

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
April 2, 2012**

Members Present:

Michael Gallagher
Andrew Ozuna
Helen Dutmer
George Britton
Jesse Zuniga
Mary Rogers
Mike Villyard
Gene Camargo
Henry Rodriguez
Maria Cruz

Staff:

Andrew Spurgin, Planning Manager
Matthew Taylor, Senior Planner
Jacob Floyd, Senior Planner
Andreina Dávila-Quintero, Senior Planner
Trenton Robertson, Planner
Ernest Brown, Planner
James Cramer, Intern
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.

Ms. Dutmer made a motion to move Case No. A-12-032 to the end of the agenda. Mr. Rodriguez seconded the motion with all members voting in the affirmative.

Ms. Dutmer made a motion to move Case No. A-12-033 to the end of the agenda. Mr. Rodriguez seconded the motion with all members voting in the affirmative.

CASE NO. A-12-029

Applicant – Busick Properties, Inc.

Lot 37, Block 16, NCB 15786, save and except that portion replatted as Lot 83, Block 16, NCB 15786, and Lot 83, Block 16, NCB 15786

5315 Gawain Drive

Zoned: “MF-33 AHOD” Multi-Family Airport Hazard Overlay District and “C-2 AHOD” Commercial Airport Hazard Overlay District

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

Andreina Dávila-Quintero, Planner, presented background and staff’s recommendation approval of the variance request. She indicated 36 notices were mailed, one was returned in favor and one was returned in opposition and no response from the Camelot 1 Neighborhood Association.

Robert Wandrisco, representative, stated the existing 6-foot wood privacy fence is deteriorating. The new fence will not block visibility because all the parking is contained within the property. He also stated the area high school students walk through alley and tend to jump the 6-foot fence. He further stated the fence would make the neighborhood attractive. They are proposing a chain link fence with vinyl privacy slats that as wide as the opening of the fence.

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-12-029 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that in case **A-12-029**, the request for **Busick Properties, Inc.**, on case **A-12-029**, on property known as **5315 Gaiwan Drive**, also legally described as **Lot 37, Block 16, NCB 15786, save and except that portion replatted as Lot 83, Block 16, NCB 15786, and Lot 83, Block 16, NCB 15786**, be granted the requested change of a **2-foot variance from the 6-foot maximum fence height standard in the side and rear yards, in order to allow an 8-foot fence to be constructed on the side and rear yards of the property**. The variance is not contrary to the public interest in that **the requested fence variance will not adversely impact the well-being of the general public as it will not obstruct visibility of impending traffic. The subject property is a multi-family lot that is surrounded by other commercial and residential and high density residential uses. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that a literal enforcement of the maximum fence height standard will require the applicant to reduce the fence height to 6-feet on the southern portion of the property by allowing the 8-foot fencing in the south portion of the property which is what the staff is recommending will only enhance the security and visibility of the property. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done in that the requested fence height variance will be in keeping with the spirit of the ordinance as the proposed fence height complies with the intent of the maximum fence height standards of the ordinance.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that **the requested variance will not authorize the operation of the use which is prohibited in this classification and the current use is that of multi-family and will continue to be used as such.** 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 requested fence height variance will not adversely impact the adjacent conforming properties. The subject property is surrounded by commercial and multi-family uses on all sides.** 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 requested variance is due to burglaries, vandalism and other crime activities that occurs in the area. It is felt that by erecting the type of fence that is described by the applicant, it**

would make it more difficult for people to trespass onto certain property. The motion was seconded by **Mr. Zuniga**

AYES: Camargo, Zuniga, Cruz, Rogers, Rodriguez, Villyard, Dutmer, Britton, Ozuna, Gallagher

NAY: None

THE VARIANCE WERE GRANTED.

CASE NO. A-12-035

Applicant – Jesus Martinez
Lot 12, Block 9, NCB 14559
3127 Fidelia Drive
Zoned: “R-6 AHOD” Residential Single Family Airport Hazard Overlay District

The applicant is requesting a special exception to erect a 6-foot ornamental-iron front yard fence in the “R-6” Residential Single-Family District.

Trenton Robertson, Planner, presented background and staff’s recommendation of approval of the requested special exception. He indicated 18 notices were mailed, 2 were returned in favor and none were returned in opposition.

Jesus Martinez, applicant, stated the reason for this fence is to protect his family. He also stated traffic in the area ignore the stop sign and has seen traffic accidents. He further stated the fence would aide as a barrier in case of a vehicle coming into his yard due to traffic accidents.

The following citizens appeared to speak:

Brenda Maldonado, citizen, spoke in opposition.

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-12-035 closed.

MOTION

A motion was made by **Ms. Rogers**. Re Appeal No. **A-12-035**, application to **erect a 6-foot Ornamental-Iron Front Yard fence in the “R-6” Residential Single-Family District**, subject property being located at **3127 Fidelia Drive, Lot 12, Block 9, NCB 14559**, the applicant being **Jesus Martinez**, location being **3127 Fidelia Drive**. I move that the Board of Adjustment grant the applicant’s request as stated above, application for a Special Exception for the subject property as described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UDC 35-399.04. The special exception will be in harmony with the spirit and purpose of the chapter in that **the proposed fence meets the height, width, design and all other requirements established in Section 35-399.04(a) of the UDC**. The public welfare and convenience will be

substantially served in that **the public welfare and convenience will be substantially granted by allowing the applicant to securely protect their property and also being essential to protect an autistic child.** The neighboring property will not be substantially injured by such proposed use in that **the neighboring properties will not be substantially injured by granting the special exception. The design of the fence will not encroach on the neighboring properties or cause any undo hardship in any way.** The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought in that **there are various properties with similar ornamental rod iron front yard fences throughout the neighborhood and by granting the applicant's request for a special exception, the proposed fence and the encompassing property will maintain the harmony and character of the surrounding neighborhood.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district **the requested special exception does not weaken the general purpose of the "R-6" Residential Single Family zoning district. The fence, as proposed, will comply with the additional standards set forth in Section 35-399.04(a) of the UDC and staff does recommend approval of the requested special exception.** The motion was seconded by Mr. Rodriguez.

AYES: Rogers, Rodriguez, Camargo, Cruz, Villyard, Dutmer, Zuniga, Britton, Ozuna, Gallagher

NAY: None

THE SPECIAL EXCPETION WAS GRANTED.

CASE NO. A-12-036

Applicant – Brenda A. Maldonado

Lot 11, Block 9, NCB 14559

3123 Fidelia Drive

Zoned: "R-6 AHOD" Residential Single Family Airport Hazard Overlay District

The applicant is requesting a special exception to erect a 6-foot Ornamental-Iron Front Yard fence in the "R-6" Residential Single-Family District, 3123 Fidelia Drive.

Trenton Robertson, Planner, presented background and staff's recommendation of approval of the requested special exception. He indicated 20 notices were mailed, 2 were returned in favor and none were returned in opposition.

Brenda Maldonado, applicant, stated the reason for this request is for safety and security. She also stated her house has been burglarized and a vehicle has been stolen. She further stated

The following citizens appeared to speak:

Jesus Martinez, 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-12-036 closed.

MOTION

A motion was made by **Mr. Rodriguez**. In case No. **A-12-036**, I move that the Board of Adjustment grant this exception as presented by **Ms. Brenda A Maldonado**, location **3123 Fidelia Drive**, legal description **Lot 11 Block 9 NCB 14559**, zoning **“R-6 AHOD” Residential Single Family Airport Hazard Overlay District**. The special exception will be in harmony with the spirit and purpose of the chapter in that **the special exception will be in harmony with the spirit and purpose of Chapter 35, UDC once the condition later mentioned has been met, as the fence will meet the height, width, design and all other requirements of Section 35-399.04(a) of the UDC**. The public welfare and convenience will be substantially served in that **as the previous case these are very attractive fences and it’s this board members opinion that they should talk to some more people in the block so they can look pretty much alike**. The public welfare and convenience will be substantially served in that **by allowing the applicant to securely protect their property**. The neighboring property will not be substantially injured by such proposed use in that **the neighboring properties will not be substantially injured by granting the special exception. The design of the fence will not encroach on the neighboring properties or cause any undo hardship**. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought in that **there are various properties with similar ornamental rod iron front yard fences throughout the neighborhood. By granting the applicant’s request for a special exception the proposed fence and the encompassing property will maintain the harmony and character of the surrounding neighborhood**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the requested special exception will not weaken the general purpose of the “R-6” Residential Single Family zoning district. The fence, as proposed and after meeting the required condition, will comply with the additional standards set forth in Section 35-399.04(a) of the UDC**. The motion was seconded by **Ms. Cruz**

AYES: Rodriguez, Cruz, Camargo, Dutmer, Villyard, Britton, Zuniga, Rogers, Ozuna, Gallagher

NAY: None

THE SPECIAL EXCEPTION WAS GRANTED.

CASE NO. A-12-038

Applicant – **K. P. Ganeshappa, MD**

Lot 20, Block 16, NCB 823

607 Camden Street

Zoned: **“HS FBZ T5-1 AHOD” Historic Significant Form Based Zoning Transect T5-1 Airport Hazard Overlay District and “FBZ T4-1 AHOD” Form Based Zoning Transect T4-1 Airport Hazard Overlay District**

The applicant is requesting 1) a variance to the Transect Zone T5-1 and T4-1 requirement that signs, if illuminated, shall only be illuminated by an external lighting source, in order to allow an internally illuminated sign; and 2) a 14-foot 9-inch variance to T5-1 requirement that band signs be located no greater than 12 feet above the sidewalk, in order to allow a band sign to be installed twenty (26) feet, nine (9) inches above the sidewalk.

Jacob Floyd, Senior Planner, presented background and staff's recommendation of denial of the request. He indicated 24 notices were mailed, 1 was returned in favor and none were returned in opposition and no response from the Downtown Residents Association.

Bebb Francis, applicant, stated the new form based zoning guidelines is to bring the buildings to the front property line with parking a quarter mile away to encourage people to walk. He also stated there is no pedestrian access along the alley way.

The following citizens appeared to speak:

K.P. Ganeshappa, citizen, spoke in favor.

Kris Key, citizen, spoke in favor.

Roger Saenz, 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-12-038 closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that in Case **A-12-038**, the request of **K. P. Ganeshappa, MD**, on property known as **607 Camden Street**, also legally described as **Lot 20, Block 16, NCB 823**, be granted 1) **a variance to the Transect Zone T5-1 and T4-1 requirement that signs, if illuminated, shall only be illuminated by an external lighting source, in order to allow an internally illuminated sign;** 2) **a 14-foot 9-inch variance to T5-1 requirement that band signs be located no greater than 12 feet above the sidewalk, in order to allow a band sign to be installed 26 feet, 9 inches above the sidewalk.** I'm reading it per say as staff indicated is what the request is. Although as I stated earlier this sign that is being requested is not above a public sidewalk but above an alley. The variance is not contrary to the public interest in that **the requested variances are not contrary to the public interest as the proposed location of the sign will not obscure visibility of motorists or pedestrians.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it is felt that the conditions that exist on this property that the height variances are necessary in order to give this structure identification for emergency vehicles wishing to access this property nor will it obscure visibility of adjacent properties.** The scale of the proposed sign is consistent with existing signs in the area. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done in that **the granting of the variance is in the spirit of the ordinance in the spirit of the ordinance**

being the safety and health of the individuals. I think the request proposed is to accomplish this. It has been stated by the applicant's representative that all other form based design criteria has been adhered to by the applicant's architect and the owner of the property. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that **the variance will not authorize the operation of a use other than those permitted in the "FBZ T5-1" classification.** 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 requested variances will not substantially injure the appropriate use of the adjacent conforming and nonconforming property that exist in this area.** 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 location of the property in relationship to adjacent development that blocks the identification of the very important use that is occurring in this particular piece of property.** The motion was seconded by Mr. Zuniga

AYES: Camargo, Zuniga, Britton, Villyard, Dutmer, Rogers, Cruz, Ozuna, Rodriguez, Gallagher

NAY: None

THE VARIANCES WERE GRANTED.

CASE NO. A-12-032

Applicant – Peter Lewis Architect and Associates, PLLC
Lot 11, Block 1, NCB 14747
18403 IH-10 West

Zoned: "MPCD GC-1 MSAO-1 MLOD-1 AHOD" Master Planned Community Hill Country Gateway Corridor Camp Bullis Military Sound Attenuation Overlay Military Lighting Overlay Airport Hazard Overlay District

The applicant is requesting 22-foot variance from the 200-foot minimum spacing requirement between freestanding signs in the Hill Country Gateway Corridor District, in order to allow a freestanding sign to be erected one hundred seventy-eight (178) feet from an existing freestanding sign.

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 7 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Forest Creek Neighborhood Association.

Carter Thurmond, applicant, stated they are asking for a 20-foot variance to have a sign for the restaurant.

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-12-032 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-12-032**, applicant is **Peter Lewis Architect and Associates, PLLC**, subject property is **18403 IH-10 West**, the owner **Rim Amigo Real Estate Holdings, Ltd**, legal description is **Lot 11, Block 1, NCB 14747**, the variance request is for a **22-foot variance from the 200-foot minimum spacing requirement between freestanding signs in the Hill Country Gateway Corridor District, in order to allow a freestanding sign to be erected 178-feet from an existing freestanding sign**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-032**, 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. The variance is not contrary to the public interest in that **the requested variance is not contrary to the public interest. The variance, if approved, will allow the subject property to erect a freestanding sign to advertise the services to be provided on site**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a strict enforcement of the 200-foot separation requirement will result in the elimination of the single tenant sign on the subject property (Sign "A") that was approved by the Rim SMP development agreement in 2011. According to this SMP, one freestanding sign was approved on the subject property and on each adjacent property to the north and south. The properties to the north and south of the subject property were developed first, and sign permits were issued allowing the existing signs to be three 378-feet apart without consideration of the allotted sign on the subject property. Due to the 200-foot minimum separation between freestanding signs of the "GC-1" Hill Country Gateway Corridor District, the location of the existing signs resulted in the subject property's inability to erect a sign. Denial of the variance will result in the restaurant not having adequate signage to advertise the services provided. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done in that one of the objectives of the Sign Regulations is to assure that on-premises signs in terms of size, height, scale and location are properly related to the overall adjacent land use character and development. In 2011, the City and Fourth Quarter LXIII L.P. signed the Rim SMP development agreement for the entire Rim development located north of the intersection of West Interstate Highway 10 and Loop 1604. This SMP approved a number of signs within the development that are of less height and area than what is normally allowed. Granting of the variance will allow the applicant to erect the approved freestanding sign on the subject property one hundred 178-feet from the Whataburger Sign located on the property to the south. The resulting distance between the signs, and the proposed height and area of the signs, still comply with this objective of the Sign Regulations and the "GC-1" Hill Country Gateway Corridor District. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that the requested variance**

will not authorize the operation of a use on the subject property other than those specifically permitted in the “MPCD” Master Planned Community 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 **Granting of the variance will not have a substantial adverse impact on neighboring properties, or alter the essential character of the “GC-1” Hill Country Gateway Corridor District. The proposed single tenant sign will be placed on the subject property as approved by the Rim SMP.** 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 Rim SMP development agreement approved one freestanding sign on the subject property and on each property to the north and south, among other signs throughout the development. The properties to the north and south erected their permitted freestanding sign; however, these were placed 378-foot apart restricting the subject property from erecting its allotted sign. These conditions were not a result of an action by the property owner or general condition in the district, or merely financial. The variance, if approved, will allow the applicant to erect and maintain the single tenant freestanding sign approved by the SMP, and allowed by the “GC-1” Hill Country Gateway Corridor District if the SMP did not exist. I would further add that staff recommends approval of A-12-032 variance application.** The motion was seconded by Mr. Zuniga.

AYES: Ozuna, Zuniga, Dutmer, Villyard, Rodriguez, Rogers, Britton, Cruz, Camargo, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-033

Applicant – Roque Salas
Lot 49B, Block G, NCB 8393
1059 Sutton Drive
Zoned: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

Motion

A motion was made by **Ms. Rogers** to continue this case until the April 23, 2012 Board of Adjustment meeting. The motion was seconded by **Ms. Cruz** with all members voting in the affirmative.

THE MOTION PASSES

Approval of the March 12, 2012 Minutes

The March 12, 2012 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 3:04 p.m.

APPROVED BY: Michael A. Gallagher OR _____
Michael Gallagher, Chairman Andrew Ozuna, Vice-Chair

DATE: 4-23-12

ATTESTED BY: [Signature] DATE: 4-23-12
Executive Secretary