

AGENDA
BOARD OF ADJUSTMENT/APPEALS OF THE CITY OF UNIVERSAL CITY, TEXAS
Regular Meeting, Monday Evening, 26 August 2024
COUNCIL CHAMBER OF CITY HALL

1. CALL TO ORDER: Chair J. Sue Svalberg at 6:00 PM
2. QUORUM CHECK: Michael Cassata, Development Services & EDC Director
3. MINUTES OF PREVIOUS MEETING:
 - A. Regular Meeting – 22 July 2024

4. NEW BUSINESS:

ITEM 1

A. **Election of Officers**

ITEM 2

- B. **Public Hearing:** V.C. 680— A request for a variance for property zoned R-OT “Old Town Residential” at 202 W. Byrd Blvd. and 213 W. Wright Blvd. – True Life Church (CB 5768 BLK 13 LOT 11 Tabernacle Baptist Subd & CB 5768 BLK 13 LOT 9) to allow a 320 square foot storage shed (Connex), thereby exceeding the 250 square foot maximum size requirement, per zoning ordinance 581.
- C. **Consider:** V.C. 680— A request for a variance for property zoned R-OT “Old Town Residential” at 202 W. Byrd Blvd. and 213 W. Wright Blvd. – True Life Church (CB 5768 BLK 13 LOT 11 Tabernacle Baptist Subd & CB 5768 BLK 13 LOT 9) to allow a 320 square foot storage shed (Connex), thereby exceeding the 250 square foot maximum size requirement, per zoning ordinance 581.

ITEM 3

D. **Executive Session:**

1. Pursuant to Texas Government Code Sec. 551.07, Consultation with Attorney, to discuss and deliberate pending litigation titled Camino Nuevo, LLC, a Texas Limited Liability Company vs. Board of Adjustment of the City of Universal City
2. Reconvene in Open Session and take action, if needed, on any item pertaining to or listed in the Executive Session section of this Agenda.

5. CITY MANAGER’S REPORT:

- A. Dates and Times of Local Meetings
- B. Status of City projects and programs
- C. ADJOURNMENT:

Maribel Garcia
Deputy City Clerk

This facility is handicap accessible and handicap parking spaces are available. Request for accommodations or interpretive services must be made 72 hours prior to this meeting. Please contact the City Clerk’s Office at (210) 659-0333 if these services are needed.

MINUTES
BOARD OF ADJUSTMENT OF THE CITY OF UNIVERSAL CITY, TEXAS
Regular Meeting, Monday Evening, 22 July 2024

1. CALL TO ORDER: Chair J. Sue Svalberg at 6:02 p.m.

2. QUORUM CHECK: Michael Cassata, Development Services Director

Commission Members Present:

J. Sue Svalberg, Chair
Donna Ash, Member
Chuck Consla, Member
Elizabeth Dixon, Member
Tom England, Vice-Chair
Ron Jackson, Alt.

Staff Present:

Kim Turner, City Manager
Cynthia Trevino, City Attorney
Michael Cassata, Development Services Director
Maribel Garcia, Deputy City Clerk

Mr. Cassata noted a quorum was present.

3. MINUTES OF THE PREVIOUS MEETING: Regular Meeting – 26 February 2024.

Mr. England moved to accept the minutes as presented. Mr. Jackson seconded the motion.

The motion was approved on a 6-0 vote.

4. NEW BUSINESS:

- A. **Public Hearing:** V.C. 678 – A request for a variance for property zoned R3-Medium Density Residential at 128 Low Meadow Drive (CB 5046X (CIBOLO CROSSING UT-1), BLOCK 1 LOT 67) to allow a residential fence to exceed the maximum 6-foot height requirement by two feet to allow an 8-foot fence, per Zoning Ordinance 581.

Mr. Cassata clarified the location of the property and the request of the applicant. The home has a five-foot setback on the side yards and backs up to open space. The home is close to other homes and because of the slope at the property line and the window locations of her home in relation to surrounding homes, the property owner can see into other people's homes. Additionally, the neighbors' back patios being approximately 2'-6" above grade, allows them to see above the applicant's fence line and into her backyard.

Mr. Jackson confirmed the eight-foot fence would be for both sides of the property.

Ms. Ash moved to open the Public Hearing. Ms. Dixon seconded the motion.

The motion was approved unanimously; Chair Svalberg opened the Public Hearing at 6:07 p.m.

Ms. Rebecca Sadler, the property owner for 128 Low Meadow Drive, explained that her family was the first amongst her immediate neighbors in the new Cibolo Crossing subdivision. Being that there were no neighbors on either side, they did not have an issue arising from the slope of the property and the viewshed of their windows. However, a neighbor moved in and due to their house being set back from the street an additional 11 feet, created the issue of the

windows being lined up directly across from each other and the related privacy obstructions. She asked that the BOA at least consider a height variance relative to the slope line.

The fence layout was explained with relation to the property. The aesthetic of the fence was discussed. Several alternate methods of creating privacy were considered, including a shrubbery for which there was no space, and curtains that would have to be used all day and night.

After confirming a permit had not been issued initially and the HOA apparently approved the 8-foot fence, Mr. England opined that Sitterle, the home builder, should be aware of the need for fence permits as they have done business in the City before.

Mr. Cassata explained that home builder turnover and different project managers may have led to miscommunication and other construction-related issues.

It was noted that existing neighbors had no objection to the variance.

There being no further public comment, Ms. Dixon moved to close the Public Hearing. Mr. England seconded the motion.

The motion was approved unanimously; Chair Svalberg closed the Public Hearing at 6:20 p.m.

- B. **Consider:** V.C. 678 – A request for a variance for property zoned R3-Medium Density Residential at 128 Low Meadow Drive (CB 5046X (CIBOLO CROSSING UT-1), BLOCK 1 LOT 67) to allow a residential fence to exceed the maximum 6-foot height requirement by two feet to allow an 8-foot fence, per Zoning Ordinance 581.

Mr. Jackson and Mr. England both feared this would cause a wave of fence variance requests in the Cibolo Crossing subdivision.

Mr. England felt the HOA, which at this point is comprised of the two home builders, should both know the requirements for fence and accessory structures. He was reassured of the fence quality with Mr. Cassata noting a retroactive fence inspection had been performed.

The Board agreed to allow a compromise by removing the front two sections, thereby allowing the 8-foot portion to start in line with the neighbor's fence line.

Mr. Jackson concurred with the findings of fact as outlined in the variance application. Specifically,

- That there are extraordinary conditions affecting the land, including existing land constraints
- That the variance is necessary and essential to the preservation of substantial property rights
- That granting the variance will not be detrimental to the public health or safety
- That extraordinary conditions do not generally apply to other properties within the vicinity
- The unique conditions of the property were not created by the property owner
- The variance requested is in conformance with the City's Future Land Use Plan
- Approval of the variance requested allows the greatest utilization of the property

Mr. Jackson, therefore, moved to approve V.C. 678 and to grant a variance from Section 4-5-71 of the Zoning Code for the property at 128 Low Meadow to allow a residential fence on the side yards to exceed the maximum 6-foot height requirement by two feet resulting in an 8-foot fence, except for the first two sections, or beginning at the fence line of the neighbor. Ms. Dixon seconded the motion.

Vote: **Yeas: Jackson, Dixon, Svalberg, Ash, Consla, England**
Nays: None

The motion was approved on a 6-0 vote.

- C. **Public Hearing:** V.C. 679 – Per Section 7.02 of the City Charter, a request for an appeal from an alleged error by an administrative official of the City specifically related to Section 4-5-65 of the Zoning Code related to Nonconforming Buildings and Uses at 205 W. Byrd Boulevard (CB 5768 BLK 7 LOT 11).

Mr. Cassata noted the location of the property on a map. He gave a history of the zoning of the property and noted the property was rezoned in 2007 from Class 2 Medium Density to the current R-OT-“Old Town Residential” zoning classification. Proper legal notices were sent to newspapers and property owners at that time both before and after the rezoning was approved. He explained the requirements of nonconforming property use, per Section 4-5-65 of the Zoning Code, and that if the property is vacant for 120 days, uses on the property must conform with the current zoning requirements. He reviewed the timeline of events with the property at 205 W. Byrd Boulevard, including the issuance of a Temporary Certificate of Occupancy on September 19, 2023 for a nonconforming use which would expire November 10, 2023 if a full Certificate of Occupancy was not issued. A subsequent full Certificate of Occupancy was not requested and was not issued by the City. This made the 120th day to re-occupy the building March 9, 2024. Subsequently, the City received a Certificate of Occupancy application for a different user on May 3, 2024. Mr. Cassata noted that the property was effectively vacant by “the absence of characteristic furnishings, equipment, and personnel,” according to Section 4-5-65(1)(c) of the Zoning Code, as observed by the Building Official during her inspection on September 19, 2023.

The R-OT – “Old Town Residential” zoning uses were explained for Mr. Jackson.

Mr. Cassata noted that utility bills may be used to determine vacancy, with emphasis on the term “may.” He reported that although a water account had been active since 2002, during the time the applicant has owned the property, there has been zero water consumption except for one or two days each month. He also stated that although Suite 101 has had an active electricity account since 2022, Suite 105 did not have an active account and power during the Building Official’s Temporary CO inspection on September 19, 2023. Mr. Cassata reiterated that the Building Official had to use a flashlight to perform that inspection and observed that nothing was inside either of the suites, including furniture, equipment or personnel.

Mr. Cassata clarified that while the nonconforming use no longer applies to the property, it is not the City’s position that the building must be torn down; he explained that he had discussed with the applicant the option to apply or petition for a zone change to a commercial district. He noted the zone change may not be considered spot-zoning and may meet the legal requirement for said rezoning as it is adjacent to a property in the C2-Retail District.

Mrs. Turner explained the history of the Future Land Use Plan (FLUP) and noted the current Zoning Map correlates with the FLUP even though the more recent and proposed uses do not.

Mr. England moved to open the Public Hearing. Ms. Dixon seconded the motion.

The motion was approved unanimously; Chair Svalberg opened the Public Hearing at 7:00 p.m.

Ms. Caroline McDonald, Brown & McDonald, PLLC and representative of the applicant, stated their position that the nonconforming use was never abandoned and that the suites had been occupied. She noted that the Code, in her estimation, did not require a Certificate of Occupancy to be deemed occupied. She presented a timeline of events differing with Mr. Cassata's timeline showing the property had only been unoccupied for 32 days, not 120. Utility bills were entered into the record as proof of occupancy. She noted that restriping of the parking lot and new fencing were completed and provided emails between the property owner and the code enforcement officer regarding these projects. She presented surrounding properties with nonconforming use for which the City did not have responsive records when requesting Certificates of Occupancy. She also noted that the State legislature had made changes to the Local Government Code regarding compensation to the property owner if nonconforming use was terminated by the City.

The Board and Ms. McDonald discussed utility usage on the bills presented and the changes to the Local Government Code and when compensation would be enforced.

Mr. Logan Fulmer, applicant for the appeal and property owner, explained the history of the lessees and stated that nine of ten requirements for occupancy per the City's September 19, 2023 Notice of Additions or Corrections were completed, with the tenth being something Code Enforcement needed to review. He asserted that Certificates of Occupancy were not required for surrounding properties and only occupancy was required, which he argued was maintained at his property.

At the request of Ms. Ash, Mr. Cassata explained that the City's only way of confirming legal occupancy is through the Certificate of Occupancy application and completion process, otherwise, the City wouldn't know who is in the building and whether they meet the Code. Furthermore, he asserted the City was guided by the Code and ascertained occupancy according to the Code. Upon inquiry, Mr. Cassata reiterated that the utility usage was for the most part zero or minimal at best. For the purposes of defining "occupancy," the City did not recognize any form of legal occupancy outside of a Certificate of Occupancy being issued.

Mr. Fulmer noted that the use of the property may be once a day but still showed occupancy for nonconforming use.

After Chair Svalberg opined that the building was not occupied per the regulations of the City since November 2023 as the Temporary Certificate of Occupancy expired, Ms. McDonald reminded the Board of the applicant's position that occupancy could be determined through utility bills and the nonconforming section of the Code does not require a Certificate of Occupancy for continued nonconforming use. She concurred that there was a building violation for occupying without a Certificate of Occupancy, but this would not cancel the nonconforming use.

Mr. England received clarification that the property owner was aware of the property's nonconforming use prior to purchase of the property, as was explained to him during a meeting with his attorney, broker and Mr. Cassata in the summer of 2023.

Mr. Fulmer felt blindsided by the notice of expiration of nonconforming use due to his continued correspondence with Code Enforcement in relation to restriping and fencing projects.

After Ms. Ash determined that the issue was essentially a dispute in definition of "occupancy," Mr. Fulmer added that the previously mentioned option to petition for a zone change was amenable to him. He preferred to have the temporary solution of the appeal to extend another 120 days but felt the zone change was a more permanent solution.

The Board discussed the possibility of a zone change and the likelihood of it passing Planning & Zoning and City Council. However, they refocused on the item as it is not within their scope to review zone changes.

Mr. England moved to table the item for 60 days to allow the applicant to file a zone change application with Planning & Zoning.

Ms. Trevino advised the Board that they can only motion to an immediate date or to approve the appeal; they cannot make conditional motions or direct action outside of that scope.

Mr. England amended his motion to table to a motion to table until September 23, 2024. The motion did not receive a second.

Ms. Ash moved to have a closed session pursuant to Texas Government Code Sec. 551.071 (Consultation with Attorney) regarding Item 2 of the agenda. Mr. Consla seconded the motion.

The motion was approved on a 5-1 vote.

Chair Svalberg began the Closed Session at 7:32 p.m.

Chair Svalberg convened into Closed Session with present Board of Adjustment members, City Attorney Cynthia Trevino, and Development Services and Economic Development Director Michael Cassata.

Chair Svalberg and the BOA reconvened into Open Session at 7:48 p.m. No action was taken during the Closed Session. The Public Hearing continued at this time.

Kim Igleheart, 736 Garden Meadow, thanked the BOA for their work during the meeting and opined that the land would never be used for residential purposes and would always be commercial. She understood that the consideration for this did not speak to the facts that the BOA must consider. However, she wished the BOA would consider that Mr. Fulmer would like to keep the property occupied.

Greg McGehee, New Braunfels, the prior property owner, stated he and Mr. Fulmer knew of the property's nonconforming use. He opined that the spirit of the law should be more considerate toward abandonment rather than non-occupancy. He hoped the building would be allowed to

continue development in a commercial use.

There being no further public comment, Ms. Ash moved to close the Public Hearing. Mr. Consla seconded the motion.

The motion was approved unanimously; Chair Svalberg closed the Public Hearing at 7:52 p.m.

- D. **Consider:** V.C. 679 – Per Section 7.02 of the City Charter, a request for an appeal from an alleged error by an administrative official of the City specifically related to Section 4-5-65 of the Zoning Code related to Nonconforming Buildings and Uses at 205 W. Byrd Boulevard (CB 5768 BLK 7 LOT 11).

Mr. Jackson moved to approve V.C. 679 and to overturn the decision made by the administrative official of the City regarding the nonconforming status of the property at 205 W. Byrd Boulevard. As a result, in accordance with Zoning Code Section 4-5-65 – Nonconforming Buildings and Uses, the subject property and building may be reoccupied with a use for which the building or structure was designed or intended, if so occupied within a period of 120 days from the date of this determination. Mr. England seconded the motion.

Vote: **Yeas: Consla**
 Nays: Jackson, England, Svalberg, Ash, Dixon

The motion to approve the appeal was not successful on a 1-5 vote.

5. CITY MANAGER'S REPORT:

Mrs. Turner announced the Comprehensive Plan contract approval was passed by City Council at their last meeting. The August 6th City Council meeting would include a FY 2024-2025 budget presentation designed for the public. New boards and commission members would begin their terms August 1st.

ADJOURNMENT: With Mr. England moving to adjourn the meeting and Ms. Ash seconding the motion, Chair Svalberg adjourned the meeting at 7:57 p.m.

J. Sue Svalberg
Chair

TO: Board of Adjustment & Board of Appeals

From: Michael Cassata, Development Services & EDC Director

RE: Election of Officers

DATE: 16 August 2024

The Board of Adjustment and Board of Appeals each has two officers: Chair and Vice-Chair. The Chair presides over the meetings, signs minutes and other documents requiring an official signature. Occasionally, the Chair is present at City Council meetings when a controversial item has been considered.

The Vice-Chair presides over the meetings and signs documents when the Chair is absent.

The term for each officer position is one year.

CITY OF UNIVERSAL CITY

Date 16 August 2024

File VC 680

TO: Members of the Board of Adjustment

FROM: Michael Cassata, Development Services & EDC Director

SUBJECT: VC 680—Request to allow an oversized storage container at True Life Baptist Church

Specific Request

A request for a variance from Section 4-5-63 of the Zoning Code for property zoned R-OT—"Old Town Residential" at 213 W. Wright Boulevard to allow a 320-square-foot storage container (Connex), thereby exceeding the 250 square foot maximum size requirement, per Zoning Ordinance 581.

Zoning

The property is owned by True Life Baptist Church and is zoned R-OT—"Old Town Residential". The Future Land Use Plan designates this property as MDR—Medium Density Residential.

Surrounding Uses

Properties in the immediate area are a mix of vacant properties, single-family detached residences, and commercial services businesses, zoned either R-OT—"Old Town Residential" or C2-Retail.

Project Specifics

This request is to allow True Life Baptist Church to install a 320-square-foot storage container (Connex) in the rear yard behind the existing annex building at 213 W. Wright Boulevard. The container would be placed between the annex building and the church's parking lot. The annex building is currently being partially utilized for storing lawn care equipment and other items. These items would be transferred to the storage container, if approved. The container would be painted to match the church's building colors (white and grey).

The Zoning Code allows for a 250-square-foot storage container at a maximum height of 10 feet. While the proposed Connex meets the height requirement at 9.5 feet, it does exceed the maximum size requirement, and, therefore, requires a variance.

Also, the Zoning Code requires a 5-foot rear yard setback and there is an existing 7.5-foot utility easement running along the rear property line in which permanent accessory structures are not permitted. Although the storage container is not technically permanent, if approved, it is suggested that a condition be placed requiring the storage container to be located outside of the utility easement.

Please find attached a site plan, photos, and the original plat of subdivision showing the existing easement.

The subject property is not located within a JBSA Randolph Air Installations Compatible Use Zone (AICUZ).

Findings of Fact

For your consideration, please find attached a set of responses to the Criteria for Granting a Variance.

Legal Notices

Per State law, 32 notices were mailed to property owners within 200 feet of the subject property. As of this memo, the City has not received any phone calls or return notices regarding this request.



W Byrd Blvd

W Byrd Blvd

W Byrd Blvd

Travis Dr

Houston Dr

Travis Dr

Houston Dr

Wright Blvd

W Wright Blvd

W Wright Blvd

Main Church Building

True Life Church

Proposed Storage Location

Multi-Use Building

Jon Wayne Service Company

Patriot Martial Arts Self Defense

305

301

217

213

122

121

Me Hair



Dr

Travis Dr

Travis Dr

Travis Dr

217

213

220

19' distance from this corner

Dimensions
8' W x 9.5' H x 40' L

18' distance from this buiding

Storage



KALIBER
CONTAINER
KaliberContainer.com
410-317-0609

**Will Be Painted To Match Building Colors
(White/Grey)**

45000040000

CAUTION
5'6" HIGH
CONTAINER





KLSR
ONLINE

XCLU4000188

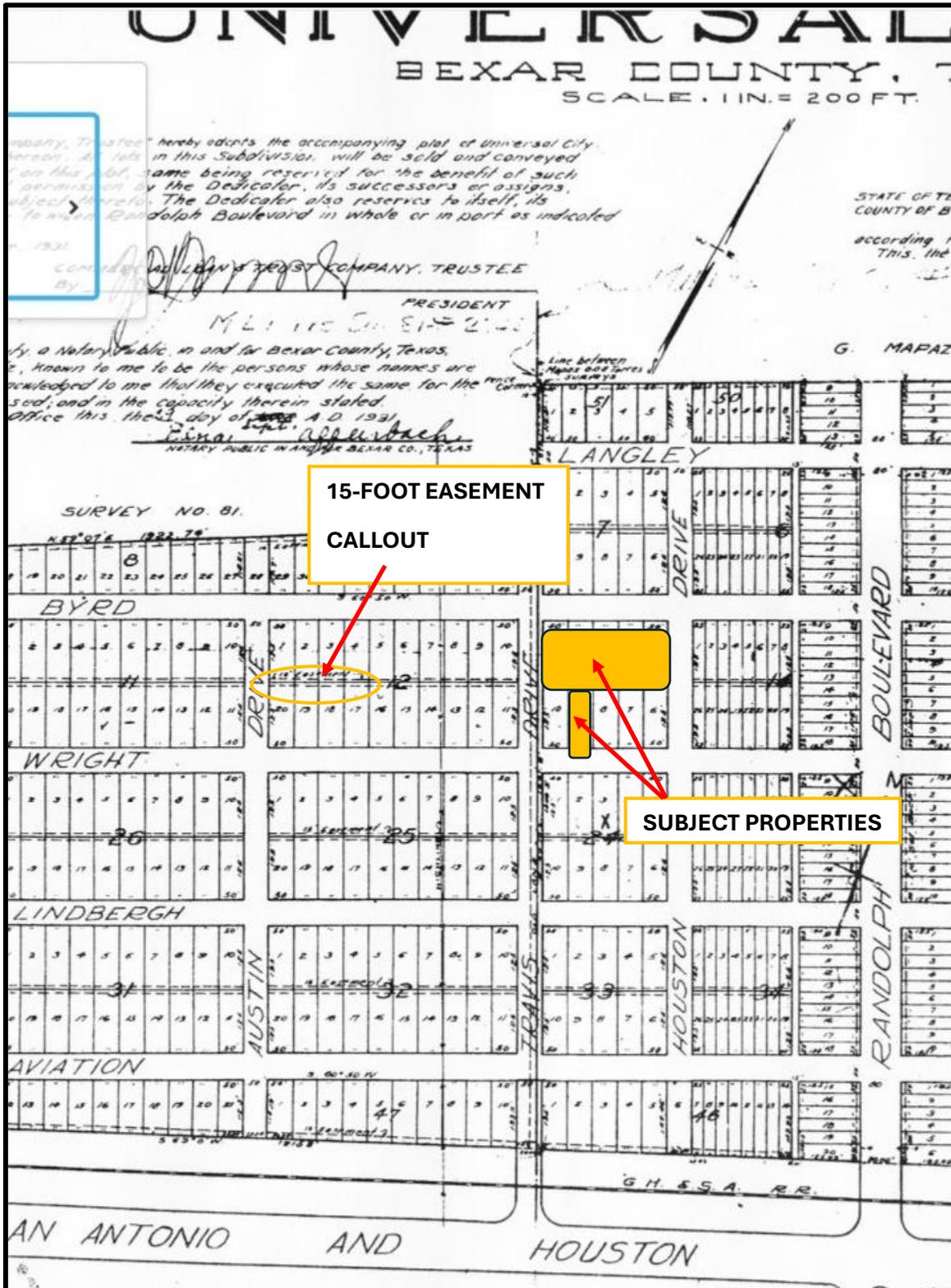
45GB

2.9m
9'6"

CAUTION
9'6" HIGH
CONTAINER

A3
8' 100

TRUE LIFE CHURCH ORIGINAL PLAT WITH EASEMENT CALLOUT



Parcel 354443 – 202 W Byrd Blvd

Criteria for Granting a Variance, Findings Required

The Board of Adjustment shall prescribe only conditions that it deems not prejudicial to the public interest and shall enumerate its decision with findings of fact. In making the required findings, the Board of Adjustment shall take into account the nature of the proposed use of the land involved, the existing use of land in the vicinity, the number of persons who will reside or work in the proposed development, the possibility that a nuisance may be created, and the probable effect of such variance upon traffic conditions and upon public health, convenience, and welfare of the vicinity. No variance shall be granted unless the Board of Adjustment finds all of the following:

A. Extraordinary Conditions

That 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 the 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.

Response: The shed will be installed on the interior on the subject property facing the parking lot and will not be adjacent any residential neighbors nor impact our only neighbor on the block in any way. Therefore, due to the subject property being a corner lot with only one residential neighbor on the backside of the lot and having minimal impact to nearby residential neighbors, strict application of the Code would deprive the applicant of a reasonable use of the land.

B. Preservation of a Substantial Property Right

That the variance is necessary for the preservation of a substantial property right of the applicant.

Response: A substantial property right is the ability to use land in a reasonable and satisfactory way. Therefore, since the subject property has minimal impact to adjacent residential neighbors, use of the proposed shed is reasonable and would preserve a substantial property right.

C. Substantial Detriment

That the 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.

Response: Granting of the requested variances for the shed will not negatively impact adjacent neighbors due to its location and, therefore, will not be detrimental to the public health, safety, or welfare and will not be injurious to other property in the area.

Parcel 354443 – 202 W Byrd Blvd

D. Other Property

That the conditions that create the need for the variance do not generally apply to other property in the vicinity.

Response: The conditions that create the need for the variances do not generally apply to other properties in the vicinity because we are a church which takes up most of the block we are on and have a larger need for space and use for our shed. We have an accessory building between our main building and our parking lot and the shed will be between those two spaces away from the public roads and our residential neighbor.

E. Applicant's Actions

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.

Response: The subject property is unique compared to other properties in the vicinity because the majority of properties in the area are not corner lot churches with need for larger storage area. As a result, there is only one adjacent or immediate neighbor that is located on the opposite side of the yard where the second shed is proposed and who is also separated by a fence.

F. Future Land Use Plan

That the granting of the variance would not substantially conflict with the Future Land Use Plan and the purposes of this Ordinance.

Response: Since accessory structures are permitted in residential districts, the granting of the variances would not substantially conflict with the Future Land Use Plan designation of this property as MDR-Medium Density Residential.

G. Utilization

That 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.

Response: Since the location of the proposed shed is on the back side of our parking lot, away from the residential street and separated from our neighboring residential property by a fence and another building already in place, the application of this Code to that particular piece of property would effectively prohibit or unreasonably restrict utilization of the property.

Insufficient Findings

The following types of possible findings alone do not constitute sufficient grounds for granting a variance:

Parcel 354443 – 202 W Byrd Blvd

- A. That the property cannot be used for its highest and best use.
- B. That there is only a financial or economic hardship.
- C. That there is a self-created hardship by the property owner or its agent.
- D. That the development objectives of the property owner are or will be frustrated.
- E. The fact that property may be utilized more profitably should a variance be granted.

Motion to Approve:

VC 680

I concur with the findings of fact as outlined in the variance application. Therefore, I move to approve VC 680 and to grant a variance from Section 4-5-63 of the Zoning Code for the property at 213 W. Wright Boulevard to allow a 320-square-foot storage container in the rear yard with the following conditions:

1. The storage container shall be painted to match the church's building colors.
2. The storage container shall be located outside the utility easement.