

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
August 6, 2012**

Members Present:

Michael Gallagher
Andrew Ozuna
Frank Quijano
Edward Hardemon
Helen Dutmer
George Britton
Jesse Zuniga
Mary Rogers
Gene Camargo
Henry Rodriguez
Maria Cruz

Staff:

Andrew Spurgin, Planning Manager
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.

Mr. Rodriguez arrived at 1:03 p.m.

Mr. Zuniga made a motion to move Case No. A-12-078 to end of the agenda and was seconded by Mr. Hardemon with all members voting in affirmative.

CASE NO. A-12-059

Applicant – Joseph M Gonzales, Jr.
Lot 17, NCB 6561
311 Carnahan Street
Zoned: “R4 NCD-6” Residential Single-Family Neighborhood Conservation District

The applicant is requesting **1)** an 8-foot 7-inch variance from the maximum 12-foot wide driveway to allow a 20-foot 7-inch wide driveway and **2)** a variance from the requirement to maintain a front walk to allow its elimination.

Tony Felts, Planner, presented background and staff’s recommendation of denial. He indicated 24 notices were mailed, none were returned in favor and 9 were returned in opposition and the Mahncke Park Neighborhood Association is in opposition.

Georgina Villapaso, representative, stated it was their mistake in not obtaining a permit for the construction. She also stated they merged the front walkway with their driveway to maximize their parking area. She further stated the ground was causing mudslides and an eyesore to the property. The expansion of the driveway would avoid congestion.

Joseph Gonzales, stated there are many homes in the neighborhood that have multiple driveways. He also stated he is trying to better his property and the community. He further stated they made a mistake and did not obtain the paperwork but is going to obtain the proper permits. Being first time homeowners, he did not know the process of obtaining permits.

The following citizens appeared to speak:

Carlynn Ricks, citizen, spoke in opposition.

Sam Houston, citizen, spoke in opposition.

Jody Williams, 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-12-059 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-12-059**, variance application for **311 Carnahan Street**, subject property is **Lot 17 NCB 6561**, again situated at **311 Carnahan Street**, applicant is **Joseph M Gonzales, Jr.**, the variance request is for **1) a variance to allow a driveway 8-feet 7-inches wider than the allowed 12-foot maximum and 2) a waiver of the required front walk**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-059**, 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 in that **the existing zoning for the subject property is "R-4 NCD-6" Residential Single-Family Neighborhood Conservation District**. Specifically, we find that such variance will not be contrary to the public interest in that **the applicant provided testimony to us today that demonstrated some existing conditions along their street and adjoining street that showed similar concrete driveways which afforded the ability to park larger vehicles that the applicant owns in the driveway**. Additionally the applicant and staff have provided visual of those surrounding neighborhoods that were in protest, the applicant cited that none of the properties across the street, immediately affected by the existing conditions of the driveway. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **again the applicant provided testimony that they are merely, in addition to creating available parking for their trucks, are trying to correct a condition of pulling of water and mud condition at the foot of the property, which has been corrected with the driveway improvements that they constructed**. The spirit of the ordinance is observed and substantial justice is done in that **one of the goals of the Mahncke Park**

Neighborhood Conservation District is to deemphasize and conceal spaces designed for the automobile. The applicant provided testimony that they were attempting to provide parking spaces for their vehicles in that the way the parking was laid out was minimal impact and visibility of the cars in the front yard. The applicant showed us similar situations of parking within the conservation district. 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 current zoning condition of "R-4 NCD-6" Residential Single-Family Neighborhood Conservation District will remain. There is no change to the existing zoning purposed with the variance.** 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 applicant further provided testimony that the width of their trucks creates a condition where the prior driveway was not consistent with ability for them to park their trucks and the use of the driveway and the existing condition that exists does not allow the use of the driveway or their trucks since they have larger trucks. The variance is sought because of circumstances of the property is such that the narrow drive does not allow the enjoyment of the use to park their properties on the property.** The motion was seconded by Mr. Hardemon.

AYES: Dutmer, Cruz, Gallager

NAYS: Ozuna, Hardemon, Rogers, Quijano, Camargo, Rodriguez, Britton, Zuniga

THE VARIANCE WAS NOT GRANTED

CASE NO. A-12-060

Applicant – Aetna Sign Group

Lot 4, NCB 8611

114 E Gerald

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

The applicant is requesting a 5-foot variance from the 8-foot maximum sign height in a residential zoning district.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval. She indicated 57 notices were mailed, 8 were returned in favor and none were returned in opposition.

Larry Gottsman, representative, stated the previous variance was denied because the electronic part of the sign was not clearly stated.

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-12-060 closed.

MOTION

A motion was made **Mr. Camargo**. I would move that in Case **A-12-060**, the applicant being **Aetna Sign Group**, on property located at **114 E Gerald, Lot 4 NCB 8611**, be granted the **5-foot variance from the 8-foot maximum sign height in a residential zoning district to allow a 13-foot tall sign on a local street**. The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signage to the site, considering the unique features of the property as described by the applicant's representative. **The granting of the variance does not provide the applicant with any special privilege that is not enjoyed by others. The granting of the variance will not have a substantially adverse the surrounding area or impact the neighborhood. The granting of the variance will substantially conflict with the stated purposes of this ordinance in that the applicant has stated that due to the conditions of the existing parking a monument sign would not do any justice to that which they are trying to accomplish.** The motion was seconded by **Ms. Dutmer**.

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

NAYS: None

THE VARIANCE WAS GRANTED**CASE NO. A-12-061**

Applicant – Aetna Sign Group
Lot 13, Block 27, NCB 449
103 W Ninth Street
Zoned: "FBZ T6-2 S RIO 2" District

The applicant is requesting a 114-square foot variance from the 50-square foot maximum sign square feet area to allow 3 wall signs consisting of 164-square feet.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the one facing the streets but denial of the one facing the river. She indicated that there were 6 notices mailed, none were returned in favor and none were returned in opposition.

Larry Gottsman, representative, stated they reduced to 164-feet after meeting with the Historic Department. He also stated the sign that will be facing the Riverwalk traffic will be less than thirty square foot in size.

The following citizen(s) appeared to speak:

Michael Ordaz, citizen, spoke in opposition.

David Sonnen, 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-12-066 closed.

MOTION

A motion was made **Mr. Camargo**. I would move that in Case No **A-12-061**, the applicant being **Aetna Sign Group**, on property located at **103 W Ninth Street**, also legally described as **Lot 13 Block 27 NCB 449**, be granted approval of a variance for a **62-square foot variance on a 50-foot maximum square foot sign to allow a 52-square foot wall sign and a 60-square foot wall sign on the street elevation of the Wyndham Garden Hotel**. The request for a variance along the river walk is not included in this motion. It is felt that the variance would allow the applicant to have all wall signage visible to the visiting public searching for their hotel on the street side. Due to special conditions, a literal enforcement of the ordinance would create an unnecessary hardship by preventing the owner from identifying the hotel to tourist unfamiliar with the surrounding area. The spirit of the ordinance is observed by permitting wall signage in a scale with the mass and size of the four-story building and if the location is surrounding by narrow local streets, some of which are restrictive to one-way traffic, making it less direct vehicular access from nearby freeways. Additional elevated signage is warranted given the unique location along the street side of this property. The motion was seconded by **Ms. Rogers**.

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-073

Applicant – Hector and Yolanda Martinez
N 123 ft of E 61 ft of Block 248, NCB 7846
102 W Mayfield Drive
Zoned: “R-6 AHOD” Single-Family Residential Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the 4-foot maximum height to maintain an existing 6-foot predominantly open fence in the front yard.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation approval of the variance. She indicated that there were 18 notices mailed, 3 were returned in favor and none were returned in opposition.

Hector Martinez, applicant, stated he has lived in these for over twenty years and has had numerous break-ins. He also stated this neighborhood is not safe. He further stated the lives in the middle of two bars and built the fence to protect his home.

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-12-073 closed.

MOTION

A motion was made **Mr. Quijano**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-073**, variance application for **102 W Mayfield Drive**, subject property description **Lot N 123 ft of E 61 ft of Block 248 NCB 7846**, situated at **102 W Mayfield Drive**, the applicant being **Hector and Yolanda Martinez**. I move that we approve the request for the **variance from the front yard fencing height limitations as set forth in Section 35-514 of the UDC**, in order to authorize an existing **6-foot, ornamental iron fence in the front yard**. **The special exception process could not be used because the contractor installed the vertical slats closer than 5 ½ inches required to qualify**. Specifically, we find that such variance will not be contrary to the public interest in that **public interest is a central theme used to justify government regulations; it refers to general welfare and common well-being of the population as a whole**. **Securing the home from intruders is in the public interest**. **Home invasion crimes cost the public revenues that could otherwise be used to enhance the quality of life or improve outdated infrastructure**. **We have heard from the applicant that he has had several instances of crimes being occurred within his property**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **literal enforcement of the ordinance would allow an open four-foot fence around the front yard, or permit the Board to grant a special exception to a fence with one additional inch of spacing between the vertical bars**. Staff recently learned that the applicable fire regulations are silent on residential fencing, indicating that the fence is not a danger to health and safety. The applicant expressed concern for his wife who is in the home alone throughout the day and believes that the fence is necessary for safety reasons. The spirit of the ordinance is observed and substantial justice is done in that **the Code includes a provision for the Board of Adjustment to grant a special exception for ornamental iron fencing when it meets specific design requirements and is found to be consistent with the character of the neighborhood**. A staff survey of homes in the surrounding neighborhood found several with ornamental iron fencing, making the request consistent with the surrounding neighborhood. 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 **there is no use variation proposed from the R-6 AHOD 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 **many other homes in the area have ornamental iron fencing, being installed as a deterrent to crimes**. **Reducing crime in the neighborhood improves the essential character of the area and maintains a sense of community**. 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 asserts that the fence was installed for safety, security and peace of mind due to concerns of safety for his family**. His home located near the corner of Pleasanton, a busy commercial corridor, and

shares a property line with a tire store. While this locational issue is one shared by several homes in a larger city, it does increase challenges to typical enjoyment and usually requires mitigation. City ordinances recognize these impacts by requiring additional setbacks and landscaping where the two conflicting uses meet. Retrofitting the existing non-conforming condition warrant the requested fencing. The motion was seconded by Mr. Rodriguez.

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

NAYS: None

THE VARIANCE WAS GRANTED

Board members recessed for 10 minutes.

CASE NO. A-12-074

Applicant – Yolanda Nemer
Lots 37 & 38, Block 16, NC B15645
1527 Estancia Street
Zoned: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting for 1) a 5-foot north side yard setback variance from the minimum 5-foot side yard setback to allow a primary structure on the side property line and 2) an 8-foot 3-inch rear yard setback variance from the minimum 20-foot rear yard setback to allow a primary structure 1-foot, 9-inches from the rear property line.

Tony Felts, Planner, presented background and staff’s recommendation denial of rear yard setback variance request and denial of the north side yard setback variance request. He indicated that there were 41 notices mailed, 6 were returned in favor and none were returned in opposition.

Robert Nemer, applicant, stated they bought they rented the property in 1996 and purchased it in 2005. He also stated the fence was existing when they starting renting the property in 1996. The height of the fence was not an issue for the past fifteen years. He further stated the fence would provide security and protection of his property.

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-12-074 closed.

MOTION

A motion was made **Ms. Rogers**. Re Appeal No. **A-12-074**, applicant **Yolanda Nemer**, location **1527 Estancia Street, Lots 37 & 38, Block 16, NCB 15645**, variance application for subject property description , situated at applicant I move that the Board of Adjustment grant the

applicant's request for a **3-foot variance from the 4-foot maximum height to maintain an existing 7-foot predominantly open fence in a front yard.** Specifically, we find that such variance will not be contrary to the public interest in that the **fence height is not hurting anyone else in the neighborhood.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **there are special conditions in this neighborhood in that there is a high-rated crime and the applicant is worried about the security of his family, pit-bulls, and roaming teenagers, and other animals in the vicinity.** The spirit of the ordinance is observed and substantial justice is done in that **there is a special condition to want this in that justice would be done because the applicant is a citizen who needs justice as well as everybody else in the neighborhood.** 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 **there will be no other use there of that where they live, it is a domestic residence and the people are living there and that's the use of the property.** The character of the district is not altered because there are other fences and in this particular case I would say that the safety of the individual certainly overrides whether or not the neighborhood is altered by this fence which there is many other fences there, so therefore I don't see that. 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 circumstance that he is as we said in the other issues, security problems.** The additional height fence is required for security and safety. I would that there was no opposition. The motion was seconded by Mr. Hardemon.

AYES: Rogers, Hardemon, Camargo, Dutmer, Rodriguez, Quijano, Zuniga, Britton, Ozuna, Cruz

NAYS: Gallagher

THE VARIANCE WAS GRANTED

CASE NO. A-12-075

Applicant – Las Palmas Church of the Nazarene
W IRR 45 ft of Lot 11, Block 7, NCB 8163
4202 San Luis Street
Zoned: "RM-4 AHOD" Residential Mixed Airport Hazard Overlay District

The applicant is requesting for a 32-square foot variance from the 4,000 square foot minimum lot area requirement to allow two 3,968 square foot lots at 233 Leigh Street.

Margaret Pahl, Senior Planner, presented background and staff's recommendation approval of the requested variance. She indicated that there were 26 notices mailed, none were returned in favor and one was returned in opposition.

Randolph Brown, representative, stated they are proposing to replace the church with a classroom building. He also stated the older churches were not constructed with classroom space. He further stated he has hired a professional house moving company to move the house.

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-12-075 closed.

MOTION

A motion was made **Mr. Ozuna**. Re Appeal No. **A-12-075**, application for **Las Palmas Church of the Nazarene**, subject property is **W Irr 45 ft of Lot 11, Block 17, NCB 8163**, again located at **4202 San Luis Street**, the request is for a **special exception to authorize relocation of Building #2 from 402 SW 29th Street to a vacant parcel located at 4202 San Luis Street**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-075**, 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 35-399.03. 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 **the applicant is proposing to relocate a structure to a vacant lot and intends to repair the structure to meet city codes. A residential use on this vacant lot, instead of its current use as overflow parking, is preferred, especially within a block that currently has two other vacant lots. Therefore, granting the special exception will be in harmony with the spirit and purpose of the chapter.** The public welfare and convenience will be substantially served in that **the structure will be used as a single family dwelling, making use of an undeveloped parcel within a neighborhood that could benefit from incremental revitalization. Adding another family to the blockface will also increase natural surveillance, and potentially reduce crime. The public welfare and convenience will be substantially served by the relocation.** The neighboring property will not be substantially injured by such proposed use in that **the neighboring property owner contacted staff after receiving the public hearing notice to express support for the application. It is their opinion that the relocation will benefit them and that their property values will not be substantially injured by the proposed relocation.** 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 **the houses in this area have developed over time, and are each unique in design. Therefore, the character is eclectic, showing a broad diversity of residential styles. In addition, the house is being relocated from a lot on the next block of San Luis Street. The special exception authorizing the relocation will not alter the essential character of the district.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the special exception will not weaken the general purpose of "R-4 AHOD" zoning district, a district designed to support residential land uses. The site plan submitted by the applicant shows the proposed placement of the home will conform not only to the required front, side and rear yard setbacks of the district, but all other district regulations as well.** The motion was seconded by **Mr. Zuniga**.

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

NAYS: None

THE SPECIAL EXCEPTION WAS GRANTED.

CASE NO. A-12-076

Applicant – Joe B Alvarez IV
Lot 12, Block 5, NCB 15494
1718 Desert Willow Street
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 fence in the front yard.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of denial of the special exception. She indicated that there were 37 notices mailed, 4 were returned in favor and none were returned in opposition and the Lackland Terrace Neighborhood Association is in favor.

Yvonne Alvarez, applicant, stated they were unaware of specific guidelines and codes. She also stated the fence in the rear yard has been constructed and materials have been purchase for the fence. She further stated she came into the city off to apply for permits and was instructed to apply for a variance for the height of the fence.

Joe Alvarez, applicant, stated they are requesting this special exception for security reasons.

The following citizens appeared to speak:

Sandy Jenkins, 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-12-076 closed.

MOTION

A motion was made **Mr Ozuna**. Re: Appeal No. **A-12-076**, variance application for **1718 Desert Willow Street**, subject property description is **Lot 12 Block 5 NCB 15494**, situated again at **1718 Desert Willow Street**, the applicant is **Joe B Alvarez IV**, the request is for a **special exception to erect a 5 ½ foot ornamental-iron front yard fence in the “R-6” Residential Single-Family District**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-12-076**, 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 following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **the applicant provided testimony to us and we have seen that the subdivision itself does not have deed restrictions that would restrict the construction of any type of fence in the front yard. We saw testimony that an existing 4-foot chain link fence exist within a short distance. The association recommended approval of a 5-foot fence which in my belief, if they saw the design criteria, would approve 5 ½ foot as we are recommending with the variance today.** The public welfare and convenience will be substantially served in that **the applicant again provided testimony that his course of business deals with security needing to secure contents brought home from his business. Also the applicant has three children which they are trying to provide for their safety by requesting the fence as designed.** The neighboring property will not be substantially injured by such proposed use in that **again we have been provided testimony to us today that there was no opposition for the request and additionally the neighborhood association approved the 5-foot of which we are adding an additional 6-foot feet request to it.** 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 **although there are no ornamental fences within the neighborhood, we did see a chain link fence and again there was no opposition from adjoining property owners and the association approved the design that is being proposed today.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **again the “R-6 AHOD” Residential Single Family Airport Hazard Overlay District is the existing zoning and no proposed zoning changes to that district are proposed here today.** The motion was seconded by **Mr. Rodriguez.**

AYES: Ozuna, Rodriguez, Dutmer, Quijano, Britton, Rogers, Cruz, Zuniga, Gallagher

NAYS: Camargo, Hardemon

THE SPECIAL EXCEPTION WAS GRANTED.

CASE NO. A-12-077

Applicant – Aetna Sign Group

Lots 60 & 61, Block 3, NCB 11714

7140 Blanco Road & 707 NW Loop 410

Zoned: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting 1) a 23-foot variance from the 50-foot maximum height allowed for a freestanding sign along an expressway in a nonresidential district in order to allow a 73-foot sign; 2) a 415 square foot variance from the 375 square foot maximum size allowed for a freestanding sign along an expressway in a nonresidential district in order to allow a sign of 795 square feet in area; and 3) a 10-foot variance from the 40-foot maximum height allowed for a freestanding sign along a “Secondary Arterial Type A” street in a nonresidential district in order to allow a sign at 50 feet in height.

Tony Felts, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated that there were 12 notices mailed, 2 were returned in favor and none were returned in opposition and no response from the Greater Harmony Hills Neighborhood Association.

Larry Gottsman, applicant, stated they are asking for a variance to include to separate legal nonconforming signs in the sign master plan. He also stated this is for the Planet Fitness Sign. He further stated they are requesting to reface the sign which would require a sign master plan. They are dealing with two non-conforming signs.

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-12-077 closed.

MOTION

A motion was made **Mr. Camargo**. Re: Appeal No. **A-12-077**, the applicant being **Aetna Sign Group**, on property known as **7140 Blanco Road and 707 NW Loop 410**, legally described as **Lots 60 & 61, Block 3, NCB 11714**, be granted the following variances **1) a 23-foot variance from the 50-foot maximum height allowed for a freestanding sign along an expressway in a nonresidential district in order to allow a 73-foot sign, 2) a 415 square-foot variance from the 375 square-foot maximum size allowed for a freestanding sign along an expressway in a nonresidential district in order to allow a sign of 795 square feet in area, and 3) a 10-foot variance from the 40-foot maximum height allowed for a freestanding sign along a "Secondary Arterial Type A" street in a nonresidential district in order to allow a sign at 50 feet in height. That wording should encompass Items 1, 2, and 3 that are listed in the agenda that is provided by staff.** It is felt that the variance is necessary because strict enforcement of this article prohibits **a reasonable reuse and development of this property at major intersection of two major roadways in the city.** A denial of the variance would prohibit the owner of this property from proceeding with a **Master Sign Plan** which in fact would enable a developer, the applicant, the owner to develop the property with proper advertising that would allow a descriptive sign to be placed on a through-fare, that which would the property being advertised does not front thus making it not an on-premise but an off-premise sign. Basically the justification is that these variances are necessary in order to allow a property redevelopment of this major piece of property on two major streets. The granting of the variance does not provide the applicant with a special privilege that has not been extended to other properties where we have non-conforming signs on the property in order to allow a property redevelopment of a sign. It is felt that the granting of the variances will not substantially impact any neighborhood properties in that **this side is in the mist of heavily commercialized area and that the variance will not conflict with the stated purpose of the overall ordinance to allow for proper signage that enables businesses to thrive.** The motion was seconded by **Mr. Hardemon**.

AYES: Camargo, Hardemon, Rodriguez, Ozuna, Rogers, Quijano, Zuniga, Britton, Cruz, Gallagher

ABSTAIN: Dutmer

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-079

Applicant – Executive Signs, Ltd.

Lot 3, Block 3, NCB 15664

11087 Bandera Road

Zoned: “C-2NA AHOD” Commercial Non-Alcoholic Beverage Sales Airport Hazard Overlay District

The applicant is requesting an 8-foot variance from the 10-foot minimum side yard setback requirement for freestanding signs along side property lines abutting residentially zoned properties in order to allow a 2-foot setback for a new freestanding sign.

Tony Felts, Planner, presented background and staff’s recommendation approval of the requested variance. He indicated that there were 5 notices mailed, none were returned in favor and none were returned in opposition.

Terry Sherheart, representative, stated because the adjacent property is zoned residential in an arterial a, a 10-foot offset is required from the property line. He also stated they are asking for a 2-foot offset that is usually required by adjacent commercial property. When the engineers and architects designed this property, they installed all the utilities down the center of the 20-foot flag. He further stated this made it impossible to install a sign at a 10-foot offset and put the foundation of the sign on top of the gas lines.

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-12-079 closed.

MOTION

A motion was made **Ms. Rogers**. Re Appeal No. **A-12-079**, applicant **Executive Signs, Ltd.**, owner **Stapleton Farms, LLC**, location **11087 Bandera Road, Lot 3 Block 3 NCB 15664**. I move that the Board of Adjustment grant the request of the applicant for an **8-foot variance from the 10-foot minimum side yard setback requirement for freestanding signs along side property lines abutting residentially zoned properties in order to allow a 2-foot setback for a new freestanding sign**. The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography. Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly

situated or potentially similarly situated. The subject property is a flag-shaped lot, with a 20-foot wide strip to Bandera Road, giving the lot frontage. The frontage provides the lot with utility connections and room for placement of a sign. Based on staff observation, access to the site is via an adjacent lot. As the bulk of the lot is 200 feet from the right-of-way line, signage along roadway is important for visibility for any business locating there. The area in which a freestanding sign would be allowed to be placed is 10 feet wide, and, as stated above, is occupied by necessary utility connections. The presence of the utilities does not allow placement of the sign over the utilities, as adequate footings to secure the sign would not be able to be constructed. This situation results in a hardship which cannot be overcome with a strict interpretation of the ordinance. As such, allowing a sign of conforming height and area to be constructed within the setback area will not provide a special privilege to the property, it will merely allow the property to have necessary signage. Granting the variance will not have a substantially adverse impact on neighboring properties. The purpose of 10-foot setback from residentially zoned properties is to protect residential land uses from visual encroachment of signs which may detract from residential character. In this case, the adjacent residential parcel is uniquely situated in that the property is a 60-foot wide strip which provides access to the bulk of the parcel further back from the road. "R-6" zoning regulations require a minimum street frontage of 30 feet. Were the subject lot to be platted for single-family use, the parcel only has enough frontage for two lots. This seems unlikely due to the current 8-acre area of the parcel. It is more likely that the affected part of the parcel will be developed as an access way, whether a public street or private drive, for some future development on the eight acre parcel to the south. It is very unlikely that a single residence would be developed on this portion of the parcel. Given this unique circumstance, granting the variance will not have a substantial adverse impact on the neighboring property. Granting the variance will not substantially conflict with the stated purposes of this article. Given the unique land layouts for both the subject property and the adjacent residential property as discussed above, granting of the variance will not conflict with any of the stated purposes as outlines in Section 28-3 of the Sign Regulations. The motion was seconded by Ms. Cruz.

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

NAYS: None

THE VARIANCE WAS GRANTED.

Board members recessed for five minutes.

CASE NO. A-12-080

Applicant – City of San Antonio

Lots 9-14, 26-28, W 65.5 ft of 8, S 51 ft of 22-24 & W Irr 22ft of 25, Block 28, NCB 15436
568 Rasa

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

The applicant is requesting a 4-foot variance from the maximum 6-foot fence height to allow a 10-foot chain link fence for a linear distance of 70 feet along Hunt Lane.

Margaret Pahl, Senior Planner, presented background and staff's recommendation approval of the requested variance. She indicated that there were 38 notices mailed, one was returned in favor and none were returned in opposition

Sandy Jenkins, representative, stated the 10-foot fence will be permanent to cover up the soccer goals. She also stated the purpose of the fence is to protect the goal.

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-12-080 closed.

MOTION

A motion was made **Mr. Quijano**. property description **Lots 9-14, 26-28, W 65.5 ft of 8, S 51 ft of 22-24 & W Irr 22 ft of 25 Block 28 NCB 15436**, the applicant is also the **City of San Antonio**, and the location is **568 Rasa**. I move that the Board of Adjustment grant the applicant's request regarding a **4-foot variance from the side yard fencing height limitations as set forth in Section 35-514 of the UDC, in order to authorize 10-foot chain link fence for a linear fence distance of 70-feet in Rainbows Hill Park**. Specifically, we find that such variance will not be contrary to the public interest in that **public interest refers to general welfare and common well-being of the population as a whole. In this case, the Parks and Recreation staff-members are trying to resolve a point of conflict within a public facility. Soccer balls have missed the goal and gone into the street, creating a dangerous traffic hazard. Players have also run into the street after the balls. The applicant asserts that the fence will improve the safety of both the field and the street, serving the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **literal enforcement of the ordinance would result in an unnecessary hardship with an unprotected soccer field and occasional road hazards. Recognition of the need for higher fencing around sport courts can be found in the Section 35-514, where a 10-foot fence is allowed in a rear yard with a 20 foot setback from the property line. In this application however, the Park is oriented toward Rasa, making this property line a side yard so the added height allowance did not apply. This section of Hunt Lane is unique in several ways; it is a busy thoroughfare that provides convenient access to US Hwy 90 and Marbach Road. There are no businesses or homes facing this section of roadway. The City owns land on both sides of the street in the vicinity of the Park. The 362-acre wooded parcel on the west is a sewer treatment facility. Given the physical surroundings, the potential visual impact of the tall fencing is mitigated.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is represented in its ability to protect the public health, safety and welfare of the citizens. In this case, the specific use of the site, the location of the soccer goal and the classification of the abutting street combine to warrant special consideration. Therefore, the variance to allow the extra height will observe the goals 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 subject property is located in that **there is no use variation proposed from the R-6 AHOD 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 **Rainbow Hills Park is a community park benefitting the residents from a broad radius. Ball fields, a walking trail, a community center and playground equipment make this a popular gathering spot. Providing a fence tall enough to keep the balls and the children away from a busy road like Hunt Lane is an important public investment for the families who play here. The fence will not alter the essential character of the district.** 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 programming of the park is complex and includes baseball, basketball, soccer, playground equipment, walking trails and picnic facilities. The park itself has sloping ground, a condition not favorable to play fields, walking trails or parking lots. As a result, the site planning was constrained. The junior soccer field was placed in the southwest corner, with the baseball field selected for the more remote location in the northeast. An important component of the site development is adequate fencing along this property line.** The motion was seconded by Ms. Dutmer.

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-078

Applicant – Edward Lee Martinez
Lot 16, Block 33, NCB 11301
2539 Quintana Road
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a Special Exception to authorize relocation of a residential structure from 12939 SW Loop 410 to 2539 Quintana Road.

Tony Felts, Planner, presented background and staff’s recommendation approval of the special exception. He indicated that there were 23 notices mailed, 2 were returned in favor and none were returned in opposition and no response from the Quintana Community Neighborhood Association.

Edgar Dodson, representative, stated the owner is aware that the railroad tracks are within 200-feet of his backyard. He also stated there will be off street parking. He further stated the front door will be on the Quintana street side.

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-12-078 closed.

MOTION

A motion was made **Mr. Rodriguez**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-078**, the applicant/owner **Edward Lee Martinez**, the legal description is **Lot 16 Block 33 NCB 11301**, zoning "**R-6 AHOD**" **Residential Single-Family Airport Hazard Overlay District**, the applicant is requesting a **special exception to relocate a structure from 12939 SW Loop 410 to 2539 Quintana Road**, 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 35-399.03. 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 **the granting of the special exception will be in harmony with the spirit and purpose of the chapter. The applicant is proposing to relocate a residential structure. The public welfare and convenience will be substantially served in that the public welfare and convenience will be substantially served by allowing this type of infill development to occur. The neighboring property will not be substantially injured by such proposed use in that the neighboring property will not be substantially injured by the proposed use as the neighborhood in general will be better served by the use of the property. 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 the special exception will not alter the essential character of the district as the structure is of a similar character as other structures within the district. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that the special exception will not weaken the general purpose of "R-6" zoning district to accommodate single-family residential land uses.** The motion was seconded by **Mr. Camargo**.

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

NAYS: None

THE SPECIAL EXCEPTION WAS GRANTED.

Approval of the July 16, 2012 Minutes

The July 16, 2012 minutes were approved with all members voting in affirmative

Approval of the September 11, 2006 Corrected Minutes

The September 11, 2006 corrected minutes were approved with all members voting in affirmative

There being no further discussion, meeting adjourned at 5:33 pm.

APPROVED BY: Michael R. Mulvey OR 8-27-12
Michael Gallagher, Chairman Andrew Ozuna, Vice-Chair

DATE: 8-27-12

ATTESTED BY: [Signature] DATE: 9-4-12
Executive Secretary