



City of Fredericksburg

Zoning Board of Adjustment Meeting Agenda
Wednesday, September 18, 2024 ~ 5:00 PM
Law Enforcement Center
1601 E. Main Street
Fredericksburg, Texas 78624

Clay Sears, Member
Taylor Williams, Member
Mike Mahoney, Member

Jennifer Eggleston, Member
Eric Hammersen, Member
Adam Luton, Alternate
James "Jim" McAfee, Alternate

The City of Fredericksburg Zoning Board of Adjustment will meet in a regular session on September 18, 2024, at 5:00pm. Link to City of Fredericksburg, <https://fredericksburgtx.portal.civicclerk.com/event/1076/files>

Written Comments: to be submitted remotely:

1. Must be received by 2 p.m. on September 18, 2024.
2. Complete the Citizen Comment Form online at www.fbgtx.org; or
3. Email your comments to jmusgrove@fbgtx.org

Verbal Comments:

1. Sign up in-person between 5:00 p.m. and 5:30 p.m. at the Law Enforcement Center, 1601E. Main Street, in order to comment.

You will be limited to 3 minutes to speak.

1. EXECUTIVE SESSION

- A. Board Training on Historic Review Board Appeals
- B. Pursuant to Section 551.071 of the Texas Government Code, the Zoning Board of Adjustment reserves the right to consult in closed session with its attorney and to receive legal advice regarding any item listed on this agenda.

2. CALL TO ORDER

3. SWEARING IN OF NEW APPOINTMENT

4. ROLL CALL

5. APPROVAL OF MINUTES

- A. July 17, 2024 Regular Meeting Minutes

6. PUBLIC HEARING

- A. Request #ZBA2024-08; By Braveheart Unique Boutique to Consider an Appeal of the Historic Review Board's Determination per Sec. 23-66 of the Fredericksburg Municipal Code. The Applicant is Requesting Permission to have a Mural Painted on the West Wall for Property Located at 522 West Main Street.

- i Presenation by the Applicant
- ii Staff Report
- iii Hold a Public Hearing
- iv Consider the Appeal

7. DISCUSSION ITEMS

- A. Director's Report - Last meeting at the LEC

8. ADJOURN

CERTIFICATION

This is to certify that I, Jan Musgrove, posted this Agenda before 5:00pm on September 13, 2024, on the bulletin board of the City of Fredericksburg City Hall, 126 W. Main St., Fredericksburg, Texas.

Jan Musgrove

Jan Msgrove
Planner 1

STATE OF TEXAS
COUNTY OF GILLESPIE
CITY OF FREDERICKSBURG

BOARD OF ADJUSTMENT
July 17, 2024
5:30 P.M.

On this the 17th day of July 2024, the BOARD OF ADJUSTMENT convened in regular session at the regular meeting place thereof with the following members present to constitute a quorum.

PRESENT: JENNIFER EGGLESTON
CLAY SEARS
MIKE MAHONEY
ERIC HAMMERSEN

ABSENT: JIM MCAFEE
TAYLOR WILLIAMS
MARCUS VIDRINE

ALSO PRESENT: SHELBY COLLIER – Senior Planner
JAN MUSGROVE – Planner 1
RACHEL RAGGIO– City Attorney – Virtual

The meeting was called to order at 5:58 P.M. by Clay Sears.

Letty Vacek, city Secretary swore in new board member Mike Mahoney and the returning members, Eric Hammersen, Jennifer Eggleston and Clay Sears.

Mike Mahoney made the motion to table the election of Chair and vice Chair, Eric Hammersen 2nd. All voted Aye and the motion was carried.

MINUTES

Clay Sears made a motion to approve the June 2024 Regular Meeting Minutes. Seconded by Jennifer Eggleston. All voted in favor and the motion was carried.

Clay Sears opened the public hearing, all speakers were sworn in.

PUBLIC HEARING

Request #ZBA2024-06: By Kory Keller, To Consider a Variance to Sec. 3.200 – Height-To Allow for a Radio Tower with a Height Greater than 38 Feet for Property Located at 1122 South State Highway 16 and 1097 Post Oak Rd. The Requested Tower Height is 240 Feet

Applicant:

Bebb Francis, Lawyer for SBA communications, spoke at length to deny the request for a new tower in the location as the new use was not a radio tower but a tower with enhanced capabilities and that it was an unauthorized use of the Variance process.

Kory Keller stated that the new tower would replace a tower built in 1964 at 380 Ft with extensive guide wires. The new tower would be 240 ft tall with no guide wires and would enhance the services to existing customers and possibly add new leases. The goal was to still provide the services and to free up the land so that the area could be developed as a business park.

Marlene Pilot with Windcrest patio Homeowners Association spoke to the safety concerns as the new tower was going to be located closer to the homes in Windcrest, she had concerns about if the tower were to fall over; what and where the debris field would be.

Patrick King with Nexstream, spoke to the safety of the new tower and that it conformed to all standards. An EPA study was being performed by the engineers.

Lauren Kennedy mentioned that a meeting had been held with the locals HOA's on May 6th, 2024 and that they would be happy to have another meeting if local residents would like to.

Kevn Montgomery, a resident of Windcrest patio homes wanted to know if the new tower could be placed closer to Hwy 16, moving it away from the residents of Windcrest Patio homes?

Patrick King mentioned that placing it closer to Hwy 16 would be a safety issue due to traffic and "threat" of automobile collisions.

Eric Hammersen made a motion to close the public hearing. Mike Mahoney 2nd the motion. All voted Aye and motion was carried.

Executive Session commenced at 7:13 pm

Executive Session ended at 7:26 pm

Staff Report: Shelby Collier

The tower would be short at 240 Ft and have no guide wires.

Staff Recommendation:

Staff recommends approval of the demolition of the existing tower and construction of the 24 ft freestanding tower with the condition that the placement of the new tower adheres to the required building setbacks.

After extensive discussion amongst the board members, Eric Hammersen made a motion to approve under Section 5.650 the variance request ZBA2024-06 with the following conditions.

1. Construct a 240 ft tower with uses limited to the same uses operating on the currently existing 380 ft tower as of July 17, 2024
2. Receive the appropriate building permits
3. Report back with the findings from the Engineering company to include the EPA report
4. Tower is to be constructed only in location proposed in application.
- 5.

Mike Mahoney 2nd the motion, all voted Aye, and the motion was carried.

ADJOURN

With nothing further to come before the Board, Mike Mahoney moved to adjourn the meeting and Eric Hammersen seconded the motion. All voted in favor and the meeting was adjourned at 7:39 P.M.

PASSED AND APPROVED this the 18th day of September, 2024.

JAN MUSGROVE, PLANNER 1

MARCUS VIDRINE, Acting Chair



ZONING BOARD OF ADJUSTMENT AGENDA MEMO

DEPARTMENT: Development Services

TO: Zoning Board of Adjustment

FROM:

MEETING DATE: September 18, 2024

CATEGORY: PUBLIC HEARING

CAPTION: Request #ZBA2024-08; By Braveheart Unique Boutique to Consider an Appeal of the Historic Review Board's Determination per Sec. 23-66 of the Fredericksburg Municipal Code. The Applicant is Requesting Permission to have a Mural Painted on the West Wall for Property Located at 522 West Main Street.

- i Presentation by the Applicant
 - ii Staff Report
 - iii Hold a Public Hearing
 - iv Consider the Appeal
-

PRESENTATION:

SUMMARY: The Applicant, Braveheart Unique Boutique, has submitted an Appeal of the Historic Review Boards determination (denial) of a Certificate of Appropriateness application for property located at 522 W Main Street.

The Historic Preservation Ordinance [No. 27-007](#) allows an applicant to appeal a decision of the Historic Review Board if a written notice of appeal is filed by the applicant or owner and received by the Historic Preservation Officer within ten days following the decision. The appeal application must include specific grounds for the appeal and the Zoning Board of Adjustment shall only consider the specific grounds cited by the applicant.

The Zoning Board of Adjustment may overturn the Historic Review Board's decision or requirement if it makes affirmative findings of fact on each of the following criteria:

- The historic review regulations set forth herein, or findings of the Board do not allow for a reasonable use.
- The action of the Board was not based upon the preponderance of the evidence presented to the Board.
- The plight of the owner of the property 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 zoning district in which the property is located.
- The reversal of the Historic Review Board's decision or requirement will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property

and will not impair the purposes of this article or regulations to the Zoning District in which the property is located.

- In addition, or alternately, other legal precedent or established law or is challenging or requesting a change to a rating.
- The Board of Adjustment may apply conditions to its decision or modification of the Historic Review Boards decision or requirement.

FINDINGS:

Address: 522 W Main

Applicant: Braveheart Unique Boutique

Rating: Low - defined as a resource that minimally enhances the district's ability to convey a sense of time and place. These properties may be typical examples of more recent, common local building forms, architectural styles, or plan types; be examples of distinctive building forms, architectural styles, or plan types that have been significantly altered; lack the necessary age to meet the usual 50-year threshold for possible National Register of Historic Places listing and do not appear to meet the National Register of Historic Places standard for exceptional significance for properties less than 50 years of age, but which nevertheless may have relative value within the historic district, meriting preservation. Properties or improvements with Low rating may be considered for relocation or demolition upon a determination by the Historic Review Board that the same can be accomplished with little or no consequence to the historical, cultural, architectural or archaeological character of the district or property.

Zoning: C2, Commercial

Case History:

- The applicant painted the mural on the West side of the building without the required Certificate of Appropriateness (COA).
- The applicant was made aware of the violation and submitted a COA and paid all fees, including a \$300.00 penalty fee for work without a COA.
- The COA application was submitted to the Historic Review Board for consideration on August 13, 2024.
- The Historic Review Board denied the COA application citing Sec. 3.2.6.N and stated that the mural does not contain cultural significance.
- The applicant was informed of the denied COA and was further informed with a Notice of Action, that the mural would need to be painted over.
- The applicant was informed of the appeal process through Zoning Board of Adjustment
- The applicant filed an appeal application and cited Sec. 3.2.6.N of the Historic Design Guidelines and Standards as the reason for an appeal.
- The appeal process allows the applicant to keep the mural until the Zoning Board of Adjustment takes action.
- Sec. 3.2.6.N - states that it may be appropriate to paint a mural on a Low-rated property in some cases and states that new murals may be approved on a case-by-case basis if painted on a previously painted surface or affixed to buildings in a manner that does not damage historic fabric - with preference given to historic or cultural subjects rather than business promotion.

STAFF RECOMMENDATION:

When considering an appeal, Staff does not make recommendations.

ATTACHMENTS:

1. ZBA2024-08 HRB Appeal Application
2. 2024-253 Mural
3. 522 W Main Location Map
4. ZBA2024-08 Info and Photo
5. 2024-253 Notice of Action_Denied
6. Sec 23-66 Appeal
7. HRB Minutes_522 W Main

APPROVAL/REVIEW:

Date: September 13, 2024

Shelby Collier, Senior Planner



BOARD OF ADJUSTMENT APPEAL OF HISTORIC REVIEW BOARD

City of Fredericksburg - Development Services Department
126 W. Main St., Fredericksburg, TX 78624 -- (830)997-7521

1. Applicant: Braveheart Unique Boutique
2. Owner: Pate Real Estate LTD
3. Phone: 512-699-6310 Email: Sheridanze@yahoo.com
4. Description of property involved in this request.
Address: 522 W. Main St.
Legal Description: FBG ADDN BLK 16 Lot 246-PT
Lot Size: .23 acres 10K sq. ft. Zoning District: Historic Business District
5. Date of HRB meeting: August 13, 2024
Section of Design Guidelines referenced: 3.2.4 Exterior Walls P. 94-95
G, N
The Board of Adjustment will consider the same criteria and standard of review considered by the Historic Review Board or the Historic Preservation Officer.

The Board of Adjustment may overturn the Historic Review Board's decision or requirement if it makes affirmative findings of fact on each of the following criteria:

- a. The historic review regulations set forth herein, or findings of the Board do not allow for a reasonable use.
- b. The action of the Board was not based upon the preponderance of the evidence presented to the Board
- c. The plight of the owner of the property 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 zoning district in which the property is located.

Paid 08/20/24
CIN# 8024 \$300.00

d. The reversal of the Board's decision or requirement will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property and will not impair the purposes of this article or regulations to the Zoning District in which the property is located.

e. In addition, or alternately, other legal precedent or established law or is challenging or requesting a change to a rating.

f. The Board of Adjustment may apply conditions to its decision or modification of the Board's decision or requirement.

Staff Use Only

Application No: _____

Date: _____

Payment Type: _____

If replacement of historic exterior wall materials is necessary, install the new materials maintaining spatial relationships (including depth, dimension, and joint patterns) as historically relative to window frames, door frames, and other exterior features (SOI Standards 3, 6).

High Priority	Medium Priority	Low Priority
Required for all exterior walls	Required if visible from the public ROW	Recommended

- (l) Historic-age foundation skirting should be preserved; new foundation skirting should be appropriate for the age and style of the building (SOI Standards 2, 5, 6).

Period-appropriate Foundation Skirting

Refer to *Section 2* for examples of different types of foundation skirting for different architectural styles. In general, for buildings constructed prior to ca. 1915, appropriate foundation skirting materials include wood, fiber-cement, or pressed metal. For buildings constructed after ca. 1915, appropriate foundation skirting materials include wood, fiber-cement, or stucco. Stone foundation skirting should be added only if documented as present historically. Adding stone foundation skirting without documentation that it was present historically can create a false sense of history.

- (m) If restoration of a historic-age mural is necessary, hire a qualified professional conservator (SOI Standard 7).

High Priority	Medium Priority	Low Priority
Recommended	Recommended	Recommended

- (n) New murals may be approved on a case-by-case basis if painted on a previously painted surface or affixed to buildings in a manner that does not damage historic fabric – with preference given to historic or cultural subjects rather than business promotion (SOI Standard 10).

High Priority	Medium Priority	Low Priority
Appropriate in some cases	Appropriate in some cases	Appropriate in some cases

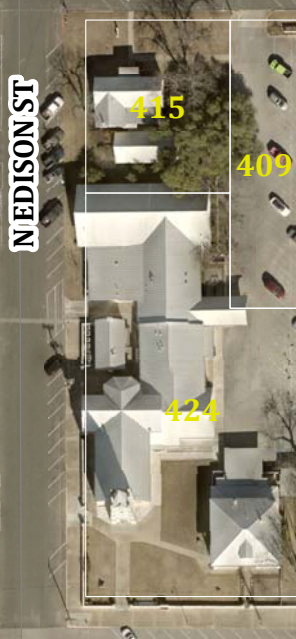


Figure 3-20. Example of a Craftsman bungalow at 707 W. Main Street. Note that the 2-inch horizontal wood siding and relationship of wall to window are character-defining features to be preserved. Source: CMEC Historic Resources Survey, 2019.



Figure 3-21. Example of damage to brick surface caused by paint. Paint can allow moisture to become trapped within the brick, resulting in flaking off the brick's hard outer crust along with the paint, leaving the softer inner brick exposed and susceptible to weatherization. Source: "Please, Don't Paint Your Mid-Century Brick," MidMod Midwest, accessed January 8, 2021, <https://midmod-midwest.com/mid-century-brick/>.





WAUSTIN ST

N BOWIE ST

NEDISON ST

W MAIN ST

S BOWIE ST

SEDISON ST

522 W. Main



Site ID No. 333

Address 522 W. Main

Date 1953

Stylistic Influence

GCAD Hyperlink [R24632](#)

Owner PATE, REAL ESTATE LTD % CHARLES & MABEL
PATE

Historic District Yes Historic District

Assessment Example of a more recent common local building form, architectural style or plan type with no known historical associations. Resource has undergone alterations.

1983 Historic Resources Survey

Previous Site No. _____

Previous Ranking _____

Previous Photo References

Roll - - - - -

Frame

2002 Re-evaluation

☐ High ☐ Medium ☒ Low

Notes Stone front façade added recently, front façade windows added.





Applicant

Sheri Danze

Case Number

2024-253

Location

522 W Main

NOTICE OF ACTION

YOUR APPLICATION FOR:

- ☐ LAND USE CHANGE
- ☐ RE-ZONING
- ☐ ENTRY CORRIDOR DESIGN GUIDELINES
- ☐ VARIANCE
- ☐ FINAL PLAT
- ☒ CERTIFICATE OF APPROPRIATENESS

HISTORIC REVIEW BOARD

ON DATE: August 13, 2024

- ☐ APPROVAL
- ☒ DENIED

CONDITIONS OF DENIAL:

As the application was denied, the mural must be removed from the building.

Signed: _____
Shelby Collier, Senior Planner

8/14/2024

126 West Main Street~ Fredericksburg, Texas 78624~ 830-997-7521 ~ 830-997-1861 fax



City nor its employees, agents or contractors shall be answerable in damages or otherwise for damage to property due to the enforcement of this article.

(4) *Lien establishment.* The City Manager or other person authorized to act on behalf of the City shall file a statement of such expenses incurred by filing the amount of such expenses, the date on which said work was done or improvements made, with the county clerk of Gillespie County, Texas in the Real Property Records of such county. The City shall have a privileged lien on such lot, lots or real estate upon which said work was done or improvements made to secure the expenditures so made. Said lien amount shall bear interest per annum from the date said statement was filed at the greater of the maximum rate published by the state Board of control, or the rate of 10 percent. For any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure of said lien may be had in the name of the City. The statement of expenses so made, as aforesaid, shall be a prima facie proof of the amount expended for such work or improvements.

Sec. 23-66. - Appeal.

(a) An applicant or owner may appeal any decision of the Board to the City's Board of Adjustment under the following conditions:

(1) That a written notice of appeal by the applicant or owner be received by the Historic Preservation Officer ~~City secretary~~ within ten days following the decision to be appealed. The application shall follow the form required for a variance request under the City's Zoning Ordinance.

(2) The Board of Adjustment may overturn the Board's decision or requirement if it makes affirmative findings of fact on each of the following criteria:

(A) The historic review regulations set forth herein, or findings of the Board do not allow for a reasonable use.

(B) The action of the Board was not based upon the preponderance of the evidence presented to the Board.

(C) The plight of the owner of the property 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 zoning district in which the property is located.

(D) The reversal of the Board's decision or requirement will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property and will not impair the purposes of this article or regulations to the Zoning District in which the property is located.

(E) In addition, or alternately, other legal precedent or established law or is challenging or requesting a change to a rating.

(F) The Board of Adjustment may apply conditions to its decision or modification of the Board's decision or requirement.

(3) The Board of Adjustment shall schedule a hearing on such appeal within 30 days after the receipt of the notice of appeal, or as soon thereafter as is reasonably practicable. Notice of such hearing shall be published in the City's official newspaper not less than the 10th day before the date of the hearing. At the hearing, the applicant, owner and all interested parties, including local preservation groups, will have the opportunity to be heard. The Board of Adjustment shall uphold, reverse or modify the decision or requirement of the Historic Review Board or the Historic Preservation Officer within 30 days of the appeal hearing unless a continuance is agreed to by the owner. The Board of Adjustment will consider the same criteria and standard of review considered by the Historic Review Board or the Historic Preservation Officer.

(b) Only one appeal shall be allowed.

(c) Prior to an appeal to judicial authorities or institution of suit, and as a mandatory prerequisite thereof, the applicant must file a written notice of appeal with the City secretary within ten days following the adverse Board of Adjustment decision, as applicable, stating specifically grounds for such appeal, and the resultant appeal or suit shall be had on that ground or those grounds.

Sec. 23-67. – Penalties and Enforcement.

Violation of article. A person, firm, corporation or other entity commits an offense if he/she/it violates this article. Each day the offense continues constitutes a separate offense. The following penalties, which are nonexclusive, and in addition to other provisions of this Article III, and the exercise of one or more of which shall not preclude exercise of the others, shall be imposed on those persons or entities found to have violated this article:

(a) The same penalties as set forth in the zoning ordinance of the City for all violations of requirements set forth in the said zoning ordinance; or the penalties set forth in section 1-6 of this Code of Ordinances of the City for zoning violations (currently up to \$2,000 per day).

(b) A certificate of occupancy will not be granted for any proper until compliance with all Certificate of Appropriateness requirements are verified by the Historic Preservation Officer or building official of the City.

(c) Stop Work order

(1) Whenever the building official finds any work regulated by this Article being performed in a manner either contrary to the provisions of this Article or dangerous or unsafe, the building official is authorized to issue a stop work order.

(2) The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. Upon

Application: 2024-253 - 522 W Main - Mural

Applicant Presentation: Sheri Danze apologized for painting it without the required permits and noted that they had paid all the fines and fees. It is located next to a gas station with a big blank wall. It does not say Fredericksburg and it does not promote the business.

Summary: Shelby Collier

A Certificate of Appropriateness application has been submitted requesting permission to paint a floral mural on the west side of the building that says, "Fearfully and wonderfully made." The property is a low-rated property built in 1953 that is the current home of Braveheart Unique Resale Boutique. The work has already been completed.

Staff Recommendation:

As the property is a low-rated property with a painted exterior and does not compete with a neighboring historic property, Staff recommends approval of the requested mural.

Cyd Donnell stated that it was not culturally significant and that it is lovely that the gas station has a pretty wall to look at.

Amy Slaughter stated that she thought it was more of an art piece than a mural and that the color palette does not meet the guidelines.

Todd Eidson commented that he didn't believe that it had any cultural significance. Joe Salinas said that everyone should follow the rules.

David Bullion mentioned that there is not an ordinance that addresses public artwork. We can address colors on historic properties or signage or murals.

Jessica Mittel stated that this was a difficult decision. This one did not fit the mural guidelines.

Robin Cowsar mentioned that she agreed with Joe Salinas that we should stick to the guidelines of the mural ordinance.

Cyd Donnell stated that this is a mural and that it does not have any cultural significance and made a motion to deny.

Joe Salinas seconded the motion.

Jessica Mittel, Robin Cowsar, Joe Salinas, Amy Slaughter, Todd Eidson, Cydney Donnell voted in favor to deny, Sharon Joseph voted nay. The motion carried.

Todd Eidson mentioned that the applicant could come back with another application.