted by the code. It is limited and defined. The Code gives the BZA the power to grant "area" variances. Area or dimensional variances are limited to size, height and setback locations. The BZA does not have the authority to create or change what the Code covers. The UDO Section 1105.15

provides the definition of a Variance. A variance may be granted allowing deviations from the height, mass, setback, parking, or other dimensional requirements established by the zoning and subdivision provisions of the UDO where practical difficulties unique to the property in question.

He stated that the question before them is whether they can add new signs where the Code has specifically allowed only one sign. The BZA, being a non-legislative body, has no authority to add to or make a substantial change to the Code. The authority given is to “vary” the Code in an effort to permit fairness where the rigid application of the Code with a particular set of facts will unduly harm a business or citizen.

In this case, the BZA does not have the authority to add one or more signs by the use of a variance. They might be able to “vary” the size of the sign face, the height of the sign or the placement of the sign regarding setbacks. To add signs where the Code has specifically denied such signs would be an improper legislative act.

He stated that the members of the BZA are volunteers and have no particular expertise in zoning or legislative matters; and, even if the majority of the members were to vote to allow the applicant to have the new sign, the act granting approval would be null and void. The City has included in the Charter the right to sue the BZA for illegal or improper acts. The City would be placed in the position of spending sums of money to negate the improper act of the BZA.

Chairman Childers stated it is his opinion that the BZA does not have authority to hear the case or decide by variance that a sign can be added where the Code has specifically limited ground signs to one sign.

Chairman Childers motioned to uphold the interpretation of the Zoning Staff that the BZA cannot grant a variance which would add a second ground sign where the UDO only allows for one ground sign. Mr. Schneider seconded the motion to uphold the city’s interpretation. On call of the roll: Mr. Childers, yes; Mr. Schneider, yes; Mr. Richardson, yes; and Mr. Timbrook, yes. **Motion carried.**

Other Business – Ms. Holt stated that they are working on a waiver text amendment so they can address these requests. A waiver would allow them to waive design regulations within the code. Chairman Childers stated that sounds like a solution. Ms. Holt stated that they are reviewing peer cities on their waivers as there will be restrictions. Chairman Childers asked if they could go to court over this. Mr. Burkholder replied that he does not know, but is glad this provides a process and remedy to come to the BZA. This is a deficiency to their code; other communities have a waiver and it is good they are working on this flexibility. They wanted to provide the opportunity to come to the BZA and state their case. Chairman Childers addressed the applicants stating they do want their businesses there in Riverside, hopefully, the waivers will be available soon.

ADJOURNMENT: Chairman Childers motioned to adjourn; Mr. Timbrook seconded the motion. All were in favor; none opposed. **Motion carried.** The meeting adjourned at 7:48 pm.

Chairman

Date