

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
August 27, 2012**

Members Present:

Michael Gallagher
Andrew Ozuna
Frank Quijano
Edward Hardemon
Helen Dutmer
George Britton
Jesse Zuniga
Mary Rogers
David Villyard
Paul Klein
Maria Cruz

Staff:

Margaret Pahl, Senior Planner
Tony Felts, 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.

CASE NO. A-12-063

Applicant – Dan and Linda Rutherford

Lot 10, Lot 11, exc SW TRI 15.9 ft and NE TRI 12.3 ft of Lot 12, Block 2, NCB 946
302 Adams St.

Zoned: “RM-4 H HS AHOD” Residential Mixed Use Historic with a historically significant structure & Airport Hazard Overlay District

The applicant is requesting an appeal of the administrative decision by the Historic Preservation Officer, HDRC Case 2012-091, to deny a request for a Certificate of Appropriateness for a proposed addition.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation to uphold the decision by the Historic Preservation Officer to deny the request for a Certificate of Appropriateness. He indicated 28 notices were mailed, none were returned in favor and 2 were returned in opposition and the King William Neighborhood Association is in opposition.

Dan Rutherford, applicant, stated this house does not have closets which they use the garage to store their clothes. He also stated the structure is not attached to the house and is a free standing structure. He further stated the structure would be for safety reasons to store a gun safe and saddles.

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-12-063 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-12-063**, variance application for **302 Adams St.**, property is **Lot 10, Lot 11, exc SW TRI 15.9 ft and NE TRI 12.3 ft of Lot 12, Block 2, NCB 946**, again situated at **302 Adams St.**, the applicant is **Dan and Linda Rutherford**, the motion is to support the applicant's request that the Board of Adjustment reverse the Historic Preservation Officer's decision to deny the certificate of appropriateness for proposed addition Historic and Design Review Commission HDRC Case 2012-091. The appellate claims that the HPO failed to allow the interior standards for rehabilitation numbers 2, 9, and 10. The motion was seconded by **Mr. Hardemon**.

AYES: Hardemon, Dutmer, Britton, Zuniga, Cruz

NAYS: Ozuna, Roger, Quijano, Villyard, Klein, Gallagher

THE MOTION FAILS

CASE NO. A-12-082

Applicant – Fernando Aguilar, AIA
Lot 25, Block 24, NCB 3292
1901 South New Braunfels Avenue
Zoned: "C-2 AHOD" Residential Airport Hazard Overlay District

The applicant is requesting a 10-foot 10-inch rear yard set back variance from the 30-foot required rear yard setback, to allow an addition to a commercial building 19 feet, 2-inches from the rear property line.

Tony Felts, Senior Planner, presented background and staff's recommendation of approval. He indicated 20 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Highland Park Neighborhood Association.

Fernando Aguilar, applicant, stated the purpose of the addition is for a cooler which will be entered through the inside of the store. He also stated they are limited to parking space. He further stated they meet the UDC parking excluding the parking under the canopy.

No citizen 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-12-082 closed.

MOTION

A motion was made **Mr. Klein**. This is Appeal **A-12-082**, this is a variance application for a **10-foot, 10-inch rear yard setback variance from the 30-foot required rear yard setback, to allow an addition to a commercial building 19 feet, 2 inches from the rear property line**, the subject property is located at **1901 South New Braunfels Avenue**, the legal description is **Lot 25 Block 24 NCB 3292**, the zoning is **"C*2 AHOD" Commercial Airport Hazard Overlay District**, the applicant is **Fernando Aguilar, AIA**, the owner is **Sigmor Number 119, Inc.** I move that the Board of Adjustment grant the applicant's request for this case, 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 **in this particular case the existing building is already out of compliance with current regulations. The proposed addition will add approximately 15-foot linear feet to the back building façade. The increase in nonconformity will be mitigated by the elimination of the existing driveway to the rear of the building which abuts an adjoining residential property owner. The existing fencing and heavy vegetation between the site and the adjacent residential property will further mitigate the variance. As such, the variance is not contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the placement of the existing non-conforming structure on the lot is a special condition that would result in an unnecessary hardship. Because the addition does not extend further toward the property line than the existing building, and with the mitigation proposed, a variance is warranted. Further there is no access from the exterior of the new addition. It would be accessed from the interior of the existing convenience store.** The spirit of the ordinance is observed and substantial justice is done in that **the required setbacks are designed, in part, to separate incompatible land uses. By preserving the existing non-conforming setback and eliminating the existing driveway and replacing it with landscaping, an effective buffer will be maintained. This preserves the spirit of the ordinance and ensures substantial justice.** 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 an operation other than what is permitted "C-2 AHOD" 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 variance will not substantially injure the appropriate use of adjacent conforming property due to the proposed landscape buffer and the existing privacy fence. The variance will also not alter the essential character of the district as the proposed setback for the addition is the same as the non-conforming setback on the existing structure.** 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 is based on unique circumstances existing on the property, namely, the existing non-conformity of the structure and the overall small site for this convenience store. The applicant has taken care to ensure proper buffering by the addition of landscaping area, which can add cost to a project, therefore, the plight is not based upon financial concerns.** The motion was seconded by Ms. Cruz.

AYES: Klein, Cruz, Hardemon, Villyard, Quijano, Rogers, Dutmer, Zuniga, Britton, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-083

Applicant – Isabel P Noyola
Lot 25, Block 3, NCB 8573
2802 Wilson Blvd
Zoned: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 7-foot front yard setback variance from the 10-foot required front yard setback to allow a carport 3-feet from the front property line.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated that there were 30 notices mailed, one was returned in favor and one was returned in opposition and no response from the Maverick Neighborhood Association.

Isabel Noyola, applicant, stated she hired two men to do the construction and was told by them that she did not need a permit as long as the sidewalk and curb were not touched. She also stated if she had known she would have obtained a building permit for the carport.

The following citizen(s) 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-12-083 closed.

MOTION

A motion was made **Mr. Quijano**. Appeal No. **A-12-083**, variance application for **2802 Wilson Blvd**, subject property description **Lot 25, Block 3, NCB 8573**, situated at **2802 Wilson Blvd**, the zoning is **“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District**, and the applicant is **Isabel Noyola**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-12-083**, this request is for a **7-foot front yard setback variance from the 10-foot require front yard setback to allow a carport 3-feet from the front property line**. Specifically, we find that such variance will not be contrary to the public interest in that **yard setbacks are designed to maintain orderly development by separating incompatible land uses and ensuring access, light, and air availability**. The public interest

in this case lies with maintaining the visual regularity of the streetscape. This carport is the only one on this portion of Wilson Boulevard, and is not a distraction in the neighborhood, and therefore is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance would result in an unnecessary hardship.** As stated above, the carport meets the minimum parking area depth as but the carport could possibly have been constructed with the same or very nearly the same amount of horizontal space as it currently has. **The applicant has been notified that there are some alterations that could be considered in order to be a little bit better accepted.** 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 “R-4 AHOD” (Residential) 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 carport is the only one on this portion of Wilson Boulevard. By stated fact it is visually accepted.** 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 is not based on unique circumstances existing on the property. The carport could potentially be altered in such a way as to make it better compliant, and serve the same purpose as designated by the applicant.** The motion was seconded by Ms. Dutmer.

AYES: Ozuna, Rogers, Quijano, Klein, Hardemon, Britton, Villyard, Cruz, Gallagher

NAYS: Dutmer, Zuniga

THE VARIANCE WAS GRANTED.

CASE NO. A-12-084

Applicant – Teresa Coles-Davila

Lot 20 Block 6 NCB 9194

4819 San Pedro

Zoned: “O-1 AHOD” General Office Airport Hazard Overlay District

The applicant is requesting **1)** a 20-foot 2-inch variance from the 30-foot rear yard setback, **2)** a 5-foot 2-inch variance from the 15-foot buffer yard, and **3)** a 10-foot variance from the 20-foot side yard setback requirement to allow a building addition within 9-feet 10-inches of the west property line and 10-feet from the north side property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation denial of the variance. She indicated that there were 21 notices mailed, none were returned in favor and none were returned in opposition.

Teresa Coles-Davila, applicant, stated she purchased the property and immediately rezoned this property to "O-1". She also stated the property is too small that she can only accommodate herself and four other employees. Her intentions were to accommodate other associates. She further stated she worked with her neighbor to knock down a wall and construct a fence. She further stated if she built according to staff recommendations she would need to tear through an old building that has been there for about fifty years.

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-12-084 closed.

MOTION

A motion was made **Mr. Ozuna**. Re Appeal **A-12-084**, variance application for **4819 San Pedro**, subject property is **Lot 20 Block 6 NCB 9194**, situated again at **4819 San Pedro**, the applicant is **Theresa Coles-Davila**, the request is for **1) a 20-foot 2-inch variance from the 30-foot rear yard setback, 2) a 5-foot 2-inch variance from the 15-foot buffer yard, and 3) a 10-foot variance from the 20-foot side yard setback requirement to allow a building addition within 9-feet 10-inches of the rear property line and 10-feet from the north side property line**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-084**, 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 testimonies before us today that notifications were sent out to the adjoining property owners and all neighbors within the specified radius and no opposition reported. Additionally the applicant made a presentation before the zoning and city council board in regards to the subject property and there was no opposition from the homeowners association**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special condition are such that the applicant desires to increase the size of her business and location as such to comply with the various setbacks and buffer requirements would provide a very unusable floor plan situation which would make the whole project basically unusable and the property unusable for the applicants intent of the property. They falls a lot with the no neighborhood opposition to the subject**. The spirit of the ordinance is observed and substantial justice is done in that **clearly with no opposition from the adjoining property owners and also testimony that the neighbor that is impacted the most, being the property that shares the west property line, is in favor of the project and do not see any injustice done for the proposed variances**. 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 zoning of the property of the "O-1 AHOD" General Office Airport Hazard Overlay District will remain. There are no proposed changes to the 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 applicant provided testimony that the design**

character of the property will be in uniform with the neighborhood in that the exterior in the front of the building facing the Hermosa will be designed as a residential structure so as to observe the fabric of the neighborhood. The impact or likelihood of off-street parking will be minimized and given that the applicant is by appointment only and those customers will know to use the parking lot in the back of the property which is essentially the front door of the property so the impact of the neighborhood and the use of the property as an office is in conformity. 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 **given the current UDC with the 15-foot landscaping buffer and the 30-foot yard setback is really not applicable in this case. Additionally the side setback is required to meet the health, safety, free flow of the area is not applicable again because we are up against Hermosa Street which a 50-foot plus right of way. That in addition to our setback creates enough space to provide adequate air flow and fire safety for the subject. I do not see where the variance conditions are creating any undo impact to the neighborhood.** The motion was seconded by Mr. Quijano.

AYES: Ozuna, Quijano, Villyard, Hardemon, Klein, Dutmer, Rogers, Britton, Zuniga, Cruz, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED

Approval of the Minutes

The August 6, 2012 minutes were approved with all members voting in affirmative

Nomination and approval of a Board member to serve as an alternate member on Planning Commission's Technical Advisory Committee

Ms. Rogers made a motion to nominate **Mr. Klein** to the Board of Adjustment alternate member position on the Planning Commission Technical Advisory Committee. **Mr. Quijano** seconded the motion with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 2:58 pm.

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

DATE: 9-17-12

ATTESTED BY: J.P. DATE: 9-18-12
Executive Secretary