

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
August 1, 2011**

Members Present:

Michael Gallagher  
Andrew Ozuna  
Liz Victor  
Helen Dutmer  
George Britton  
Jesse Zuniga  
Mike Villyard  
Gene Camargo  
Paul Klein  
Harold Atkinson  
Maria Cruz

Staff:

Andrew Spurgin, Planning Manager  
Jacob Floyd, Senior Planner  
Andreina Dávila-Quintero, Planner  
Paul Wendland, City Attorney

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**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.

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**CASE NO. A-11-053**

Applicant – Lowe’s Home Centers, Inc.  
Lot 3, Block 15, NCB 17642  
10045 Rogers Run  
Zoned: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the maximum 4-foot front yard predominantly open fence height standard, in order to allow a 6-foot predominantly open fence in the front yard.

Andreina Dávila-Quintero, Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 9 notices were mailed, none were returned in favor and none were returned in opposition.

David Emler, representative, stated the applicant needs to install an additional transformer for the data center to continue with securing the Lowe’s customer data. He also stated they would have to move the fence closer to the property line to install the transformer. He further stated was not part of the design team for Phase I and does not know why the fence was installed without a permit. He is part of the Phase II design team and wants to ensure the project is done correctly.

**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-11-053 closed.

**MOTION**

A motion was made by **Ms. Victor**. Re Appeal **A-11-053**, variance application for **10045 Rogers Run, Lowe's Home Centers**, subject property description is **Lot 3, Block 15, NCB 17642**, situated at **10045 Rogers Run**, the applicant is **Lowe's Home Centers, Inc.** I move that the Board of Adjustment grant the applicant's request regarding appeal No. **A-11-053**, 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 is not contrary to the public interest in that **the requested variance will not adversely impact the well-being of the general public as it will not obstruct visibility for impending traffic. The subject property is an interior lot on a cul-de-sac with approximately four hundred feet of frontage. The fence, where proposed, will be approximately fifteen feet to twenty-five feet away from the curb, thus maintaining visibility along the right-of-way.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property consists of the Lowe's Home Center Facility that contains the computer data center and personal information of costumers. Due to the unique nature of the use, the property requires a 6-foot tall security fence to protect the important information stored at this facility. A literal enforcement of the regulations would result in the property having a 4-foot tall fence in the front yard, which does not provide the security required for the facility.** The spirit of the ordinance is observed and substantial justice is done in that **the requested variance will be in keeping with the spirit of the ordinance as the proposed fence complies with the intent of the maximum fence height standards by continuing to allow openness, air flow, light penetration and neighborhood uniformity. Furthermore, the proposed fence will be located approximately fifteen to twenty-five feet away from the curb, and thus complies with the intent of the fence standards of not obstructing traffic's visibility and maintaining openness along the street frontages.** 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 requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-2" Commercial 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 requested variance will not adversely impact the adjacent conforming properties. The subject property is surrounded by large lots of similar character that are undeveloped, or consist of corporate offices or data center buildings with large parking areas. Due to the size of the lot, the proposed fence will also maintain openness, air flow, light penetration and neighborhood uniformity on the surrounding properties.** 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 property is due to the unique nature of the facility and its high security requirements. These conditions are not a result of the general conditions of the zoning district or an action done by the property owner, or due to financial hardship.** The motion was seconded by **Mr. Hardemon.**

**AYES: Victor, Hardemon, Klein, Dutmer, Atkinson, Britton, Villyard, Cruz, Ozuna, Gallagher**

**NAY: None**

**RECUSAL: Zuniga**

**THE VARIANCE WAS NOT GRANTED.**

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**CASE NO. A-11-054**

Applicant – AJJ Properties, LLC  
Lot 1, Block 1, NCB 16477  
9907 Fredericksburg Road  
Zoned: “C-3” General Commercial District

The applicant is requesting an 11-parking space adjustment to the minimum 23-parking space requirement, in order to allow twelve (12) parking spaces for an approximate 6,100-square foot commercial building with a 1,200-square foot massage salon, 3,300-square foot to-go food service establishment and 1,500-square foot convenience store.

Andreina Dávila-Quintero, Planner, presented background and staff’s recommendation of approval the requested variance. She indicated 6 notices were mailed, one was returned in favor and none were returned in opposition.

David Jones, applicant, stated this building was built by his father years and had always had three spaces. The parking requirements have changed over the years. He also stated as much as he would like to have more parking spaces, it is impossible. He further stated he has two other tenants in the building, which are a convenience store without gas and a massage salon. The majority of customers walk from the apartment complex that is next door and the employees from the massage salon are dropped off. The new tenant is only going to be to go food processing business.

**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-11-054 closed.

**MOTION**

A motion was made by **Mr. Klein**. Re Case No **A-11-054**, this is a parking adjustment application for subject property located at **9907 Fredericksburg Road**, the legal description is **Lot 1, Block 1, NCB 16477**, the zoning is "**C-3**" **General Commercial District**, the applicant and owner is the same **AJJ Properties, LLC**, in this particular request involves for the applicant requests an **11-parking space adjustment to the minimum twenty-three parking space requirement, in order to allow twelve parking spaces for an approximate 6,100-square foot commercial building with a 1,200-square foot massage salon, 3,300-square foot to-go food service establishment with 1,500-square foot convenience store. The purpose of this motion is to specifically identify the three tenants and their square footages and uses as presented to the board today.** I move that the Board of Adjustment grant the applicant's request regarding this appeal, for a parking adjustment 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 a literal enforcement of the provisions of the Unified Development code, as amended, would result in a hardship. Specifically, we find that a literal enforcement of the parking regulations would result in a hardship in that **this property was originally developed in the early 1980s as included in the testimony today, that it is totally landlocked as far as being able to expand parking, the property does include a non access easement, a 1-foot that prohibits additional usage of the site from Fredericksburg Road, and that the existing land use around the property prohibits or does not allow for a cooperative parking arrangement to take place which is allowed by the Unified Development Code. In this particular instance the hardship lies on the land.** The motion was seconded by **Ms. Dutmer**.

**AYES: Klein, Dutmer, Zuniga, Victor, Atkinson, Hardemon, Villyard, Cruz, Ozuna, Britton, Gallagher**

**NAY: None**

**THE VARIANCE WAS GRANTED.**

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**CASE NO. A-11-055**

Applicant – Proportional Prosperity, LLC

Lot 9, Block 2, NCB 11858

3411 Horal Street

Zoned: "C-2 AHOD" Commercial Airport Hazard Overlay District and "C-3R AHOD" Restrictive Commercial Airport Hazard Overlay District

The applicant is requesting **1)** a variance from the solid screen (opaque) fencing requirement for properties zoned nonresidential when adjacent to single-family residential uses, in order to allow a predominantly open fence along the north and west property lines, **2)** a 3-foot variance from the maximum 3-foot front yard fence height standard, in order to allow a 6-foot tall fence in the front yard along the north property line, and **3)** a 2-foot variance from the maximum 4-foot front yard fence height standard, in order to allow a 6-foot tall fence in the front yard.

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation of approval of the 3-foot variance from the 3-foot maximum fence height standard. Staff recommends denial of the variance from the solid screen (opaque) fencing requirement and 2-foot variance from the 4-foot maximum fence height standard. She indicated 39 notices were mailed, one was returned in favor and one was returned in opposition and no response from the Rainbow Hills Neighborhood Association

Marco Gamboa, representative, stated the tenant will be the State of Texas and would need secure perimeter with controlled access. This fence would provide security and protection from trespassers and graffiti to the building. He also stated a cedar fence looks great but is hard to maintain. He further stated the opaque fence would be helpful to prevent graffiti and destruction.

**The following citizens appeared to speak:**

Mary Luna, citizen, spoke in favor.

Cedrick McGee, citizen, spoke in favor.

Theo Cavello, 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-11-055 closed.

**MOTION**

A motion was made by **Mr. Ozuna**. Re Appeal **A-11-055**, variance application for **Proportional Prosperity, LLC**, project location is **3411 Horal Street**, legal description is **Lot 2, Block 40, NCB 15404**, situated again at **3411 Horal Street**, the applicants request is for **1) a variance from the solid screen (opaque) fencing requirement for properties zoned nonresidential when adjacent to single-family residential uses, in order to allow a predominantly open fence along the north and west property lines, 2) a 3-foot variance from the maximum 3-foot front yard fence height standard, in order to allow a 6-foot tall fence in the front yard along the north property line, and 3) a 2-foot variance from the maximum 4-foot front yard fence height standard, in order to allow a 6-foot tall fence in the front yard.** I move that the Board of Adjustment grant the applicant's request regarding appeal No **A-11-055**, 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 requested variance from the solid screen fencing standard is contrary to the public interest in that the applicant has provided testimony to us today in regards to the graffiti and tagging that would go on if the fencing requirement was met in terms of solid fencing.** The proposed wrought iron fence is a predominantly open fence that will allow visibility of the office building and large parking area from the single-family residential homes. Allowing a predominantly open fence on the north and west property lines will not also lessen the

protective barrier required between commercial and single-family uses as required in the zoning ordinance. The requested fence height variances will not adversely impact the well-being of the general public as it will not obstruct visibility for impending traffic. The subject property is an interior lot with approximately 403-feet of frontage. The proposed fence will extend approximately 280-feet from the property's front property line, and will be located within the northern half of the property. Furthermore, the 6-foot tall fence on the north property line will provide better screening of the commercial use from the single-family properties to the north. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that a literal enforcement of the solid screen fencing requirement will result in undue hardship. Again the applicant has provided testimony and picture evidence of the tagging and graffiti that is predominant in the neighborhood. The subject property is uniquely influenced by these oppressive conditions that would prevent a solid fence from being erected along the north and west property lines. Further testimony before this board from the community of the neighborhoods shows the support for the wrought iron fence in the elimination of the opaque fencing requirement. A literal enforcement of the maximum fencing height standards in the front yard will result in unnecessary hardship. The subject property is uniquely influenced by oppressive conditions that would justify a 6-foot tall fence in the front yard. The applicant has provided evidence that tagging again is predominant and without providing a six-foot fence anything lower would not be a barrier for somebody to go in and not necessarily tag an opaque fence but also tag the buildings and that is what they are trying to avoid. The neighborhood association is trying to avoid as well. The spirit of the ordinance is observed and substantial justice is done in that the variance from the solid screen fence requirement is keeping with the spirit of the ordinance. The intent of this standard is to protect single-family residential uses from commercial uses, and screen the commercial use and activities from single-family uses. Along with the wrought iron fence that the applicant is proposing, the requirements will be for vegetation or hedging screening, which in conjunction with the wrought iron fence would provide the barrier between the two zoning uses classifications that is required within the zoning ordinance. The requested fence height variances 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 by continuing to allow openness, air flow, light penetration and neighborhood uniformity. 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 requested variances will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-2" Commercial or "C-3R" Restrictive Commercial zoning districts. 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 properties to the north and west of the site are single-family residences in a single-family residential zoning district. The requested variance from the solid screen fencing standards is to allow a predominantly open fence to be erected on the north and west property lines that are also the zoning district boundary lines. Granting of this variance will not eliminate the barrier requirement between residential and commercial uses, and injures the appropriate use of the adjacent conforming properties by allowing the commercial use to have a greater impact on the single-family residential homes. The requested fence height variances will not adversely impact the adjacent conforming properties. The subject property is a 5.22-

acre property with approximately four hundred (403) feet of frontage. The proposed fence will only extend along a portion of the street frontage. Due to the size of the property and location of the fence, the proposed fence will still allow openness, air flow and light penetration on the adjacent properties. Moreover, a taller fence on the north property line within the front yard of the property will allow for better screening of the commercial property from the adjacent single-family residential homes. 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 variances are due to vandalism and graffiti activities that tend to occur in the vicinity of the subject property, and for security purposes. These conditions are not a result of the general conditions of the zoning district or due to financial hardship. However, they are conditions which are unique circumstances of surrounding area and the property.** The motion was seconded by Mr. Britton.

**AYES: Ozuna, Britton, Zuniga, Victor, Klein, Dutmer, Villyard, Cruz, Hardemon, Gallagher**

**NAY: Atkinson**

**THE VARIANCE WAS GRANTED.**

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**Approval of the July 11, 2011 Minutes**

**The July 11, 2011 minutes were approved with all members voting in the affirmative**

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There being no further discussion, meeting adjourned at 2:19 p.m.

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

DATE: \_\_\_\_\_

ATTESTED BY: J.P.T.      DATE: 10-10-11  
Executive Secretary