



City of San Antonio

Agenda Memorandum

File Number:15-1781

Agenda Item Number: 9.

Agenda Date: 3/2/2015

In Control: Board of Adjustment

To: Board of Adjustment
Case Number: A-15-049
Date: March 02, 2015
Applicant: Core Property Capital
Owner: 1251AH CP, LLC
Council District: 10
Location: 1251, 1253, & 1255 Austin Highway
Legal Description: Lots 21, 22, & 23, Block 34, NCB 9073
Zoning: "C-3R MC-3 AHOD" General Commercial Restrictive Alcohol Sales
Austin Highway / Harry Wurzbach (TAPS Memorial Boulevard)
Metropolitan Corridor Overlay Airport Hazard Overlay District & C-2
MC-3 AHOD" Commercial Austin Highway / Harry Wurzbach (TAPS
Memorial Boulevard) Metropolitan Corridor Overlay Airport Hazard
Overlay District.
Prepared By: Margaret Pahl, AICP Senior Planner

Request

A request for an 80 foot variance from the minimum 200 foot spacing required from a residential use or district, as described in Section 35-385 (d) 2 to allow a cellular communication tower 120 feet from a residential zoning district.

Executive Summary

The subject property is located within the recently established Austin Highway Metropolitan Corridor Overlay. This design overlay district resulted from a decade of private non-profit work to revitalize this historic corridor to its previous vitality. As such, one of the defining features selected to preserve/mimic was the buildings' proximity to the street. The District has a maximum front setback of 40 feet in an effort to retain streetscape and rhythm among buildings along the corridor.

The subject property is 2.7 acres, mostly vacant, with a cell tower near the front property line. In considering options for future development consistent with the design requirements, the design professionals recommended that the site layout include relocating the cell tower from the middle of the site to an edge where it can be less conspicuous. The proposed new location is behind the proposed building along the east property line, a boundary line shared with a motel.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“C-3R MC-3 AHOD” General Commercial Restrictive Alcohol Sales Austin Highway / Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport Hazard Overlay District & C-2 MC-3 AHOD” Commercial Austin Highway / Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport	Vacant, Cell Tower, Automotive Repair

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“MF-33 AHOD” Residential Multi-Family Airport Hazard Overlay District	Single-Family Dwellings
South	C-2 MC-3 AHOD” Commercial Austin Highway / Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport	Car Wash
East	C-2 MC-3 AHOD” Commercial Austin Highway / Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport	Motel
West	C-3 MC-3 AHOD” General Commercial Austin Highway / Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport	Multi-Tenant Commercial Center

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Northeast Inner Loop Plan, and designated as community commercial land use. The subject property is located within the boundaries of the Terrell Heights neighborhood association. As such, they were notified and asked to comment.

Criteria for Review

According to Section 35-482(e) of the UDC, in order for a variance to be granted, the applicant must demonstrate all of the following:

1. The variance is not contrary to the public interest.

The public interest is defined as the general health, safety, and welfare of the public. **In this case the public interest is represented by competing setbacks; one for the Austin Highway streetscape and one for fall protection from a cell tower. The 200 foot setback from residential uses or districts was established to coincide with the height allowed for cell towers. Since this tower is only 80 feet in height, its relocation is not contrary to public interest.**

2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.

A literal enforcement of the ordinance would result in the cell tower remaining along the streetscape or within the 40 feet maximum setback of the corridor overlay. The eastern property line is only 240 feet

deep, limiting the relocation potential without a variance. Since the cell tower is existing, a literal enforcement may result in an unnecessary hardship.

3. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.

The spirit of the ordinance requires a separation to account for potential collapse of the cellular tower, not any health related concerns from proximity. **According to a report from the American Cancer Society regarding proximity to cell towers, at ground level near typical cellular base stations, the amount of RF energy is thousands of times less than the limits for safe exposure set by the US Federal Communication Commission (FCC) and other regulatory authorities. It is very unlikely that a person could be exposed to RF levels in excess of these limits just by being near a cell phone tower.**

4. The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “C-3R & C-2 MC-3 AHOD” General Commercial Restrictive Alcohol Sales Austin Highway / Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport Hazard Overlay District.

5. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.

The requested variance is not likely to harm the adjacent, conforming property. **Neighbors have responded in opposition to the variance, believing that proximity to cell towers is dangerous and could reduce property values. The investment proposed on this site will improve property values for the neighboring properties, eliminating blight.**

6. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.

The applicant is addressing a concern created by conflicting requirements of the UDC. Both cannot be satisfied without a variance to one of them. The proposed location for the cell tower reduces its visibility by relocating it away from the street frontage and closer to the residential neighborhood. It still maintains 120 feet from the property line and 150 feet from the nearest home. For each of those other residential properties, the distance increases by 50 feet each.

Alternative to Applicant’s Request

The applicant must either leave the cell tower at its present location or relocate it to a location which satisfies the minimum 200 foot distance as established by the Unified Development Code.

Staff Recommendation

Staff recommends **approval of the 80 foot setback variance requested in A-15-049** based on the following findings of fact:

1. That if the cell tower were to fall in the proposed location, it would not damage nearby residential structures.