

**CITY OF SAN ANTONIO
DEVELOPMENT SERVICES DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Florencio Peña, Director, Development Services

SUBJECT: Appeal of Decision to Deny Sign Permit for 875 East Ashby Place

DATE: November 4, 2004

SUMMARY AND RECOMMENDATIONS

An appeal of the Board of Adjustment's recommendation to the Director of Development Services to uphold the sign inspector's denial of the on-premise sign permit application dated June 8, 2004, and the appeal of the official written determination of the Director, dated September 16, 2004.

Staff recommends denial.

BACKGROUND INFORMATION

The property is the Star Storage mini-storage facility located at 875 East Ashby Place, adjacent to US Hwy 281 North and across from Brackenridge Park. The existing sign structure on the property is within a scenic corridor, which bans billboards and is also within a River Improvement Overlay District.

The applicant, Executive Signs, was denied a permit to reface an existing sign structure, which has an on-premise sign permit. The applicant stated on the application their request to "REFACE EXISTING BILLBOARD" to advertise Star Storage as well as Pilgrim's Pride, an occupant of the facility owned by Borden Park L.L.P. An on premises sign permit only allows on premises sign advertising faces. The Chief Sign Inspector determined that all the elements of the proposed sign reface did not comply with all definitions or requirements for an on-premise sign. Applicant has not met its burden of proof that the proposed sign reface would not make the overall sign a prohibited billboard or illegal off-premises sign.

Borden Park L.L.P., represented by the firm Richie & Gueringer, P.C., submitted a request to appeal the Chief Sign Inspector's decision to the Zoning Board of Adjustment. The applicant appealed to the Zoning Board of Adjustment the Chief Sign Inspector's interpretation of Chapter 28 as it applied to the application submitted. Chapter 28 of the City Code states that the Zoning Board of Adjustment may make a recommendation to the Director to modify the interpretation of the Chief Sign Inspector by a 75% vote in favor of the appellant. The Zoning Board of Adjustment met on September 13, 2004, and made a motion to overrule the sign inspector's decision to not issue a permit. The vote required 75% of the members to overrule the inspector's decision. The motion failed as 5 voted for (45%), 4 against and 2 abstained. Therefore, failure to

overrule the inspector's decision to deny was considered by the Director of Development Services. The Director of Development Services wrote a letter requesting information or other grounds for granting the permit submitted. The applicant opted not to provide the information or to further discuss the case with the Director. Instead the applicant submitted a request to the City Clerk to appeal the decision to City Council.

POLICY ANALYSIS

The Council-appointed Zoning Board of Adjustment is an eleven member Board. The Board hears and rules on appeals from enforcement of and special exceptions to the Zoning Ordinance, and authorizes variances from that zoning ordinance when not contrary to the public interest. The Board also hears cases on City ordinance Chapter 28, Signs and Billboards, and code interpretations, consistent with Council policy as reflected in the City's ordinances.

FISCAL IMPACT

If the City Council overturns the Director's decision, permit fees generated would be \$144.79.

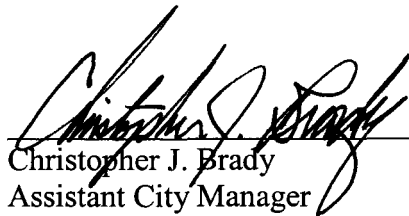
COORDINATION

This issue has been coordinated with the City Attorney's office.



Florencio Peña, Director
Development Services Department

Approved:



Christopher J. Brady
Assistant City Manager



J. Rolando Bono
Interim City Manager

A RESOLUTION

**DECIDING THE APPEAL OF EXECUTIVE SIGNS, OF
THE DIRECTOR OF DEVELOPMENT SERVICE'S
DECISION TO NOT ISSUE A PERMIT TO REFACE
AN EXISTING ON-PREMISE SIGN STRUCTURE
LOCATED AT 875 EAST ASHBY PLACE.**

* * * * *

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council of San Antonio, having heard all arguments regarding the appeal of the decision of the Director of Development Services denying the issuance of a permit to applicant, Executive Signs for the refacing of a sign structure located at 875 East Ashby Place, within the City of San Antonio, finds that, based on the evidence presented to it, the appeal of the applicant shall be approved and overturns the Director's decision to not issue said permit.

SECTION 2. This resolution shall take effect on November 14, 2004.

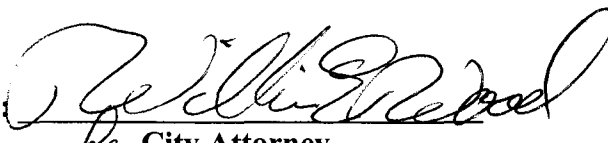
PASSED AND APPROVED this 4th day of November, 2004.

Attest:

M A Y 0 R

City Clerk

APPROVED AS TO FORM:


City Attorney

A RESOLUTION

**DECIDING THE APPEAL OF EXECUTIVE SIGNS, OF
THE DIRECTOR OF DEVELOPMENT SERVICE'S
DECISION TO NOT ISSUE A PERMIT TO REFACE
AN EXISTING ON-PREMISE SIGN STRUCTURE
LOCATED AT 875 EAST ASHBY PLACE.**

* * * * *

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council of San Antonio, having heard all arguments regarding the appeal of the decision of the Director of Development Services denying the issuance of a permit to applicant, Executive Signs for the refacing of a sign structure located at 875 East Ashby Place, within the City of San Antonio, finds that, based on the evidence presented to it, the appeal of the applicant shall be denied and upholds the Director's decision to issue said permit.

SECTION 2. This resolution shall take effect on November 14, 2004.


PASSED AND APPROVED this 4th day of November, 2004.

Attest:

M A Y 0 R

City Clerk

APPROVED AS TO FORM:


City Attorney



CITY OF SAN ANTONIO

P.O. BOX 839866
SAN ANTONIO, TEXAS 78283-3966

September 16, 2004

Gay Gueringer
Richie & Gueringer, P.C.
112 E. Pecan Street
San Antonio, Texas 78205

VIA: Facsimile
VIA: Certified Mail

Dear Ms. Gueringer:

As you know, I attended the Board of Adjustment hearing on September 13, 2004. I heard you tell the Board several times that the phrase used in the application to "Reface Existing Billboard" was a mistake and that Star Storage had no intention of claiming that granting this application would be argued to mean that the City was agreeing that the sign in question has any rights to display Off Premises/Billboard advertising. I heard you state information to the Board which you did not provide with your application or otherwise before the hearing. However, you did not provide to the sign inspector before the hearing and I did not hear you provide the Board information at the hearing about whether this sign brings more than mere incidental rental income to the property owner in contrast to the rental of its corresponding business/office space. This information is necessary to determine that the advertising meets the definition in the City Code of "on-premises sign".

In view of the Board's vote, the comments of some Board members, and relying on the truth of your representations to the Board, I would be inclined to determine to modify the sign inspector's denial of the application if you promptly provided information from which I can determine that this sign does not bring more than mere incidental rental income to the property owner in contrast to the rental of its corresponding business/office space or provided information supporting another basis for the granting of the application (as modified by you in the hearing).

I would be willing to meet with you to review your revised application with the additional information needed. If you would like to meet or have any questions regarding this issue please call me at 207-8232.

Sincerely,

Florencio Pena, III
Director
Development Services

"AN EQUAL OPPORTUNITY EMPLOYER"

RICHIE & GUERINGER, P.C.

Counselors and Attorneys at Law

112 E. Pecan Street
Suite 1420
SAN ANTONIO, TEXAS 78205
(210) 220-1080
FAX (210) 220-1088
rg-sa@rg-sanantonio.com

100 Congress Avenue
Suite 1750
AUSTIN, TEXAS 78701
(512) 236-9220
FAX (512) 236-9230
rg-a@rg-austin.com

September 20, 2004

Ms. Leticia M. Vacek, City Clerk
City of San Antonio
100 Military Plaza, 2nd Floor
San Antonio, Texas 78205

Via Hand Delivery

Re: Appeal of Board of Adjustment's Decision to Uphold Sign Inspector's Denial of
On-Premise Sign Permit Application; Case No. A-04-107PP;
Our File No. 7154.001.

Dear Ms. Vacek:

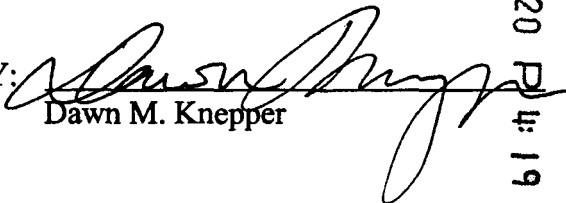
Pursuant to Chapter 28, Article IX, Section 28-247 of the San Antonio City Code, please accept this letter as Borden Park, L.P.'s written appeal of the Board of Adjustment's recommendation to the Director of Development Services, Florencio Pena, to uphold the Sign Inspector's denial of the On-Premise Sign Permit Application dated June 8, 2004, and the appeal of the official written determination from Mr. Pena, dated September 16, 2004, which we have attached hereto. As you will see from Mr. Pena's letter, although it is not clear that he has determined to uphold the decision of the Sign Inspector, we are pursuing this appeal in an exercise of caution. Our firm check in the amount of \$150.00 is enclosed in payment of the City's fee in this matter.

Should you require any additional information or documentation necessary in order to appeal these decisions, please notify me immediately at the San Antonio letterhead address.

Very truly yours,

RICHIE & GUERINGER, P.C.

BY:


Dawn M. Knepper

DMK/lle

RECEIVED
CITY OF SAN ANTONIO
2004 SEP 20 PM 4:19

RICHEL & GUERINGER, P.C.
P.O. BOX 220-1080
112 E. PECAN, SUITE 1420
SAN ANTONIO, TX 78205

2255

PAY TO THE
ORDER OF

City of San Antonio

DATE 9/30/04

2004
1110

One Hundred Fifty and 00/100

\$ 150.00

DOLLARS



CHASE

JPMorgan Chase Bank
Houston Region
712 Main St.
Houston, TX 77002

FOR Filing Fee 7154.001

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[Signature]
Vice President