

August 16, 2017

Variance Request Review
Attn: Environmental Section Review Staff
Development Services Department
City of San Antonio
1901 South Alamo
San Antonio, Texas 78204

Director of Planning and Development Services
(as Secretary of the Planning Commission)
Development Services Department
City of San Antonio
1901 South Alamo
San Antonio, Texas 78204

Re: Ruby City
A/P # IM2259314 (PPR #P7490/SITE WORK AP #I2226677)
UDC Section 35-523 (h) - 2010 Tree Ordinance Survey Standards

Ladies and Gentlemen:

This variance request is being submitted on behalf of Pace Exhibitions, LLC (the "**Owner**"), which is the owner of the property located at 150 Camp Street and depicted on the site plan (the "**Site Plan**") attached hereto as **Exhibit "A"** (the "**Property**"). Owner is proposing to develop on the Property a 13,750 square foot art exhibition space to be known as "Ruby City" (the "**Ruby City**"). The purpose of this variance letter is to request an exception to UDC Section 35-523(h) regarding tree preservation within environmentally sensitive areas.

Summary

Under UDC Section 35-523(h), significant trees are required to be preserved at eighty percent (80%) within environmentally sensitive areas. As detailed below, Owner is unable to strictly comply with this requirement due to unique conditions relating to the inclusion of approximately forty percent (40%) of the Property within the boundaries of the San Pedro Creek Project. Owner is proposing to mitigate the trees to be removed under this variance through payments into the City's Tree Mitigation Fund. Owner is also proposing new plantings to exceed the tree canopy requirements, along with other extensive landscaping in and around Ruby City. For the reasons stated below, the requested variance is consistent with the spirit and intent of the Unified Development Code and will not adversely affect the health, safety, or welfare of the public.

Property Conditions

The Property is located adjacent to the San Pedro Creek Improvements Project (the "**Creek Project**") being developed by the San Antonio River Authority ("**SARA**"). In fact, nearly forty percent (40%) of the area of the Property is planned as part of the Creek Project following the anticipated donation by Owner of such 0.610 acres (the "**Creek Project Area**") to SARA.

In anticipation of the Creek Project, Ruby City is being developed solely on the remaining 0.933 acres of the Property (the "**Ruby City Area**"), as shown on the Site Plan. A portion of the Ruby City Area along its boundary with the Creek Project Area (the "**Project Boundary Line**") is located within the 30' Environmentally Sensitive Area ("**ESA**") adjacent to the San Pedro Creek.

Owner and SARA are actively engaged in a process to coordinate the design of the Creek Project with Ruby City in order to ensure consistency and to promote better public access between these two new projects. Along and overhanging the Project Boundary Line are two trees that qualify as significant under

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the UDC but that are incompatible with the design of Ruby City and the transitions along the Project Boundary Line.

Trees in ESA

The two trees Owner seeks to remove under this requested variance are shown on the attached **Exhibit "B"** and consist of a nineteen inch (19") diameter Pecan Tree (Tag #3503) and a fourteen inch (14") diameter Hackberry Tree (Tag #3507) (the "**Incompatible Boundary Trees**"). There is one other tree that qualifies as significant located within the ESA (Tag #3520) and this twelve inch (12") diameter tree will be preserved. Altogether, there are forty-five (45) diameter inches of significant trees currently located in the ESA. Under the requested variance, twelve (12) of these inches will be preserved and twenty-four (24) will be mitigated. This means that thirty-six inches (36") (or eighty percent (80%) of the existing diameter in the ESA) will be preserved or mitigated under the proposed variance.

Proposed Mitigation

Owner proposes to provide the necessary mitigation to achieve the eighty percent (80%) threshold under UDC Section 35-523(h) through the payment of Four Thousand Eight Hundred Dollars (\$4,800.00) into the City's Tree Mitigation Fund. In addition, both Ruby City and the Creek Project will include extensive landscaping that will provide enhanced tree cover across the Property. Specifically, Owner is planning the following plantings within the ESA as part of the Ruby City project: three (3) Bald Cypress, twenty (20) Brakelight Red Yuccas, three (3) Weber Agaves, six (6) Opuntia Kelly's Choice and two (2) Graceful Bamboo plants (all as shown on the Proposed Planting Plan attached hereto as "**Exhibit C**"). Ruby City will also include numerous additional plantings outside the ESA as shown on the Proposed Planting Plan. With these plantings, Ruby City will exceed the minimum requirements for service court shade and lot canopy coverage. While the Creek Project design has yet to be finalized, it is anticipated that there will be significant new plantings with the Property as part of that project.

Requested Variance

Owner is requesting that the Planning Commission grant a variance to permit Owner to mitigate the removal of the Incompatible Boundary Trees through the payment of Four Thousand Eight Hundred Dollars (\$4,800.00) into the City's Tree Mitigation Fund. This variance is required because the removal of the Incompatible Boundary Trees would cause the total diameter inches of significant trees within the ESA to fall below the eighty percent (80%) requirement set forth under UDC Section 35-523(h).

Approval Criteria for Variance

The requested variance is consistent with the spirit and intent of the Unified Development Code and will not adversely affect the health, safety, or welfare of the public. More specifically, the requested variance satisfies the following general standards set forth in Information Bulletin 124 as described below:

- **The requested variance is not contrary to the spirit and intent of the UDC or Section 35-523(h) specifically.** The spirit and intent of Section 35-523(h) is to ensure that adequate tree canopy is retained in environmental sensitive areas and that established trees are preserved to the extent feasible. In authorizing variances from strict compliance, Section 35-523(h) also recognizes the need for flexibility to deal with unique conditions. The spirit and intent of the UDC includes planting new trees and creating an aesthetically pleasing urban environment to enhance quality of life. Under the Proposed Planting Program, there will be more trees and greater tree canopy within the ESA than currently exists. The requested variance will provide the flexibility required to successfully develop Ruby City and provide for a successful transition across the Project Boundary to the Creek Project.

- **Owner has taken all practicable measures to minimize any adverse impacts on the public health, safety and public welfare.** Owner has carefully evaluated the options available along the Project Boundary and has proposed an extensive Proposed Planting Program to augment the proposed fees to be paid into the City's Tree Preservation Fund. The net result of these projects will yield superior benefits for the public health, safety and public welfare through enhanced tree canopy, landscaping and public spaces.
- **The public interest underlying the requested variance outweighs the public interest underlying strict compliance with Section 35-523(h).** Ruby City will showcase a world-class contemporary art collection for the benefits of the citizens of San Antonio and will be housed in a space designed by a prominent world-class architect. The other portion of the Property will be utilized for the Creek Project as part of a transformative linear park and flood control project. Together, these projects will create a new destination in the City of San Antonio that incorporates thoughtful landscaping and new tree plantings. The public interest in these projects is greater than the public interest served by not allowing mitigation for the Incompatible Boundary Trees under Section 35-523(h).

The requested variance also satisfies the approval criteria set forth under Section 35-483(e) of the UDC for planning commission variances, as follows:¹

- **The proposed variance will not be contrary to the spirit and intent of this code and the regulations from which the variance is requested.** The spirit and intent of Section 35-523(h) is to ensure that adequate tree canopy is retained in environmental sensitive areas and that established trees are preserved to the extent feasible. In authorizing variances from strict compliance, Section 35-523(h) also recognizes the need for flexibility to deal with unique conditions. Under the Proposed Planting Program, there will be more trees and greater tree canopy within the ESA than currently exists. The requested variance will provide the necessary flexibility required to successfully develop Ruby City and provide for a successful transition across the Project Boundary to the Creek Project.
- **The hardship relates to the applicant's land, rather than personal circumstances.** SARA has close to forty percent (40%) of the Property to be used for the Creek Project. This condition gives rise to the Incompatible Boundary Trees and is related solely to the location of applicant's land and has no relation to personal circumstances.
- **The hardship is not the result of the applicant's own actions and that the applicant has taken all practicable measures to minimize any adverse impacts on the public health, safety and public welfare.** As noted above, the conditions relating to the Project Boundary and loss of donated acreage to the Creek Project arise solely from the location of the Property adjacent to the Creek Project. Owner has carefully evaluated the options available along the Project Boundary and has proposed an extensive Proposed Planting Program to augment the proposed fees to be paid into the City's Tree Preservation Fund. The net result of these will yield superior benefits for the public health, safety and public welfare through enhanced tree canopy, landscaping and public spaces.
- **Under the circumstances, the public interest underlying the proposed variance outweighs the public interest underlying the particular regulation for which the variance is granted.** Ruby City will offer the citizens of San Antonio exposure to a world class contemporary art

¹ Information Bulletin 124 contains a model form letter that references certain bullet points for variances under UDC Section 35-483(e) to be included in variance applications. There are discrepancies between the items listed in the information bulletin and the actual approval criteria listed in UDC Section 35-483(e). This letter uses the actual approval criteria listed in UDC Section 35-483(e) some of which are duplicative of the criteria already stated above.

collection housed in a space designed by a world class architect. The other portion of the Property will be utilized for the Creek Project as part of a transformative linear park and flood control project. Together, these projects will create a new destination in the City of San Antonio that incorporates thoughtful landscaping and new tree plantings. The public interest in these projects is greater than the public interest served by not allowing mitigation for the Incompatible Boundary Trees under Section 35-523(h).

- **The granting of the variance will not be injurious to other property and will not prevent the orderly subdivision of other property in the area in accordance with these regulations.** The requested variance will not adversely affect any property or property owner.

For all of the reasons stated above, the proposed variance is in harmony with the spirit and intent of the UDC and will not adversely affect the health, safety, or welfare of the public and Owner accordingly requests that the variance be granted.

Sincerely,



Karl P. Baker
Partner
Golden Steves & Gordon, LLP

Attachment(s)

For Office Use Only:		AEVR #:	Date Received:
		_____	_____
<u>DSD – Director Official Action:</u>			
<input type="checkbox"/> APPROVED	<input type="checkbox"/> APPROVED W/ COMMENTS	<input type="checkbox"/> DENIED	
Signature: _____		Date: _____	
Printed Name: _____		Title: _____	
Comments: _____			

