

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
April 5, 2010**

Members Present:

Michael Gallagher  
Andrew Ozuna  
Gene Camargo  
Liz Victor  
Edward Hardemon  
Helen Dutmer  
George Britton  
Jesse Zuniga  
Mary Rogers  
Mike Villyard  
Henry Rodriguez

Staff:

Christopher Looney, Planning Manager  
Rudy Niño, Jr., Senior Planner  
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.

Mr. Rodriguez, arrived at 1:05 p.m.

**CASE NO. A-10-022**

Applicant – Anthony Qwik

The east 50 feet of the south 198 feet of Lot P-28, the east 198 feet of Lots P-28A and P-29B, NCB 15684

10803 Perrin Beitel

Zoned: “C-3 NA AHOD” General Commercial Non-Alcoholic Sales Airport Hazard Overlay District and “I-1 AHOD” General Industrial Airport Hazard Overlay District

The applicant is requesting 1) a 2-foot 10-inch variance from the requirement that predominantly open front-yard fences not exceed 4 feet in height, in order to keep a 6-foot 10-inch tall fence on the east property line and 2) a 2-foot 10-inch variance from the requirement that predominantly open front-yard fences not exceed 4 feet in height, in order to keep a 6-foot 10-inch tall fence on the north property lone from the northeast corner to a point 53 feet west of the northeast corner.

Jacob Floyd, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 11 notices were mailed, 3 were returned in favor and none were returned in opposition.

Mark Macay, representative, stated the applicant is requesting this variance for the security of his property from theft. He also stated that the applicant thought that since the four foot fence was already in place when he purchased the property that he did not need a permit to build this fence higher.

Anthony Qwik, applicant, stated the contractor he hired went out and constructed 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-10-022 closed.

### **MOTION**

A motion was made by **Mr. Ozuna**. Re Appeal No **A-10-022**, variance application for **Anthony Qwik**, property address is **10803 Perrin Beitel**, subject property description is **the east 50 feet of the south 198 feet of Lot P-28, the east 198 feet of Lots P-28A and P-29B, NCB 15684**, situated at **10803 Perrin Beitel**. The application request is for a **2-foot 10-inch variance from the requirement that predominantly open front-yard fences not exceed 4 feet in height, in order to keep a 6-foot 10-inch tall fence on the east property line and 2) a 2-foot 10-inch variance from the requirement that a predominantly open front-yard fence not exceed 4 feet in height, in order to keep a 6-foot 10-inch tall fence on the north property line from the northeast corner to a point 53 feet west of the northeast corner**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-10-022**, 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 **the applicant has provided testimony to us today about the crime within the Perrin Beitel area, specifically the property being in a high traffic area and has submitted to evidence police reports where he has been broken into twice and some properties whether stolen or not stolen but his property has been trespassed upon. Second we saw from the testimony presented to us that there were three in favor and no oppositions against the said variance from the surrounding property owners who all have been notified about the variance request. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the testimony presented showed specific elevation change, a 3-foot elevation change, which topography differences between the side property lines which would make a 4-foot fence not effective to the side but on the front we showed a small elevation change that would be necessary for the applicant to build the 6-foot fence. The spirit of the ordinance will be observed and substantial justice will be done in that the property may be reasonably used on an equal basis with the other properties with the existing "C-3NA" zoning district and there is no changes or variances to the existing zoning that is proposed with the variance. 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 again the existing variance will not authorize the operation of a use other than those uses authorized in the district in which the**

**property is located in that his existing continued enjoyment of the property and his use of the property is not proposed to be altered with the variance. 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 applicant has shown or demonstrated adjoining properties, directly across the street and the side property lines that have 6-foot fences, some transparent some not transparent, that are on the front property lines which kind of builds or shows the use of the property that is essential or that is characterized within the district that the application is being submitted. 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 due to unique again topographical issues, issues in regards to crime activity in the surrounding area all build in to the reason the applicant is requesting this subject variance. The motion was seconded by Ms. Dutmer.**

**AYES: Ozuna, Dutmer, Rogers, Hardemon, Victor, Camargo, Britton, Zuniga, Rodriguez, Gallagher**

**NAY: Villyard**

**THE VARIANCE WAS GRANTED.**

**CASE NO. A-10-023**

Applicant – BVP Avalon Place, LLC  
Lot 2, Block 4, NCB 14743  
6676 UTSA Boulevard  
Zoned: “MF-33 MLOD-1” Multi-Family Military Lighting Overlay District

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

Michael Farber, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 40 notices were mailed, 10 were returned in favor and none were returned in opposition.

Brian Parker, representative, stated the neighborhood association requested the 8-foot masonry fence and the applicant was required to submit the variance request. He stated the applicant is requesting denial of the variance and that the 6-foot fence submitted with the building permit is sufficient.

**The following citizens appeared to speak:**

Nelson Harborth, citizen, spoke in favor.

Ruben Lazarde, citizen, spoke in favor.

Dennis White, citizen, spoke in favor.

Ray Chaderdon, citizen, spoke neither in favor or opposition of the requested variance.

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-10-023 closed.

## MOTION

A motion was made by **Mr. Villyard**. Re Appeal No **A-10-023**, a variance for a **1) a 5-foot variance from the requirement that front-yard solid screen fences not exceed 3 feet I height, in order to erect an 8-foot tall solid screen front-yard fence and 2) a 2-foot variance from the requirement that side and rear-yard solid screen fences not exceed 6 feet in height, in order to erect an 8-foot tall solid screen side and rear-yard fence**, application for a **special exception to allow a one-operator beauty shop**, subject property described as **Lot 2, Block 4, NCB 14743**, situated at **6676 UTSA Boulevard**. 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 **it attests by the applicant the neighbors requested that this fence be built therefore it would appear that the granting of the variance would not be contrary to the public interest**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the property does possess a unique topographical characteristic that would necessitate a fence of this height**. The spirit of the ordinance will be observed and substantial justice will be done in that **that legal documents existed in which the developer agreed to request this variance and the testimony is shown that such a variance is warranted**. 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 **such a property is zoned multi-family**. 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 **it is a multi-family development adjacent to a residential development and that there is a large retaining wall in which it would allow members of the multi-family to look down into the residential property below and thus interfere with the residential owners enjoying their use of their 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 **as we said before the testimony shown that the topographical areas are such for the safety of the multi-family residence as well as the privacy of the residential areas would be insured as per submitted site plan**. The motion was seconded by **Mr. Hardemon**.

**AYES:** Villyard, Hardemon, Rogers, Britton, Dutmer, Rodriguez, Victor, Ozuna, Gallagher

**NAY:** Camargo, Zuniga

**THE VARIANCE WAS GRANTED.**

Board members took a 10-minute recess.

**Sign Master Plan No. 10-007**

Arturo Elizondo, Sign Inspector, briefed Board Members on Sign Master Plan for Terrell Plaza, located at 1201 Austin Hwy.

**Mr. Camargo** made a motion to approve **Sign Master Plan No. 10-007** and was seconded by **Ms. Dutmer** and members voted in the affirmative.

**THE SIGN MASTER PLAN WAS APPROVED.**

**Mr. Britton** departed at 2:59 p.m.

**Sign Master Plan No. 10-008**

Arturo Elizondo, Sign Inspector, briefed Board Members on Sign Master Plan for Haven for Hope, located at 1 Haven for Hope Way.

**Ms. Rogers** made a motion to approve **Sign Master Plan No. 10-008** and was seconded by **Mr. Hardemon** and all members voted in the affirmative.

**THE SIGN MASTER PLAN WAS APPROVED.**

**Approval of the March 1, 2010 Minutes**

The February 1, 2010 minutes were approved with all members voting in the affirmative.

**Staff briefed board members on the status regarding Case No. A-10-016.**

[REDACTED]

Board members departed the Board Room for executive session in the Tobin Room at 3:07 p.m. and returned to the Board Room at 3:30 p.m.

Mr. Gallagher asked for a board member to make a motion to concerning the facts discussed during executive session.

A motion was made by Ms. Rogers pursuant to a court order directing the Board of Adjustment to "state concisely any pertinent and material facts that show the grounds of the decision" under Case No. A-09-085. I move to amend the Board of Adjustment official minutes of October 5, 2009, to reflect that the Board of Adjustment adopts the findings of facts contained in this document as the findings of fact in support of its decision and that same be incorporated to the October 5, 2009 minutes as the findings of fact of the Board of Adjustment in Case No. A-09-085. Findings of fact attached. The motion was seconded by Ms. Victor and all members voted in the affirmative. The motion passes.

A motion was made by Ms. Victor. I move that the Board of Adjustment authorize Michael Gallagher to sign any documents necessary to comply with the Court's order regarding the appeal in Case No. A-09-085. The motion was seconded by Mr. Hardemon and all members voted in the affirmative. The motion passes.

[REDACTED]

There being no further discussion, meeting adjourned at 3:32 p.m.

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

DATE: 4-19-10

ATTESTED BY: [Signature] DATE: 4-20-10  
Executive Secretary

**CASE NO. A-09-685**

**THE APPEAL OF SAROSH MANAGEMENT, LLC d/b/a A-Z FOOD MART  
Findings of Fact**

On October 5, 2009 the Board of Adjustment held an evidentiary hearing on the appeal of Sarosh Management, LLC D/B/A A-Z Food Mart to consider the propriety of the previous revocation of its Certificate of Occupancy to conduct its convenience store operations at 4003 E. Southcross in the City of San Antonio, Texas. The City of San Antonio appeared through its code compliance office representative and Petitioners appeared in person and by their attorney of record, Mayo J. Galindo, Esq.

After hearing the evidence presented and argument of counsel, Board Member Andrew Ozuna made a motion to overturn the decision of the Director of Development Services which previously revoked Petitioner's Certificate of Occupancy to conduct their business operations at the above location. A roll call vote was taken and the motion carried by a vote of 9 in the affirmative and 2 in the negative.

In support of this decision the Board makes the following findings:

1. On August 28, 2008 Petitioners contracted to buy the property at 4003 E. Southcross in San Antonio, Texas described as Lot 34, Block 4, New City Block 13575, in San Antonio, Bexar County, Texas.
2. The purchase was contingent upon Petitioners obtaining a license to sell alcoholic beverages and a permit for the installation of two underground gasoline storage tanks.
3. As Applicants for the beer and wine license Petitioners made a disclosure to the Texas Alcoholic Beverage Commission that its property was within three hundred (300 ft) feet of the E. J. Burke Elementary School across the street. The Board of Adjustment issued TABC a notice of the hearing on the revocation of the Certificate of Occupancy. TABC failed to appear. As of the date of the hearing, the petitioner had a valid license from the Alcoholic Beverage Commission to sell beer and wine. The Alcoholic Beverage Commission has taken no steps to remove or revoke the licence.
4. Petitioner also made this disclosure to the school that its property was within three hundred (300 ft) feet of the E. J. Burke Elementary School. The disclosure was made to the principal by letter. The School District staff failed to investigate the application at the time it was made. E. J. Burke Elementary School serves Kindergarten through third grade students. The School Superintendent reported no safety issues or problems related to the operation of Petitioner's business.

5. The school property is at an irregular lot size. The main school building is about 475 feet from petitioners' property with a parking lot and a privately-owned vacant lot between the property and the school building.
6. After receiving approval from the TABC for the issuance of the license, the Petitioners closed the purchase of the property on November 22, 2008 and formally received their license from the TABC on December 19, 2008.
7. The City of San Antonio inspected the premises and issued a certificate of occupancy on April 30, 2009. In August, 2009, Sylvia Cortez, Chief Building Inspector for Development Services, inspected the property and determined that the department had issued a Certificate of Occupancy in error.
8. On August 12, 2009 the San Antonio Director of Development cancelled the certificate of occupancy and the owner appealed the revocation to the Board of Adjustment.
9. The Petitioners' business is family-operated and employs four persons. The Petitioners relied on the TABC license, the School District's apparent lack of opposition to the issuance of a certificate of occupancy and the City of San Antonio's Certificate of Occupancy to make a substantial financial and personal investment on the business. The revocation of the Certificate of Occupancy will cause the Petitioners substantial financial and personal harm.
10. The evidence presented which was undisputed reflects the following:
  - a. Petitioners paid \$230,600 for the property and have mortgage payments in the amount of \$1,615.00.
  - b. Petitioners installed underground, double lined gasoline tanks at the cost of \$106,200.00 and have installment payments of \$1,128.45. Total monthly mortgage payments are \$2,743.45.
  - c. Petitioners' initial investment in acquiring and developing the property is approximately \$337,800.00.
  - d. The percentage of revenues derived from the sale of alcoholic beverages is twenty-nine (29) to thirty-six percent (36) of gross sales.
  - e. No adverse police incidents have occurred on Petitioners' premises since the commencement of their business operation.
  - f. The revocation of Petitioners' certificate of occupancy was global, i.e., it prohibits Petitioners from making any retail sales of goods.