

**Jeff Jack**

2008 B Rabb Glen

Austin Texas, 78704

[jjack2@austin.tx.gov](mailto:jjack2@austin.tx.gov)

**Architect**

Fax & Tel (512-447-5877)

L8  
75

Monday, October 12, 2015

Re: Casa de Luz parking variance request,  
B of A agenda item L-8, case C15-2015-~~0218~~ 0128

Chair Vincent Harding and Board Members

I urge you to deny the parking variance request of Casa de Luz because it does not meet any of the fundamental requirements for granting such a variance, it will set a extremely bad precedent for the entire city and will encourage bad behavior for those wishing to avoid complying with our zoning requirements.

Requirements for granting a variance:

1. **Reasonable use.** The Board can grant a variance if the denial of the variance will deny the owner "a" reasonable use of the property. This does not mean that the reasonable use is the one desired by the applicant, but rather the property could be developed in some way consistent with the existing zoning. This property could be utilized by the owner in several ways that could be consistent with the current zoning.

A. The Casa de Luz restaurant could be maintained on this property in such a manner to meet current parking requirements. As an architect I know that for a 3,000 sf restaurant the site is large enough to accommodate the code minimum parking requirement if the other construction on the site is removed. This then would provide a "reasonable use" of the property.

B. The Casa de Luz site is a .7803 acre tract zoned CS and lies within the Waterfront Overlay zoning district that allows by right mixed use and residential uses. This site then could be developed as a 60 foot high mixed use project. As a comparison the Sage Condo project at 1702 South Lamar is a 33 unit complex on 1.098 acre tract with three story residential build over ground floor parking. The Sage site has a similar width as the Casa de Luz property and if only developed as high as the Sage, could result in approximately 26 residential units. If structured parking was provided as with the Barton Place Lofts further down Toomey it would be possible to add not only more residential units but this lot could also accommodate retail on the ground level resulting in a mixed use project that not only is a "reasonable use" but also would result in a project that would provide more housing in the urban core, would have on-site parking and be a real mixed use project. Certainly this would be a reasonable use as well

L8  
76

2. **Hardship.** The Board may grant a variance if the property has a unique "hardship" that is particular to that property and is not typical of adjacent properties. Typical examples of such hardships are significant trees located on the property, topo changes that impact part of the site or some other special circumstance only found on the property.

This property has no unique site conditions that result in a "hardship". The lot is essentially flat, there are no trees that could not be incorporated with good design and there are no other site specific features that constitute a "hardship"

While the applicant claims that the current use is somehow "unique" and that use should be exempted suggesting that the current code is "the" hardship is not a valid "hardship". The code that an applicant is requesting a variance from can not be used as the "hardship" to get a variance from that very same code!

The only hardship in this case is the fact that the property owner build out the site without applying for the proper building permits and tried several times to miss classify the restaurant use as part of the school use.

In addition this facility was granted a previous variance to reduce the parking requirement from about 68 spaces to only 46 spaces with specific stipulations for the remainder of the required 46 space to be provided with off-site leased parking. The fact that these off-site lease spaces were not maintained by the applicant in violation of the previous B of A ruling is not a "hardship" either.

Finally this site is no different from any of the adjacent properties in the area similarly situated that have been build out with the appropriate building permits and code required parking.

3. **Area Character.** The Board may grant a variance if granting the area would not result in a project that is out of character to the surrounding area and does not grant a special privilege to the project not enjoyed by similarly situated properties.

The fundamental standard here is that if a variance was granted that gave this particular property owner a special right not enjoyed by adjacent property owners, then the property could be developed "inconsistent" with the character of surrounding properties.

Granting this variance would be totally inconsistent with ALL other surrounding properties that have to meet the code required parking minimums. In particular all the restaurants in the area (Green Mesquite, Baby Acapulco, Billy's Brew Pub, Austin Java, Chuy's and Schlotsky's) all meet there parking obligations and the resultant building area is sized accordingly. Granting this variance to Casa de Luz would provide to them a special privilege not enjoyed by surrounding similar business and therefore would be inconsistent with the existing area character.

48  
77

4. **Additional Parking Criteria.** In addition to having to meet the three fundamental requirements for the B of A to grant a variance listed above, a parking variance has also to show that it will not negatively impact traffic volumes on the adjacent street and not create a safety hazard.

The applicant is contending that the on-street parking and the metered parking in the city park parking lot across the street will provide the parking needed for this operation. However this assumption is based on these parking spaces being available entirely for Casa de Luz patrons to use.

This site is in the urban core and has a 20% reduction in the standard parking requirement already. This reduction is based on the assumption that the needed on-site parking for a business can be reduced due to that business being able to utilize the on-street parking in front of their business. So in effect the city has already acknowledged in the urban core the availability of on-street parking to sever local business, but only to the extent of a 20% reduction in on-site parking. So now granting a parking variance for an even further reduction due to on-street parking would in effect be double dipping and is not consistent with the intention of the urban core reduction.

The operating hours for Casa de Luz are from 7 am to 8:30 Pm seven days a week. This will result in a direct conflict with the park users ability to use park parking and should not be seen as any type of "shared parking" that may be suitable with two uses with different operating hours. What happens when there are multiple activities in the park such as ball games and special events. And where will the trail users park? Allowing Casa de Luz to use parkland parking will only exacerbate the problem of limited parking for park users.

It should also be noted that part of the parking lot in the adjacent park is utilized by ZACH theater. With ZACH's expansion they are in need of expanding the amount of space in that parking lot delegated to theater users. This will only add to the conflict if Casa de Luz does not provide the parking required by code.

It is clear that granting this variance it will result in even more parking problems on Toomey and Sterzing and will be in conflict with the public's ability to use parkland parking. When parking availability is inadequate then it will inevitably result in more street congestion which can result in more traffic safety hazards. Both Toomey and Sterzing have minor street profiles with limited cross street connections. Barton Springs Road is a heavily travel major collector and South Lamar a major arterial. This creates a perfect storm as buisness patrons and park users search for open parking spaces. This is in an area already impacted by all the special events in Zilker and Butler Parks (ACL fest, Fun Fun Fest, Food and Wine Fest, fun runs, Blues on the Green, etc.). Granting this variance will only aggravate the parking, traffic and safety problems in this area.

## Other Considerations

28  
78

**Precedent for the City.** While all B of A cases are evaluated on the merits of the particular case by the Board members, it is also clear that rulings by the B of A are often used by subsequent applicants seeking variances as justification for their own variance request. The "you gave it to them, so give it to me" argument.

The B of A has time and time again made it clear that individual rulings should not be seen as precedent setting, but the granting of this particular parking variance will be used by other businesses wishing to off load their cost to provide parking for their patrons to the public by either monopolizing the on-street parking or by converting public park parking to private use. The granting of this variance will encourage other businesses to try to off load their cost to the public all over the city.

The code enforcement history that was passed out at the last B of A meeting documents the particulars of this case in amazing detail. There is no doubt that the owner has spent considerable expense with various consultants trying to avoid compliance. It should also be obvious of the hundreds of hours of staff time dealing with this case at the public tax payer expense. The granting of this variance will encourage others to try to circumvent our code in much the same way that Casa de Luz has done for years.

**Encourage Bad Behavior.** The Casa de Luz case has been going on for over a decade. The owner of the property is a sophisticate business person who has known about the code requirements for the property since they purchased the property. They knowingly build out the property without applying for a building permit, got caught, had to go to the B of A to get a variance. A variance was granted to reduce the parking requirement base on obtaining off site shared parking. While that was done for a while, when those space we no longer available, the owner made no serious effort to find other off-site parking. They simply chose to ignore the first variance stipulations.

When it was clear that the previous variance was not being honored, instead of working to bring the project into code compliance they have tried to circumvent the code compliance issues by all sorts of delaying tactics, have been cited by code enforcement many times. Their efforts have resulted in parking meters being place on public parkland parking in an attempt to confiscate public parking of a business use. And to pour salt into a wound, they have even added to the building more construction without a permit during the time of trying to deal with the code issues created by not having a building permit in the first place.

The granting of this variance will justify their long history of trying to avoid compliance with our code and if granted will encourage similar bad behavior by others who wish to be treated special and above the law.

L8  
79

**Casa De Luz is SPECIAL!** The B of A will probably hear tonight that Casa de Luz is special due to it's unique menu, it's patrons don't need parking they walk of bike to the site, it is a "neighborhood" friendly business and the "far sighted healthful oriented services" offered to the community should be reason enough to grant this variance. It will also be suggested that if this variance is not granted Casa de Luz will have to close. While interesting points, none of these arguments are relevant to the Board of Adjustment's criteria for granting a parking variance request. But I think it is important to refute the underlying premise of these arguments as well.

First off Casa de Luz is a business that is on a piece of property owned by a different legal entity. It is the legal entity that is responsible for meeting the code requirements, not the business utilizing the property. As a business that is successful and grows it is not unlike so many other successful business in Austin, when they out grow their location, they move. If it is a good business with a committed patronage their customers will move with it. A good example of this is seen recently in the Zilker area where Kirby Lane Café outgrew it's previous location and moved down the street to a bigger location with adequate parking. Another example is the Bicycle Sport Shop who out grew it location on Toomey Road and move into a better and bigger location on South Lamar. If every successful business that out grew it's current location then asked for variances just so they could remain in place and off load their business expense by the granting of a variance, what good would the code be al all? Financial or economic circumstance are not a "hardship" relevant for the B of A criteria.

The applicant may argue that moving is financially impossible as well. But is that really the case? Just look at the number of new start up restaurants along South Lamar that have opened with no tract record of patronage to support them (The Odd Duck, Barney Swine, Olivia, Uchi, Barlatas, Medici, Gour doughs, to name a few). All of them seem to find it financially feasible to operate and provide their code required parking? Why not an establish restaurant like Casa de Luz?

Secondly the property is a valuable asset, with a land value of \$1,699,600 (TCAD property tax roles for 2015) This property is owned by the Shambala Corporation, not Casa de Luz. With a property valued at just under \$1.7 million the corporation is sitting on a asset that cannot justify either as a restaurant or a small day care or school. At some point the corporation will see the value of the property increase due to Austin's growth to the point that it will be either sold off or redeveloped to a much higher density. And that new development will have to get a building permit and meet the code parking requirements. Using the Casa de Luz cover the owner is simply warehousing the property, paying the minimum expenses required with the income from the business on site, until it is time to cash in on this valuable asset. The Board of Adjustment should not be used to facilitate this business plan by granting this parking variance!

Thanks for your service to the community  
Jeff Jack Zilker