

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
April 20, 2009**

Members Present:

Michael Gallagher  
Paul Klein  
Liz Victor  
Helen Dutmer  
George Britton, Jr,  
George Alejos  
Mary Rogers  
Andrew Ozuna  
Mike Villyard  
Gene Camargo  
Maria Cruz

Staff:

Fernando De León, Assistant Director  
Christopher Looney, Planning Manager  
Jacob Floyd, Planner  
Michael Farber, 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.

Ms. Cruz arrived at 1:04 p.m.

**Ms. Dutmer** made a motion continue Case No. **A-09-043** to the next regularly scheduled meeting on May 4, 2009 per the applicant's request. **Mr. Klein** seconded the motion and all members voted in the affirmative.

**CASE NO. A-09-038**

Applicant – APO Investments, L.P.  
Lot 17, NCB 8691  
1027 Austin Highway  
Zoned: "C-2" Commercial District

The applicant is requesting **1)** a 5-foot variance from the requirement that a front-yard solid-screen fence shall not exceed 3 feet in height, in order to erect an 8-foot tall front yard fence along the west side property line in the front yard, **2)** a 2-foot variance from the requirement that side and rear-yard fences shall not exceed 6 feet in height, in order to erect an 8-foot tall side and rear-yard fence, **3)** a 5-foot variance from the requirement that a front-yard solid-screen fence shall not exceed 3 feet in height, in order to erect an 8-foot tall front yard fence along the east side property line in the front yard and **4)** a 2-foot variance from the requirement that

predominantly open front-yard fences shall not exceed 4 feet in height, in order to erect a 6-foot tall predominantly open front-yard fence.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variances. He indicated 39 notices were mailed, 2 were returned in favor and 1 was returned in opposition and no response from Terrell Heights Association.

Mac Chesney, representative, stated there is an increased of height on their property of approximately 2 feet which has some merit here. There are six houses that touch their property which three of them have 8-foot fences. The fences on the front are ornamental iron and this building will have really good landscaping. If they have to keep the 6-foot fence they will have a 4-foot fence because of the topography.

Todd Brockwell, stated, he just wants to improve the building. The variance will improve the security they have.

#### **No citizens 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-09-038 closed.

#### **MOTION**

A motion was made by **Mr. Camargo**. I would like move that in Case No. **A-09-38**, the request of **APO Investments, L.P.**, on property known as **Lot 17, NCB 8691**, also known as **1027 Austin Highway**, zoned **"C-2" Commercial District**, **be granted a variance on Items 1, 2, 3, & 4 for the following reasons**. Specially, we find that such variance will not be contrary to the public interest in that **the notices that were mailed there were two notices returned in favor, one returned in opposition. The one notice returned in opposition is from property, the address is in the file but it is not a property that immediately abuts the property in question. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the drainage situation on the property in question has required that the developers of this property create a fill situation that places the property on which the building is being built two foot above the natural terrain. The spirit of the ordinance is observed and substantial justice is done in that prior discussion with staff is was pointed out that the difference in grade elevation between the subject property and adjacent property can be allowed up to a four foot increase in height without a variance. We are here today because in effect where one foot above that four foot which is allowed by the code. Where the variance request states that is being requested for a five foot variance which in fact it is. We are basically going one foot above that which the code would normally allow. 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 property is zoned "C-2" Commercial and the uses proposed would fall within that category. 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 fencing which is being proposed is beyond the front property line and distances that were indicated by the applicant's representative that range from 30 some of feet along the east property and 52**

feet some of feet along the west property. So it is not to give the effect of having eight foot fencing all the way up to the street line. 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 elevation of this property did not exist at the beginning but as stated by the applicant's representative in order to comply with drainage regulations that would insure drainage would occur towards the public right of way, the fill that has occurred on this property was necessary to accomplish that. I might add that the variance request is as per the site plan that was submitted with the applicant's request indicating the location of this fencing. The variances are 1) a 5-foot variance from the requirement that a front-yard solid-screen fence shall not exceed 3 feet in height, in order to erect an 8-foot tall front yard fence along the west side property line in the front yard, 2) a 2-foot variance from the requirement that side and rear-yard fences shall not exceed 6 feet in height, in order to erect an 8-foot tall side fence and rear-yard fence, 3) a 5-foot variance from the requirement that a front-yard solid-screen fence shall not exceed 3 feet in height, in order to erect an 8-foot tall front yard fence along the east side property line in the front yard and 4) a 2-foot variance from the requirement that predominantly open front-yard fences shall not exceed 4 feet in height, in order to erect a 6-foot tall predominantly open front-yard fence. The motion seconded by Ms. Dutmer.

**AYES:** Camargo, Dutmer, Ozuna, Victor, Villyard, Rogers, Alejos, Cruz, Klein, Gallagher

**NAY:** None

**THE VARIANCE IS GRANTED.**

**CASE NO. A-09-042**

Applicant – Jimenez Ramiro  
Lot 92, Block 33, NCB 17513  
5835 Hawaiian Cove  
Zoned: "R-6" Residential Single Family District

The applicant is requesting a 2-foot variance from the requirement that front-yard fences not exceed 4 feet in height, in order to keep an existing 6-foot tall predominantly open front-yard fence.

Michael Farber, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated that there were 38 notices mailed, 4 were returned in favor and 1 was returned in opposition and no response from the Southwest Neighborhood Association.

Isabel Gaona, representative, stated her father put the fence up due to her being shot a few months ago. She also stated the shooting occurred on September 18, 2008 and the fence was constructed on February 22, 2009.

No citizens to speak.

## MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-09-042**, variance application for **Jimenez Ramiro**, property is located at **5835 Hawaiian Cove**, subject property description **Lot 92, Block 33, NCB 17513**, applicant again is **Jimenez Ramiro**, the request is for a **2-foot variance from the requirement that front-yard fences not exceed 4 feet in height, in order to keep an existing 6-foot tall predominantly open front-yard fence**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-09-042**, 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 such variance will not be contrary to the public interest in that **of the notifications that were sent out there was one in opposition of which were not immediately affected by the request of the 6-foot fence**. Also, **the neighborhood association did not lodge any opposition of the variance**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **given the crime and the applicant's request for security in constructing the fence that the request is bonafide**. The spirit of the ordinance is observed and substantial justice is done in that **again we have seen evidence of police reports and a crime perpetrated against the applicant and the residences of the property and such fence would provide deterrence or provide some level of security and safety to the applicant**. 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 existing "R-6" Residential Single Family District will remain, there is no proposed changes to the land use of the property**. 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 **we have seen testimony evidence before us that there is predominantly 6-foot fences in the neighborhood which the subject 6-foot fence is somewhat in keeping with fences in the neighborhood**. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and 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 **obviously the crime and the security that the fence is trying to address is not the plight of the owner of the property**. The motion seconded by **Ms. Dutmer**.

**AYES: Ozuna, Dutmer, Villyard, Cruz, Camargo, Victor, Rogers, Britton, Klein, Alejos, Gallagher**

**NAY: None**

**THE VARIANCE IS GRANTED.**

**CASE NO. A-09-044**

Applicant – Michael T. Lahood  
Lot 19, Block 5, NCB 1727  
1924 North Main Avenue  
Zoned: “C-2” Commercial District

The applicant is requesting a 2-foot 6-inch variance from the requirement that predominantly open fences in front yards not exceed 4 feet in height, in order to erect a 6-foot 6-inch tall predominantly open fence in the front yard.

Jacob Floyd, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated that there were 21 notices mailed, 3 were returned in favor and none were returned in opposition and no response from the Tobin Hill Neighborhood Association.

Robert Pizzini, representative, stated the reason for the request is to meet the ecstastic of the building because they already approval from the city for a 6-foot fence. He also stated they are erecting a 6-foot fence between the building and the residences. They will lose the security and the ecstastic of the building with a 6-foot fence.

Michael Lahood, owner, stated he has spoken with the president of the Tobin Hill Neighborhood Association and they are in favor of it. He also stated some of them work late and want to be protected when they walk to car at night. He further stated they have files that have very sensitive material about their clients and they want those files protected.

**The following citizens appeared to speak:**

David Mclane, citizen, spoke in favor.

Nico Lahood, citizen, spoke in favor.

Joe Gonzales, citizen, spoke in favor.

Andrew Del Cuerto, citizen, spoke in favor.

Martin Kushner, 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-09-044 closed.

**MOTION**

A motion was made by Mr. Klein. Case No A-09-044, variance application for a **2-foot 6-inch variance from the requirement that predominantly open fences in front yards not exceed 4 feet in height, in order to erect a 6-foot 6-inch tall predominantly open fence in the front yard**, subject property is described as **Lot 19, Block 5, NCB 1727**, commonly known address is **1924 North Main Avenue**, zoning is **"C-2" Commercial District**, the applicant is **Michael T. Lahood**. I move that the Board of Adjustment grant the applicant's request regarding 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 such variance will not be contrary to the public interest in that **the majority of notifications sent have indicated favorable opinions of this project in the variance request as well the property was vacant previous and city does encourage development of vacant properties within the Urban Corridor**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the variance request is for a fence to be constructed in the front yard along North Main. In comparison with that, without need for a variance the owner could have chosen to build the building itself along that North Main property line with no variance request necessary. I believe the special condition does warrant the variance request**. The spirit of the ordinance is observed and substantial justice is done in that **the Unified Development Code does provide means and mechanism particularly through this Board of Adjustment for owners to request variance in order to safeguard life and property. We have heard testimony today with the respect to the hours specifically associated with the occupants of this building and safety conditions that will be assisted through the construction of this fence**. 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 zoning is "C-2" Commercial District that will remain, the proposed use is a law office that is currently under construction, and this is an improved use for "C-2" Commercial 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 **there are no variances requested that affect immediately the adjacent conforming properties which are located to the south and to the east of the subject property**. 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 has secured various permits associated with the construction of both the building and the fence and appropriate inspections will be done to ensure there are no safety hazards. Mr. Klein made a revised wording to state granting a variance for a 6-foot wrought iron fence with 6-foot 6-inch columns as opposed to a blank 6-foot 6-inch variance**. The motion seconded by Ms. Cruz.

**AYES: Klein, Cruz, Ozuna, Victor, Villyard, Britton, Camargo, Alejos, Rogers, Dutmer, Gallagher**

**NAY: None**

**THE VARIANCE WAS GRANTED.**

**CASE NO. A-09-046**

Applicant – Claudia M. Alvarez  
Lot 7, Block 15, NCB 14362  
8911 Oletha Street  
Zoned: “R-6 MAOZ-2” Single-Family Residence District

The applicant is requesting a special exception to allow a 6-foot tall ornamental-iron front-yard fence.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated that there were 31 notices were mailed, 1 was returned in favor and 1 was returned in opposition.

Claudia Alvarez, applicant, stated they wanted a privacy fence at the beginning she has had many problems with the neighbors since 2006. She also stated the neighbors’ daughter threatened to harm her and her family if something happened to her mother because they caused her to have a stroke. They also wanted the privacy for her family’s safety since they had their home burglarized while they were on vacation.

**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-09-046 closed.

**MOTION**

A motion was made by **Mr. Villyard**. Re Appeal No. **A-09-046**, application for a **special exception to allow a 6-foot tall ornamental-iron fence in the front-yard**, the property at **8911 Oletha Street**, also known as **Lot 7, Block 15, NCB 14364**, I move that the Board of Adjustment grant the applicant’s request regarding Appeal No **A-09-046**, 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 UDC 35-399.04. Specifically we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **there will be a minimum impact within the community**. The public welfare and convenience will be substantially served in that **this family will be able to protect its property**. The neighboring property will not be substantially injured by such proposed use in that **most of the other properties do have 4-foot fences and staff has determined that it does appear that a fence of a scale of 6-feet would detract from the character of the neighborhood**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **as we have said before there are a number of fences in the front yard**. The motion seconded by **Mr. Britton**.

**AYES:** Villyard, Britton, Ozuna, Cruz, Camargo, Dutmer, Rogers, Alejos, Klein, Victor, Gallagher

**NAY:** None

**THE VARIANCE WAS GRANTED.**

**CASE NO. A-09-050**

Applicant – Aaron D. Holt  
Lot 14, Block G, NCB 12114  
3106 Letitia Lane  
Zoned: “R-6” Residential Single-Family District

The applicant is requesting a 13-foot variance from the requirement that a minimum 70-foot platted front setback be maintained (recorded in Volume 4818, Page 45 of the Bexar County Land Records), in order to erect an addition that will sit 57 feet from the front property line.

Michael Farber, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated that there were 15 notices mailed, 1 was returned in favor and none were returned in opposition and no response from Forest Oak Neighborhood Association.

Aaron Holt, owner, stated that when he hired a surveyor they found the original survey was incorrect. His house is as much as 3 feet on the garage and the front porch is already 4 feet over the line. He also stated he is requesting this variance to add a handicap ramp to the right of the porch going over to driveway so it is ground level for family and friends that are handicap.

**The following citizens appeared to speak:**

Luke Warlock, 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-09-050 closed.

**MOTION**

A motion was made by **Mr. Camargo**. I would move that in Case **A-09-050**, the request of **Aaron D. Holt**, on property known as **Lot 14, Block G, NCB 12114**, also known as **3106 Letitia Lane**, on property zoned **“R-6” Single Family District**, be granted a variance for a **13-foot variance from the requirement that a minimum 70-foot platted front setback be maintained, in order to keep the same carport 57 feet from the front property line**. Such variance will not be contrary to the public interest in that **the notices returned from the adjacent property owners the majority were in favor of the request**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that based on the age of the subdivision the setbacks that were allowed at the time of construction in this area in fact would allow structures to be built 30 foot from the front yard setback and that it is due to a recent amendment to the regulations that changes that

**particular requirement.** The spirit of the ordinance is observed and substantial justice is done in that it has been stated that a good portion of the residences in the subdivision in the adjacent area are in fact constructed at less than a 70 foot setback from the front property line. Such variance will not authorize the operation of a use other than uses specifically authorized for the district in which the subject property is located in that **the property is zoned "R-6" Single Family and this is a single family residence.** 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 **again it has been stated that there are residences built within the subdivision at setbacks less than the 70 foot setback that is shown on the plat for this particular property.** The plight 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 **again at the time that the subdivision was developed the lesser setbacks of 70 foot were permitted by then existing city codes.** The motion seconded by **Mr. Villyard.**

**AYES: Camargo, Villyard, Cruz, Alejos, Rogers, Britton, Ozuna, Dutmer, Victor, Klein, Gallagher**

**NAY: None**

**THE VARIANCE WAS GRANTED.**

**Approval of the Minutes**

**The April 6, 2009 minutes were approved with all members voting in the affirmative and Ms. Dutmer abstained.**

**Consideration of Board of Adjustment's Articles of Rules and Procedures**

**Chris Looney, Planning Manager, briefed Board Members on the changes to the Board of Adjustment's Articles of Rules and Procedures.**

**Mr. Villyard made a motion to adopt the draft Board of Adjustment's Articles of Rules and Procedures with amendments. Mr. Camargo seconded the motion and all members voted in the affirmative.**

There being no further discussion, meeting adjourned at 3:49 p.m.

APPROVED BY: *Michael R. Mulloy* OR \_\_\_\_\_  
*w/changes* Michael Gallagher, Chairman Paul Klein, Vice-Chair

DATE: *5-4-09*

ATTESTED BY: *[Signature]* DATE: *5/5/09*  
Executive Secretary