BOARD OF ADJUSTMENT
OFFICIAL MINUTES
December 10, 2012

Members Present:

Michael Gallagher
Frank Quijano
Edward Hardemon
Helen Dutmer
George Britton
Jesse Zuniga
Mike Villyard
Gene Camargo
Maria Cruz

Staff:
John Jacks, Assistant Director
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. Ozuna made a motion to Case No. A-13-008 to the beginning of the agenda. Mr. Hardemon seconded the motion with all boards member voting in the affirmative.

CASE NO. A-13-008

Applicant – Rosa E Escobedo
Lots 1 and 2, Block E, NCB 6022
1700 El Paso Street
Zoned: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a special exception to allow a one-operator beauty or barber shop.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 37 notices were mailed, none were returned in favor and one was returned in opposition.

Rosa Escobedo, applicant, stated she is almost ready to retire and would like to work at home for three days. She also stated she would be the only one working. She further stated there are currently there are three parking spaces on her 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-13-008 closed.

MOTION

A motion was made by **Mr. Hardemon**. Case No. **A-13-008**, owners are **Lauro M and Rosa E Escobedo**, location is **1700 El Paso Street**, description **Lots 1 and 2, Block E, NCB 6022**, zoning **"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District.** I move that the board grant a **special exception to allow a one-operator beauty or barber shop.** The special exception will be in harmony with the spirit and purpose of the chapter in that **the requested special exception will be in harmony with the spirit and purpose of the chapter in that the proposed one-operator beauty salon will follow the specified criteria established in Section 35-399.01 of the Unified Development Code.** The public welfare and convenience will be substantially served in that **public welfare and convenience will be served with the granting of this request as it will provide a valuable and needed public service to the residents of the neighborhood and it will not negatively impact surrounding properties.** The neighboring property will not be substantially injured by such proposed use in that **the subject property will be primarily used as a single-family residence. The beauty shop will occupy only a small part of the structure, and the fact that a beauty shop is being operated from the home will likely overlooked by bypassers. As such, neighboring properties will not be substantially injured.** 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 requested special exception will not alter the essential character of the district as the use will likely be overlooked by passersby.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the purpose of the zoning district is to promote the public health, safety, morals, and general welfare of the city. The granting of this special exception will not weaken these purposes, nor will it weaken to regulation established for this district. The applicant will only be working 28.5 hours a week which will include Thursday, Friday and Saturdays from 8:30 am to 6:00 pm. This special exception will be for twenty four months.** The motion was seconded by **Ms. Cruz**.

AYES: Hardemon, Cruz, Zuniga, Dutmer, Klein, Britton, Rogers, Quijano, Camargo, Ozuna, Gallagher
NAYS: None

THE SPECIAL EXCEPTION WAS GRANTED.

CASE NO. A-13-004

Applicant – Alfonso Moreno
Lot 20, Block 3, NCB 13165
3803 Longridge Drive
Zoned: "R-8 AHOD" Residential Airport Hazard Overlay Districts

The applicant is requesting a 4-foot 3-inch variance from the 3-foot maximum height allowed for a fence that is less than 70% open to allow a 7-foot 3-inch fence in the front yard.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of denial. He indicated 29 notices were mailed, none were returned in favor and 10 were returned in opposition and the Sunset Neighborhood Association is in opposition.

Susan Rios, representative, stated the owner was under assumption that he did not need a permit for his fence. She also stated there are many types of fencing in the neighborhood. She further stated

Alsonso Moreno, applicant, stated the fence would provide security for him. He also stated the fence height would allow for his dog to stay in the yard.

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-13-004 closed.

MOTION

A motion was made **Mr. Ozuna**. Re Appeal No. **A-13-004**, variance application for **3803 Longridge Drive**, subject property description is **Lot 20, Block 3, NCB 13165, 3803 Longridge Drive**, the applicant is **Mr. Alfonso Moreno**, the variance application request is for a **4-foot 3-inch variance from the 3-foot maximum height allowed for a fence that is less than 70% open to allow a 7-foot 3-inch fence in the front yard.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-004**, 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 public interest is defined as the general health, safety and welfare of the public at large. The public in this situation likely includes all of the surrounding single family homes in the neighborhood, which evident was provided by the applicant of some similar situations of fences which exceed the 3-foot height and retaining wall also may exceed the height within some proximity to the subject property.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the owner applied for a special exception to allow a six foot ornamental fence in the front yard. He was informed by staff that the wall would need to maintain only a 3-foot height. That the**

ornamental piece would not be considered in the height therefore did meet the construction or completed the construction thinking that he was in compliance with the requirements. The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is represented by its equal application to all citizens. The specific requirements of the fences would apply to Mr. Moreno but would also then apply to the adjoining properties which we have seen that also have fences which exceeded height requirement in the code.** 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 "R-5" AHOD zoning will remain. There is no proposed change in the existing zoning.** 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 property is part of the Hillcrest Development, a multi-phase development going back to the 1950s. There is no proposed change of zoning use of the property. Again some fences are shown to be part of the character of the neighborhood.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and 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 provided testimony about the change of grade required, the height of the fence to be somewhat higher than the 3-foot on one end to maintain that constant level and that is not a plight of the owner. It's a condition of the property that the owner was merely trying to rectify.** The motion was seconded by **Mr. Hardemon.**

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

ALTERNATE MOTION

A motion was made **Mr. Camargo**. I would like to make that motion that in Case No. **A-13-004**, the applicant being **Alfonso Moreno**, at **3803 Longridge Drive**, property legally described as **Lot 20, Block 3, NCB 13165,** be denied the variance as requested and in lieu there of grant a variance for a **4-foot high solid wall on the above described property.** It is felt that the variance is not be contrary to the public interest in that **although the opposition that was returned which would indicate that it is against the public interest, the advertisement was for a 7-foot some inch wall and not necessarily 4-foot walls. So my question was in fact the surrounding property owners were opposed that. As much as we saw several retaining walls that were 3 to 4-foot in height in the surrounding area.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **I can certainly agree with that. On the initial variance request but for the 4-foot solid wall that this variance is for, I think is in keeping with issues that we have dealt with in the past when there is a difference in topography. I've mentioned that on rear yard setbacks with cases that we have had in the past where if there is a change in topography, the height of the building and so forth is taken in consideration. So in my opinion that is something similar.** The spirit of the ordinance is observed and substantial justice is done in that **in my opinion it will at a 4-foot height and in my opinion again not as intrusive as the 7-foot wall that was**

originally proposed. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the property is zoned single-family. This is a single-family use and fences and walls to a limited height are permitted in that 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 **I just site the difference in topography and I think it was stated that there is a difference in elevation of up to 6-feet from one end to the other. I picked that up somewhere in the presentation, might be wrong, but I think it's correct and for those reasons I feel that this variance should be granted for a 4-foot wall. This is a 1-foot variance from the city's 3-foot solid screen fence in the front yard.** The motion was seconded by **Mr. Dutmer.**

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

Mr. Camargo made a motion to continue this case until a future date in order for the applicant to evaluate whether a 4-foot fence would be satisfactory or not and to give them the opportunity to meet with the association to see if they can gain their approval. Mr. Ozuna seconded the motion.

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

THE MOTION PASSES.

CASE NO. A-13-005

Applicant – Ameen Jivani
Lot 49, Block 4, NCB 3105
1923 Blanco Road
Zoned: "C-2 NCD-5 AHOD" Commercial Beacon Hill Neighborhood Conservation Airport Hazard Overlay District

The applicant is requesting 1) a 26-foot variance from the 30-foot required rear yard setback to allow a building within 4 feet of a property line abutting a residentially zoned district and 2) an 11-foot variance from the 15-foot required "Type B" bufferyard requirement to allow a building within 4 feet of the rear property line.

Tony Felts, Planner, presented background and staff's recommendation of denial. He indicated 30 notices were mailed, none were returned in favor and one was returned in opposition and no response from the Beacon Hill Neighborhood Association.

Steven Martin, representative, stated there are three situations that would benefit the applicant and would allow him to construct a 2200 square foot building. He also stated this would him to have a building in similar size built on the property. The first proposal would be for a 6-foot setback from the rear and the rear and side walls would be constructed to be a four hour fire rated wall. The second proposal would be for a 10-foot setback with the walls being constructed the same as the 6-foot walls. The third proposal would be for a 15-foot setback which would require a 15-foot variance. He further stated the variance is being requested because of the unique shape of the property. The owner is trying to keep the gas island in its current location. The removal of the gas island would be costly to the owner.

No citizens appeared to speak.

John Karlis, 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-13-005 closed.

MOTION

A motion was made **Mr. Klein**. Case No. **A-13-005**, this is variance application for two variances **1) a 26-foot variance from the 30-foot required rear yard setback to allow a building within 4-feet of a rear property line abutting a residentially zoned district and 2) an 11-foot variance from the 15-foot required "Type B" bufferyard requirement to allow a building within 4-feet of the rear property line**, these are the variances as requested, published, and placed before the board for consideration, subject property is described as **1923 Blanco Road**, the legal description is **Lot 49, Block 4, NCB 3105**, the zoning is **"C-2 NCD-5 AHOD" Commercial Beacon Hill Neighborhood Conservation Airport Hazard Overlay District**, the applicant is **Ameen Jivani**, the owner is **Jivani Basse Ventures LLC**. **To modify the applicant's request, this motion is for a 15-foot variance from the required 30-foot required rear yard setback to allow a building 15-foot from the rear property line. This variance preserves the request or the UDC requirement for a 15-foot required Type B buffer yard requirement to allow a building 15-feet from the rear property line. The bufferyard requirement would remain as 15-feet as required per the UDC.** I move that the Board of Adjustment grant the applicant's request regarding this appeal for a variances 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 **this is an existing property that does have history within the Beacon Hill Neighborhood and preserving the 15-foot required landscape buffer between commercial property and residential property is in the public interest and is in conformance with the Unified Development Code.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **this property was previously occupied for many years prior to the unfortunate fire which occurred in 2011 I believe. The applicant is proposing to rebuild the same type and character of the structure in a different location in accordance to this motion.** The spirit of the ordinance is observed and substantial justice is

done in that **this motion preserves the required 15-foot Type B landscape buffer between commercial and residential properties.** 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 subject property will maintain the "C-2 NCD-5 AHOD" zoning district designation.** 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 as motioned will supplement the rear yard setback and increase it to 15-feet from what was previously 4-feet.** 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 **again the property was affected by fire in 2011 and this is an opportunity to bring the revised property into significance compliance with the UDC.** The motion was seconded by **Mr. Quijano.**

AYES: Klein, Quijano, Camargo, Hardemon, Rogers, Dutmer, Zuniga, Britton, Ozuna, Cruz, Gallagher
NAYS: None

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-13-006

Applicant – Haven for Hope
Lot 16, Block 51, NCB 199
804 North San Marcos Street
Zoned: "C-3 NA AHOD" General Commercial Non-Alcoholic Airport Sales Hazard Overlay District

The applicant is requesting a 2-foot variance from the 6-foot maximum height allowance for a predominantly open wrought iron fence in order to allow an 8-foot high predominantly open wrought iron fence around a proposed basketball court complex.

Tony Felts, Planner, presented background and staff's recommendation of approval. He indicated 14 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Gardendale Neighborhood Association.

Ralph Hinojosa, representative, stated there will be children playing on a court and the fence would provide protection from the balls flying over the fence. He also stated the fence would provide security and safety.

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-13-006 closed.

MOTION

A motion was made **Mr. Quijano**. Re Case No. **A-13-006**, variance application for a request for a **2-foot variance from the 6-foot maximum height allowance for a predominantly open wrought iron fence in order to allow an 8-foot high predominantly open wrought iron fence around a proposed basketball court complex**, subject property is located at **804 North San Marcos Street**, the legal description is **Lot 16, Block 51, NCB 199**, zoning for this is **"C-3 NA AHOD" General Commercial Non-Alcoholic Sales Airport Hazard Overlay District**, the applicant is the **Haven for Hope of Bexar County**, and the owner is the **City of San Antonio**. After hearing the above testimony we have concluded that according to Section 35-482(e) of the UDC, in order for a variance to be granted, the applicant must demonstrate all of the following. Specifically, we find that such variance will not be contrary to the public interest in that **fence height regulations are designed to promote orderly development, reduce visual distraction, and create a sense of community. The UDC, however, contemplates that sometimes higher fences are necessary in order to allow for adequate protection of users and security. In this case, the allowed fence height of 6 feet could be considered inadequate because of the potential for vandalism to the sporting equipment present, unauthorized access, as well as the potential from injuries resulting from wayward sporting balls. 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 **because of the sport court's proximity to street and railroad rights-of-way, a lower fence than that requested could result in an unnecessary hardship because of the potential for accidents.** The spirit of the ordinance is observed and substantial justice is done in that **the UDC contemplates higher fences for sport courts in rear and side yards, but not in front yards. Because this property functions as a recreational and exercise area, allowing the increased height will observe the spirit 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 **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-3 NA 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 **granting of the variance will not have an adverse effect on adjacent property. No properties directly abut the subject property, and most of the nearby properties are affiliated with the applicant.** 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 owners is based upon security and safety concerns and is not merely financial or due general conditions within the area.** The motion was seconded by **Mr. Hardemon.**

AYES: Quijano, Hardemon, Camargo, Dutmer, Klein, Britton, Rogers, Cruz, Zuniga, Ozuna, Gallagher
NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-007

Applicant – Brown & Ortiz, PC
Lot 9, Block 4, NCB 11003
2414 Harry Wurbach Road
Zoned: "C-3 MC-3 AHOD" Commercial Austin Highway/Harry Wurzbach Metropolitan Corridor Airport Hazard Overlay District

The applicant is requesting 1) a variance from the prohibition against metal as an accent building material or approved screening material around a dumpster and 2) a variance from a requirement that all building materials are earth-tone colors to allow metal as an accent and screening material for Starbucks.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval. She indicated 11 notices were mailed, 3 were returned in favor and none were returned in opposition and no response from the Wilshire Neighborhood Association.

James Griffin, representative, stated they are promoting economic activity by allowing this Starbucks and allowing development that is consistent with the surrounding property. He also stated the development would further help revitalize the area. He further stated the variance is supported by everyone around the property location. The variance promotes economic growth and allows for uniform development.

No citizens appeared to speak.

Russell Serf, 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-13-005 closed.

MOTION

A motion was made **Mr. Klein**. Re Appeal No. **A-13-007**, variance application for **2414 Harry Wurzbach Road**, subject property is **Lot 9, Block 4, NCB 11003**, situated again at **2414 Harry Wurzbach Road**, the applicant being **Brown & Ortiz, PC**. The variance request is for **1) a variance from the prohibition against metal as an accent building material or approved screening material around a dumpster and 2) a variance from a requirement that all building materials are earth-tone colors to allow metal as an accent and screening material for Starbucks. I would further add that the variance that is before us today is for the elevation and site plan that have been presented to the board to us today.** I move that the

Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-007**, 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 public interest is defined as the general health, safety and welfare of the public at large. The public interest in this situation is protected by design guidelines which reinforce a higher level of design quality. The corridor district's list of approved building materials, required façade fenestration, and landscape buffering are proven features of a form-based code. The basis for these requirements is that good design creates enhanced economic activity and radiating reinvestment. Conversely, metal is considered a cheap building material alternative, however the use is an accent piece, an accent as the site plan and elevation presented to us provide for a material that is very beneficial, in it provides for a unique setting which it tracts investments and is a very ecstatically pleasing design for the project as evidence by multiple awards that the project has received for the retail shopping center behind it.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance would require that the applicant incorporate design materials that while attractive would not be cohesive with the shopping center's design theme. This requirement creates an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is represented by its equal application to all citizens. In some cases, unique property-related characteristics warrant flexibility to the regulations. In this case, allowing the same accent material that has been used throughout the shopping center may represent substantial justice. The proposed elevations submitted by the applicant exhibit good design and their use of metal does not detract from the goals of the corridor district overlay.** 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-3 MC-3 AHOD 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 property is part of the Sam Houston Center, which incorporated metal as a prominent, accent design feature. The variance would allow Starbucks to use the same accent design feature, thereby complementing the essential character of the center.** 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 property in question has never been developed. In the last year or so, the City has reconstructed the intersection, adding additional turning lanes, using the parcel for material stockpiling and construction staging. This prohibited the applicant from being able to develop in a timely matter that will allow them to incorporate the design ecstatic of the shopping center into the subject path. There by it was a timing of issue which prohibited and which necessitated the subject variance. It is important to state also that there is no opposition to the variance and received unanimous support for the project.** The motion was seconded by **Ms. Dutmer.**

AYES: Ozuna, Dutmer, Klein, Quijano, Camargo, Hardemon, Rogers, Cruz, Zuniga, Britton, Gallagher
NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The October 29, 2012 minutes were approved with all members voting in affirmative

There being no further discussion, meeting adjourned at 3:41 pm.

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

DATE: 1-14-13

ATTESTED BY: _____ DATE: 1-18-13
Executive Secretary