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

## *September 28, 2021*
## *7:00 P.M.*

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| ***Members Present:*** | Chuck Childers, Chairman<br>Todd Pultz<br>Jerry Richardson<br>Tim Schneider<br>Reece Timbrook | ***Members Absent:*** | none |
| ***Staff Present:*** | Nia Holt, Zoning Administrator<br>Gary Burkholder, Community Development Director<br>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. Pultz, present; Mr. Richardson, present; Mr. Schneider, present; and Mr. Timbrook, present.

**APPROVAL OF MINUTES:** Chairman Childers motioned to approve the meeting minutes of August 24, 2021. Mr. Timbrook seconded. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried**.

**HEARING OF APPEALS:**

**A. BZA Case #21-0024 – 5867 WILLASTON DRIVE** (PARCEL I39 00905 0044)
R-3, MEDIUM DENSITY RESIDENTIAL
**AN APPEAL OF AN ADMINISTRATIVE DECISION TO DENY THE RE-INSTALLATION OF A SECOND CURB CUT PER UDO SECTION 1113.13.A.2.**

Ms. Holt took the oath of office. She presented the case summary. The applicant was sent a Notice of Violation on August 2, 2021, for an unpermitted carport and driveway. The driveway in question for this appeal is a second driveway on the property and does not have an existing curb cut to connect it with the street. Prior to submitting the ROW permit, they talked to service department staff to see if re-installation was possible. They discussed a previous staff member who required them to remove the apron and install the curb cut in 2005. They installed a barrier curb. The public service director, Kathy Bartlett, denied the reinstallation of the curb cut/apron for the second driveway on August 17, 2021 under UDO Section 1113.13.A. This is now before the BZA. She presented the zoning map, an aerial map, and site photos of both driveways. She presented the staff analysis indicating that a property owner when establishing nonconformance must first establish a nonconforming structure existed AND establish that the nonconforming structure continued to exist without being altered or destroyed. She reviewed Section 1103.13.I

stating that should such nonconforming structure or nonconforming portion of a structure be destroyed, by any means, to the extent of more than 50% of the cost of replacement at time of destruction of such structure, it shall not be reconstructed except in conformity within the provision of this Ordinance. Staff finds the intent of the UDO is clear in that such nonconformities be allowed to continue until removed, they should not be encouraged to survive (Section 1103.13.A); and, the city has the authority under Section 1113.13.A to regulate driveway access to public streets to lessen the impact of future development on the City of Riverside's thoroughfare system to minimize safety hazards, traffic congestion, and other adverse impacts. Staff finds that there is not sufficient evidence the curb cut continue to exist without it being altered. They do not believe it should be reconstructed. She stated they need to determine whether the applicant has met the burden of proof to sustain their appeal of staff's decision to deny the reinstallation of curb cut.

Chairman Childers opened the public hearing. Mr. Dan Combs took the oath to give sworn testimony. He stated he is a neighbor to the property, 300 Willaston Drive. He stated he has lived their longer than most in the area. He recalled his childhood and the home in question having two driveways as it was a model home for the neighborhood with two driveways since it was built. He stated there is confusion in the neighborhood as to why the people moved from Englewood to the area and are not happy. He does not see a problem with the two driveways. He stated the two driveways are original to the house and questions why there is a problem. He asked the board to reconsider.

Mr. Robert Pickle took the oath to give sworn testimony. He stated he grew up in the area directly across from the house at 5858 Willaston Drive. He currently lives on Travis Drive and works for the Riverside School System. He stated it was the show home for the neighborhood with two driveways. At one time, Mr. Manriquez wanted to put a garage on the left side of the driveway and was told it had to be on the right driveway and that may have been part of why the apron was taken away. He asked who it was that denied them putting an apron back in. He is curious as to why it was changed. He stated that the level of requirements/services from the city have not been the same across the board as employees have changed. The driveways were blacktop and not concrete, but the one is gravel now because concrete is too expensive. He was speaking on the character of the homeowners. Chairman Childers stated his understanding was that the zoning administrator at the time said that they couldn't have it, and when the homeowner tore it out, the rules changed and now it makes it difficult to go back and do it over. Mr. Pickle asked why it wasn't grandfathered in. He commented that if they want taxpayers to stay in the area they need to make things the same all the way around, across the board. This is just too nitpicky.

Mr. David Herzog took the oath to give sworn testimony. He stated he is the neighbor next door to 5867 Willaston Drive. The driveway that is in question is being used as a driveway. There was a tree there that he trimmed back so that Mr. Manriquez could get his van in the driveway. He has no problem with the driveway as long as it is done according to zoning. It doesn't make sense to him that the actual driveway on the left is on the other side where access to the house is on the right. There are a lot of cars on the street so the second driveway gets cars off the street. He is the man who moved from Englewood and has not complained to anyone abut the driveway. He only contacted zoning to get a shed in his backyard, and it had to be 5' from the fence; that is what the city told him and that is what he did. That may have been what started

this. He does not have a problem with that driveway. He didn't complain about the driveway. He had problems with the encroachment on his property with the driveway when they were putting the gravel in so they moved it back and they gave him 18".

Mr. Pultz asked if he complained about the carport. Mr. Herzog stated he has a problem with the carport and them using his fence as a wall with a tarp hanging down. He left up a section of his fence, took down a section of privacy fence from the front and pulled it to the back of the house. There is a section of his fence still up next to their carport that is acting as a wall because he hasn't taken it down yet. That will be done next spring. He didn't want to rip it down with their stuff there. Mr. Pultz stated he was just being considerate; and he wants the carport to fall within the correct setback. Mr. Herzog stated he didn't know what the setback was, but there should be something if there has to be any maintenance to the fence or something. His fence shouldn't be a wall to the carport.

Mr. Schneider asked his address. Mr. Herzog stated it was 5879 Willaston Drive.

Ms. Christine Manriquez, property owner, took the oath to give sworn testimony. She stated she thought the main reason for this evening was talk about the curb and the apron they were ordered to take out. She reached out to the city five years ago and asked why she had to take it out in the first place and the secretary she spoked to said she did not know. Craig who had originally dealt with them told them they could only have one driveway if there was going to be a garage built no matter if it was on the left or right. The opposite apron would have to be removed. This scared them as they were first time home buyers. They felt nervous and intimidated as he made multiple visits. They weren't sure they would put a garage in, but they wanted to know the rules to zoning. Craig told them either way they could only have one driveway. She called a contractor and had it removed. When she spoke to the city five years ago, she told them she never got paperwork. She was told it was never in the city record for them to take it out. Ms. Manriquez stated she felt they were wronged for being told to take it out. Chairman Childers asked if she was unaware of the Board of Zoning Appeals. She stated back then she did not know.

Mr. Pultz asked since they removed the apron and installed curb, have they continued to use that as a driveway. Ms. Manriquez replied they did.

Ms. Holt stated there was a member from the public service department present to answer any questions. Chairman Childers stated he had none.

Chairman Childers closed the public hearing at 7:28 pm.

Chairman Childers stated after reading all the information and hearing the sworn testimony and the house being there 60 years that it starts with Craig Kinley, the zoning administrator, telling them to move it and that is it. It does not set well with them. He never told them they had a right to appeal, due process. The whole thing started to tumble right there. They were afraid of the city. He is not in favor of upholding the hearing. He is in favor of overturning it. Mr. Timbrook stated he does not see how they can uphold the appeal given the evidence. Mr. Pultz asked for the driveway and apron dimensions. He stated that the UDO states that 50% replacement cost would have to be removed to make it non-existent. They have testified and neighbors have testified that it is still being used. At any point of removing the curb he does not feel 50% has

been removed. He also has issue with all the testimony that they were forced to take that out; there is no reason not to believe this and the city has no record of it. They have a vivid memory of what they were told as well as others who have testified. If the city had records, this may have told a different story. He is in favor or upholding their appeal.

Chairman Childers reviewed the findings for BZA Case #21-0024 – appeal of an administrative decision to deny the reinstallation of a curb cut on a second driveway. The BZA finds that the property owner moved into the property which had two driveways. According to the staff conclusions and testimony offered there is sufficient evidence that the second curb cut existed prior to the current regulations.

The BZA finds that where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, etc. such structure may be continued so long as it remains otherwise lawful subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity.
2. Should such nonconforming structure or nonconforming portion of a structure be destroyed, by any means, to the extent of more than 50% of the cost of replacement at the time of destruction, it shall not be reconstructed except in conformity with this Ordinance.
3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is located after it is moved.

The problem with the current case is that the property owner was **denied due process** when the Riverside Zoning Administrator (or the equivalent position at the time) required the removal of the curb without giving the property owner notice of right to be heard on appeal.

In the staff conclusions, there is the statement "sufficient evidence the second curb existed prior to the current regulations". If the property owner had been given notice of his right to appeal, he would have done so and since the current regulations were not in place, he might have won on appeal. But, the property owner never had the chance to argue his case.

Staff is placing its findings on the fact that the property owner removed the curb thereby ending his right to keep the curb cut since it was destroyed and not replaced. In other words, grandfathering has been removed. Chairman Childers stated he disagrees. He asked why did the property owner remove the curb cut. Because he was ordered to by a government official. The property owner did not want to get into trouble with the City. It is not clear that the Zoning official had the authority to require the removal of the curb cut. Even if he had the authority, it is a basic tenet in American Jurisprudence that in such situations there should be the opportunity to appeal the governmental order.

Chairman Childers motioned that the decision to deny the re-installation of the second curb cut is an incorrect decision and should be reversed. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried**.

*Away from the microphone, Mr. Herzog asked staff a question. Mr. Burkholder stated they could address any issues and clarify information with him either after the meeting or via a phone call.*

**B. BZA Case #21-0025 – 601 WOODMAN DRIVE** (PARCEL I39 00920 0008)
B-2, GENERAL BUSINESS DISTRICT
**VARIANCE FROM UDO SECTIONS 1115.09(G)(1) AND 1115.09(G)(2) ALLOW AN INCREASE IN THE PERMITTED SIGN AREA AND HEIGHT OF THE GROUND SIGNS, AND INCREASE THE PERMITTED SIGN AREA OF THE ELECTRONIC MESSAGE CENTERS.**

Ms. Holt stated the applicant is requesting a variance from Sections 1115.09 (G)(1) and (G)(2) of the UDO to allow an increase in the permitted sign area for the ground signs and electronic message centers, and to increase the height of the ground signs. She presented the case summary as this is a former K-Mart location being redeveloped into a new Kroger location. The applicant is removing a number of existing ground sign fixtures and replacing them with new ground signs. It will be a full redevelopment with new signage on Burkhardt and Woodman. She presented a zoning map, an aerial map, the site plan with the locations of proposed signs, sign renderings, and site photos for the property and surrounding area.

She stated that the property in questions would not yield a reasonable return nor would there be any beneficial use of the property without the three variances due to the strict application of the regulations not allowing the applicant to install signs which will convey their message safely given the speed of the two roads Woodman and Burkhardt and the size of the site. The variances are substantial to all three requests. The essential character of the neighborhood would not be altered nor would any other properties suffer any damage. No governmental services will be impacted. The property owner was aware of the zoning regulations at the time of purchase. The property owners' predicament could not be obviated through some other method than a variance; they designed the signs to convey the message to let motorists know in a safe manner the difference between diesel and regular fuel prices. The spirit and intent behind the zoning requirement would be upheld by granting the variances; there is a section in the code that states to protect the public from a traffic safety concerns by reducing driver distraction and addressing driver judgement, error, risk taking, and traffic violations that could occur from the distraction of certain signs. By having this design of the signs, they are meeting the intent of the code. Staff recommends approval of all the variances.

Mr. Pultz asked if the letters that go out to the 300' distance, did it go to just business or also residential. Ms. Holt stated they went out to every address within 300'. He asked if all three gas stations have been notified. Ms. Holt stated they should have been notified; she can provide that information. He asked if staff reached out to them to see if they had any opinion about the variances. Ms. Holt stated she had not. He stated that the three gas stations are going to be impacted by this and wants to make sure the city doesn't just pencil in they sent notification because Kroger is a large company the city wants to come in. He also wants Kroger to come in; he wants to make sure he doesn't drive business away from the other gas stations. He would want to know their opinion. Discussion was held on using the mapping tool and notifying addresses within 300'. He stated that they denied Circle K two ground signs and now they are approving Kroger for two ground signs. Ms. Holt stated Circle K is approved for two ground signs. He stated originally, they were denied. Mr. Burkholder stated the waiver is now in place to

take care of design standards, but this one is for dimensional.

Chairman Childers opened the public hearing. Mr. Greg Dale, McBride Dale Clarion LLC, representing the Kroger Company, took the oath to give sworn testimony. He stated Ms. Holt has adequately covered all the aspects of variances requested. He added that there is a lot going on with this site, and Kroger believes these are the minimums needed to be successful. The sign sizes are similar in size to the surrounding business sizes. The standards in the code are met and he requests approval of the variances.

Chairman Childers closed the public hearing at 7:49 pm. Discussion was held that there were no concerns and it will be the same character of the house.

Chairman Childers reviewed the findings of fact for Case #21-0025a – maximum size of sign face area. 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 it may be. The property in question **would not** yield a reasonable return and there cannot be beneficial use of the property **without** the variance. The request is reasonable based of the location of the proposed development. They find that the variance requested is substantial since the request to increase the permitted maximum sign area by 431% on Woodman Drive and the proposed Burkhardt sign will have an increase sign area of 77.5%. The BZA finds that the essential character of the neighborhood **would not** be substantially altered by granting the variance as requested. The proposed sign will have no effect on the adjoining properties. The BZA finds that the owner's predicament **could not** be obviated through some method other than a variance. They find that the spirit and intent behind the Zoning Ordinance **would be** observed by granting the variance as requested. They also take into consideration that the city's zoning staff recommends granting the variance as requested. They find the applicant **has** met the burden of showing that practical difficulties exist for the variance as requested.

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. Pultz, yes; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried**.

Chairman Childers reviewed the findings of fact for Case #21-0025b – maximum sign height. 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 it may be. The property in question **would not** yield a reasonable return and there cannot be beneficial use of the property **without** the variance. The property is over 10 acres and is located on the corner of two heavily traveled roads. The proposed signs will be on opposite ends of the property. They find the variance of the sign height is substantial since the request is a 100% increase. The applicant has requested to install a sign that is 9' taller on Woodman Drive, which is 9' taller than permitted. The sign on Burkhardt is one foot taller, which is not substantial. The BZA finds that the essential character of the neighborhood **would not** be substantially altered nor would the adjoining property be adversely affected. The BZA finds that the owner's predicament

**could not** be obviated by displaying a conforming sign. The current design of the proposed signs is the minimum height sign area necessary to identify the site communicating information to motorists in a safe manner. They find that the spirit and intent behind the Zoning Ordinance **would be** observed by granting the variance as requested. They also take into consideration that the city's zoning staff recommends granting the variance as requested. They find the applicant **has** met the burden of showing that practical difficulties exist for the variance as requested.

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

Chairman Childers reviewed the findings of fact for Case #21-0025c – sign size. 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 it may be. The property in question **would not** yield a reasonable return and there cannot be beneficial use of the property **without** the variance. The request is reasonable based of the location of the proposed development. They find that the variance requested is substantial since the request to increase the permitted maximum sign area by 39%. The BZA finds that the essential character of the neighborhood **would not** be substantially altered by granting the variance as requested. The proposed sign will have no effect on the adjoining properties. The BZA finds that the owner's predicament **could not** be obviated through some method other than a variance. They find that the spirit and intent behind the Zoning Ordinance **would be** observed by granting the variance as requested. They also take into consideration that the city's zoning staff recommends granting the variance as requested. They find the applicant **has** met the burden of showing that practical difficulties exist for the variance as requested.

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. Pultz, yes; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried**.

**OLD BUSINESS:**

**BZA Work Session –** Ms. Holt stated there was an email sent for a date about a work session and if they need to consider another date. Mr. Schneider stated he will be out that week as it is Thanksgiving week. Chairman Childers stated they should all be pleasant. Ms. Holt stated it looks like they will be pushing it to 2022. Chairman Childers states it is necessary that they do it.

**ADJOURNMENT:** Chairman Childers motioned to adjourn. All were in favor; none opposed. **Motion carried**. The meeting adjourned at 7:56 pm.

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Chairman Date