

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
April 18, 2011**

Members Present:

Michael Gallagher
Andrew Ozuna
Helen Dutmer
Edward Hardemon
George Britton
Jesse Zuniga
Mike Villyard
Henry Rodriguez
Harold Atkinson

Staff:

Barbara Nelson, AICP, Assistant Director
Andrew Spurgin, AICP, Planning Manager
Jacob Floyd, Senior Planner
Rudy Niño, Senior Planner
Ernest Brown, Planner
Andreina Davila-Quintero, Planner
Paul Wendland, City Attorney

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

Andrew Spurgin, Planning Manager, introduced Development Services new staff.

CASE NO. A-11-027

Applicant – Dominic De La Garza
Lot 1, Block 1, NCB 18281
7576 Culebra Road
Zoned: “C-3 NA AHOD” Commercial, Non-Alcoholic Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the 6-foot maximum fence height standard in side and rear yards, in order to allow an 8-foot fence in the side yard.

Ernest Brown, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 13 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Pipers Neighborhood Association.

Dominic De La Garza, applicant, stated this is a recovery data center for all the Broadway banks. He also stated it is very critical to have to security for the amount of data that is kept at this center and it is also a recovery data center for the branches. He further stated there have been several issues with graffiti and trespassing on the property.

The following citizens appeared to speak:

Joe Alvarez, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-11-027 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-11-027**, variance application for **Broadway National Bank**, subject property description is **Lot 1, Block 1, NCB 18281**, situated at **7576 Culebra Road**, the applicant request is for a **2-foot variance from the 6-foot maximum fence height standard in side and rear yards, in order to allow an 8-foot fence in the side yard**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-11-027**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that the variance will not be contrary to the public interest in that **the variance would not be contrary to the public interest because the fence location on the interior of the lot, as shown on the attached site plan, will not adversely impact the health, safety, or general welfare of the public**. Additionally notifications were sent out to surrounding property owners and to the neighborhood associations. The city received no opposition to the requested variance. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property is of exception dimension or topography and experiences unnecessary hardship through the literal enforcement of the ordinance**. The applicant has shown testimony before us in regards to the ADA ramp which is at a **2 ½ foot elevation adjacent to the fence so that anybody trying to enter into the property, if it had been a 6-foot fence it would of made it a simple jump over into the equipment yard**. The applicant is trying to protect a very expensive equipment that preserves the data center in which case necessitates an 8-foot fence to heighten the elevation, to make it more difficult for an intruder to jump over the fence. Reasonable use of the property as a bank data center will suffer if the literal enforcement of the fence height provision is enacted. The spirit of the ordinance is observed and substantial justice is done in that **the variance is in keeping with the spirit of the ordinance**. The subject property is uniquely influenced by oppressive conditions, the ADA ramp, and its reasonable use as a data center will be impacted by the existing variance. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the variance will not authorize the operation of a use other than those specifically authorized in the "C-3 NA" zoning district**. 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 in that **the variance will not injure the appropriate use of the adjacent conforming properties nor will the essential character of the district be altered**. The proposed fences height is set away from the property line and would be on the interior of the property. The placement of the fence around the data center's equipment yard is nearest to the southern abutting property that features a storage facility with a wall greater than six feet height 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 in that **the plight of the owner of the subject property is due to circumstances unique to the property. The ADA sidewalk requirement and the elevation change makes it a unique challenge that the applicant is faced with in order to comply with federal mandates therefore the fence and the variance is a requirement of the property. It's not impacted by the applicant's circumstances.** The motion was seconded by Ms. Dutmer.

AYES: Ozuna, Dutmer, Villyard, Hardemon, Zuniga, Atkinson, Rodriguez, Britton, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-11-028

Applicant – Charles Gottsman

Lot 14, NCB 13806

10644 North IH-35

Zoned: "I-1 IH-1 AHOD" General Industrial Northeast Gateway Corridor Airport Hazard Overlay District

The applicant is requesting a 1) a 75 square-foot variance to the requirement of the IH-1 Northeast Gateway Corridor Overlay District that digital displays not exceed twenty-five percent (25%) of the allowable sign area permitted, in order to allow a 150 square foot digital display and 2) a 5-foot variance to the requirement of the IH-1 Northeast Gateway Corridor Overlay District that multiple tenant signs not exceed a height of 35 feet, in order to allow a 40-foot tall sign.

Jacob Floyd, Senior Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 9 notices were mailed, none were returned in favor and one was returned in opposition.

Larry Gottsman, applicant, stated he is not requesting for additional square footage on the sign but is asking for a variance on the height. He also stated he wants to move the electronic sign from the northbound to the southbound side to have a readable sign on the southbound sign. This would avoid distraction from drivers coming from the southbound.

The following citizens appeared to speak:

Bryan Kost, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-11-028 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal Case No **A-11-028**, variance application for **RWJ Properties, LLC**, the subject property description is **Lot 14, NCB 13806**, property situated at **10644 North IH 35**, the applicant again is **RWJ Properties, LLC**, the applicant request is for 1) a **75 square-foot variance to the requirement of the IH-1 Northeast Gateway Corridor Overlay District that digital displays not exceed twenty-five percent (25%) of the allowable sign area permitted, in order to allow a 150 square foot digital display** and 2) a **5-foot variance to the requirement of the IH-1 Northeast Gateway Corridor Overlay District that multiple tenant signs not exceed a height of 35 feet, in order to allow a 40-foot tall sign**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-11-028**, for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that the variance will not be contrary to the public interest in that **the variances are not contrary to the purpose of the gateway corridor overlay to serve the public interest by creating a more attractive, cohesive and safe environment**. The applicant has provided testimony to us today that they are merely replacing or moving the southbound face of the sign to the northbound face of the sign. Additionally the public was notified through the notification process, with nine notices sent out, there was only one in opposition and there was no testimony from anybody in opposition here today for the variance request. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the strict enforcement of this article creates unnecessary hardship in providing adequate signage on the subject property**. The applicant has provided testimony today to us about the traffic hazards that would result if the signage was to be limited and the text of the signage would be limited constraining the ability for motorists to view the signage and create a hazard in trying to get off the freeway to exit to get to the subject property. The spirit of the ordinance is observed and substantial justice is done in that **the variances are in keeping with the spirit of the ordinance and the variance would do substantial justice to the property**. The subject property is uniquely influenced by some oppressive conditions and should be allowed the greater signage and height request that the applicant is seeking. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the variance will not authorize the operation of a use other than those specifically authorized in the "I-1 IH-1 AHOD" zoning district**. 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 in that **the variance will not have a substantial adverse impact on neighboring properties**. The variance as requested will positively impact the driving environment in that it takes away the hazard of motorists trying to read the small text on the sign that would be required under the existing zoning. 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 in that **the owner of the property experiences a plight which is seeking relief to be**

found through the zoning variance. The relief sought is the ability to increase the height to 40 feet and to allow the 75 square foot variance of the square footage of the sign so that the signage would be viewable from IH 35. The motion was seconded by Mr. Hardemon.

AYES: Ozuna, Hardemon, Zuniga, Atkinson, Rodriguez, Dutmer, Britton, Gallagher
NAY: Villyard

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-11-030

Applicant – M.P. Tollette, Jr.
Lot 18, Block 1, NCB 16481
1715 Thousands Oaks Drive
Zoned: “O-2 ERZD” High-Rise Office Edwards Recharge Zone District

The applicant is requesting a 10-foot variance to the 25-foot minimum front setback requirement of the “O-2” district, in order to allow a 15-foot front setback.

Jacob Floyd, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 18 notices were mailed, one was returned in favor and none were returned in opposition and response from the Shady Oaks Home Owners Association.

Maurice Tollette, applicant, stated there is ninety feet of easement in the back and this would be used for parking. He also stated he will be using this for an insurance agency office which is a one-story building. He further stated this property is not suitable for a high-rise which is the current zoning.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-11-030 closed.

MOTION

A motion was made by **Mr. Villyard**. A request for a variance application on Case No **A-11-030**, known as legal description **Lot 18, Block 1, NCB 16481**, located at **1715 Thousand Oaks Drive**, the applicant again is **Mr. M.P. Tollette, Jr.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal **A-11-030**, for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that the variance will not be contrary to the public interest in that **the variance is not contrary to the public interest as the proposed setback will not result in an impediment of motorist visibility nor infringe upon the public well being.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that

the property is burdened by easements existing within the property which occupy a large share of its total area. Consequently, the literal enforcement of the ordinance would unduly restrict the buildable area of the subject property. The individual has down scoped the size of the building to go on the property and has made it a one story structure. The spirit of the ordinance is observed and substantial justice is done in that it will grant relief from the unnecessary hardship resulting from the easements within the property and will allow the construction of a reasonably sized structure. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that the variance will not authorize the operation of a use other than those specifically authorized in the "O-2 ERZD" zoning district. 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 in that the variance will not injure the appropriate use of the adjacent conforming properties nor will the essential character of the district be altered. The adjacent properties zoned "C-2" are not subject to a minimum front setback requirement and possesses greater area within which to build. 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 in that the plight of the subject property is due primarily to the significant area within the property occupied by easements, within which not structure may be built. In addition, the location of the easements within the rearmost 90 feet of the subject property dictates that any proposed building is located within the forward area of the property. The motion was seconded by Mr. Zuniga.

AYES: Villyard, Zuniga, Atkinson, Rodriguez, Hardemon, Britton, Ouna, Dutmer, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-11-031

Applicant – Brown & Ortiz, P.C.

Lot 5, Block 11 NCB 12481

6818 Oakridge Drive

Zoned: "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 3-foot, 3-inch variance from the requirement that front-yard fences on residential lots not exceed 4 feet in height, in order to allow a 7-foot, 3-inch fence in the front yard.

Jacob Floyd, Senior Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 16 notices were mailed, none were returned in favor and none were returned in opposition and the Oak Hills Citizens Association is in favor.

James Griffin, applicant, stated this variance is to provide safety and protection to the property. He also stated there have numerous crimes in the area.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-11-031 closed.

MOTION

A motion was made by **Mr. Klein**. Re Appeal Case No **A-11-031**, this is a variance for a **3-foot, 3-inch variance from the requirement that front-yard fences on residential lots not exceed 4 feet in height, in order to allow a 7-foot, 3-inch fence in the front yard**, the subject property legally described as **Lot 5, Block 11, NCB 12481**, the location at **6818 Oakridge Drive**, the applicant is **Brown & Ortiz, P.C** .I move that the Board of Adjustment grant this appeal for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that the variance will not be contrary to the public interest in that **it is not because the site plan attached shows that will not obstruct motorist visibility**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has adequately provided us with evidence of significant criminal activity in the area and the 7-foot 3-inch fence is reasonable to assume would restrict that**. The spirit of the ordinance is observed and substantial justice is done in that **the fence is predominantly open and they are other similar fences in the neighborhood, so it does not provide any kind of special conditions to the individual**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the variance will not authorize the operation of a use other than those specifically authorized in the "R-5" zoning district**. 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 because **it will not injure the appropriate use of the adjacent properties nor will the essential character of the district be altered**. **In addition the applicant has provided to us a petition of neighbors around the in area in support of the fence**. 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 in that **the plight is brought about by an extra large lot, additional steep topography, and the prevalence of crime in the area**. The motion was seconded by **Mr. Zuniga**.

AYES: Villyard, Zuniga, Hardemon, Rodriguez, Dutmer, Ozuna, Atkinson, Britton, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

Sign Master Plan No. 11-005

Arturo Elizondo, Sign Inspector, briefed Board Members on Sign Master Plan for Shaenfield Crossing, located at 10585 Shaenfield Rd.

Mr. Hardemon made a motion to approve **Sign Master Plan No. 11-005** and was seconded by **Ms. Dutmer** and all members voted in the affirmative.

THE SIGN MASTER PLAN WAS APPROVED.

Sign Master Plan No. 11-006

Arturo Elizondo, Sign Inspector, briefed Board Members on Sign Master Plan for Vantage at Fair Oaks Ranch Revised, located at IH-10 West and Starr Ranch.

Ms. Dutmer made a motion to approve **Sign Master Plan No. 11-006** and was seconded by **Mr. Hardmeon** and all members voted in the affirmative.

THE SIGN MASTER PLAN WAS APPROVED.

Approval of the April 18, 2011 Minutes

The April 18, 2011 minutes were approved with all members voting in the affirmative

Consideration of representative to the Planning Commission Technical Advisory Committee

Mr. Villyard made a motion to nominate Mr. Camargo to representative the Board of Adjustment on the Planning Commission Technical Advisory Committee. **Mr. Ozuna** seconded the motion will all members voting in the affirmative.
