

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
December 13, 2010**

Members Present:

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

Staff:

Christopher Looney, Interim Asst. Director
Andrew Spurgin, AICP, Planning Manager
Rudy Niño, Senior Planner
Jacob Floyd, 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-11-005 has been pulled from the agenda.

Mr. Rodriguez arrived at 1:07 pm.

CASE NO. A-11-009

Applicant – Margarita Rivera
Lot 21, Block 10, NCB 15760
810 Westleaf Drive
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting **1)** an 8-foot variance from the requirement that carports maintain a minimum setback of 10 feet from the front property line, to keep a carport 2-feet from the front property line, and **2)** a 4-foot 6-inch variance from the requirement that carports maintain 5 feet from the side property line, to keep a carport 6 inches from the north side property line.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variances. He indicated 30 notices were mailed, 12 were returned in favor and none were returned in opposition and no response from the United Westwood Neighborhood Association.

Margarita Rivera, applicant, stated she is requesting this variance for the security of her vehicles. Several of the vehicles in the neighborhood have been burglarized and burned. She also stated several of the neighbors park their vehicles in front of her property which causes her to park her vehicles down street. She further stated she did not know she had to obtain permits and that several other neighbors also have similar carports.

The following citizens appeared to speak:

Lupita Castellanos, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-11-009 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-11-005**, variance application for **810 Westleaf Drive**, subject property is **Lot 21, Block 10, NCB 15760**, situated again at **810 Westleaf Drive**, the applicant is **Margarita T. Rivera**, the variance request is for **1) an 8-foot variance from the requirement that carports maintain a minimum setback of 10 feet from the front property line, to keep a carport 2-feet from the front property line and 2) a 4-foot 6-inch variance from the requirement that carports maintain 5 feet from the side property line, to keep a carport 6 inches from the north side property line**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-11-009**, 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. The variance is not contrary to the public interest in that **the applicant has shown us that neighboring property owners, every neighboring adjoining property supports the variance. The carports built to this situation is pervasive in the neighborhood and is an accepted practice in the neighborhood**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant again has provided evidence to us today that the carport will provide protection to her and her cars and that she needs the car as a necessary mode of transportation**. The spirit of the ordinance is observed and substantial justice is done in that **the subject property possesses special conditions that result in unnecessary conditions in that the lot configuration is such it would not allow for the construction of the garage that has been built to conform with the existing side setbacks and front setback lines**. 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 granting of the variances will not authorize the operation of a use other than those specifically authorized in the existing "R-6" 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 granting of the variance will not injure the adjoining property users in so much that they have provided letters and have sent their acknowledgement of the requested variances and support the variance request.** 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 constructed the parking garage to try to protect her property. I'd also add that the applicant will indeed comply with the existing building and fire codes required for the property and subject to meeting all existing current codes to bring the property into compliance.** The motion was seconded by Mr. Zuniga.

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

NAY: Villyard

THE VARIANCE WAS GRANTED.

CASE NO. A-11-010

Applicant – Budget Signs

Lot 20, NCB 16112

11027 North IH-35

Zoned: “C-3 IH-1 AHOD” General Commercial Northeast Gateway Corridor Airport Hazard Overlay District

The applicant is requesting a 38.5 square foot variance from the “IH-1” overlay district requirement that single-tenant freestanding signs not exceed 150 square feet, in order to increase the total area of the sign to 188.5 square feet

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 10 notices were mailed, none were returned in favor and one was returned in opposition.

Paul Roths, representative, stated the applicant is requesting this variance to have the opportunity to promote their rates and there are several electronic signs in the area. He also stated if the overpass did not exist the applicant would be able to apply for a sign that would be viewable from IH 35. This is causing a hardship due to the overpass blocking the sign and making the sign unavailable.

The following citizens appeared to speak:

Ken Patel, 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-11-010 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that in Case No **A-11-010**, the applicant being **Budget Signs**, on property located at **11027 North IH-35**, also known as legal description **Lot 20, NCB 16112**, be granted a **38.5 square foot variance from the "IH-1" overlay district requirements that single-tenant freestanding signs not exceed 150 square feet, in order to increase the total area of the sign to 188.5 square feet and as mentioned earlier this is not an increase that is proposed for the existing sign but merely an addition as shown as well in the exhibits that will take it to the 188.5 square foot dimension**. It is felt that the request is not contrary to the property interest in that **there is a notice returned in opposition from the adjacent property owner**. I was trying to make out from the land use as to what the use is, it looks like auto save but the majority of number of signs, nonconforming though along **IH 5** that this would be in conformance with. It is felt that the strict enforcement of the **Northeast Gateway Corridor sign regulations would not be in keeping with the majority of the development along this portion of IH-35**. The granting of the variance is within the spirit of the ordinance in that **this would allow the owner of the property to be in fair competition with adjacent development along this stretch**. The variance will not substantially injure the appropriate use of the adjacent conforming property **nor nonconforming property because it would be size wise in accordance with other signage existing along IH-35**. 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 **it has been stated by the applicant and the owner of the property that due to the existence of the elevation of the IH-35 freeway immediately adjacent and across the street from the subject property makes the sign that is not proposed not visible from the highway traffic**. Thus giving them a disadvantage in the competition for survival of his business on his property. The motion was seconded by **Mr. Hardemon**.

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

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-11-011

Applicant – University Health System
Lot 3G and the North East Irregular 178.34 Feet of Lot 5, Block 23, NCB 13627
8131 Pinebrook Drive
Zoned: "C-3 AHOD" General Commercial Airport Hazard Overlay District

The applicant is requesting a 26-space adjustment of the minimum 103 parking space requirement, in order to reduce the minimum parking requirement to 77 spaces.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variances. He indicated 11 notices were mailed, one was returned in favor and one was returned in opposition.

William Phillips, representative, stated this is a tier three data center and they are landlocked. He also stated because the land is locked they are needing to request this variance. He also stated these would be enough parking spaces for the employees at the data center.

The following citizens appeared to speak:

Armando Valdez, 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-11-011 closed.

Motion

A motion was made by **Mr. Camargo**. I would like to move that in Case No **A-11-011**, applicant being the **University Health System**, on property located at **8131 Pinebrook Drive**, also legally described as **Lot 3G and the North East Irregular 178.34 Feet of Lot 5, Block 23, NCB 13627**, be granted a **parking space adjustment of 26 feet on the afor mentioned property**. It is felt that a literal enforcement of the parking regulations would result in a hardship **on this property and that it has been by the applicant's representative that basically they would not be able to operate in a manner in which this property was acquired for. This parking adjustment request or motion is being made with the condition that this parking space adjustment is made for this property and for this use alone and in accordance with the vice president of the Bexar County Hospital District's comments and the representative that at the maximum normally there is a maximum occupant parking load of 80 and they do in fact have 77 spaces on sight. It is felt that this condition can be imposed when this use ceases to operate, this parking space adjustment would then become null and void.** The motion was seconded by **Mr. Hardemon**.

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

NAY: None

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-11-012

Applicant – City of San Antonio, Capital Improvements Management Services Department
Lots 21, 21, 23, Block 2, NCB 3103
1406 Michigan Avenue
Zoned: “R-6 NCD-5 AHOD” Residential Single-Family Beacon Hill Area Neighborhood
Conservation District Airport Hazard Overlay District

The applicant is requesting **1) a 2-foot, 8-inch variance from the requirement that sport court fencing not exceed a height of 6 feet, in order to allow sport court fencing with a height of 8 feet, 6 inches; 2) an 8-foot, 11-inch variance from the requirement that sport court fencing be located no closer than 20 feet to a side or rear property line adjacent to a public street, in order to allow sport court fencing 11 feet, 1 inch from the property line adjacent to a public street; and 3) a 4-foot variance from the requirement that sport court fencing be located no closer than 20 feet to a side or rear property line of an adjacent single-family use or residential zoning district, in order to allow sport court fencing 16 feet from a residential zoning district.**

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 29 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Beacon Hill Neighborhood Association.

Desiree Salmon, representative, stated they want to have a useable linear park with a trail and different spaces. She also stated the basketball court is the first phase. She further stated they tried to place the courts in other parcels but the due to storm water coverts they were asked to move these courts somewhere which caused them to ask for these fence requirements. They tried to locate these as far away from the houses as they could.

No following citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-11-012 closed.

MOTION

A motion was made by **Mr. Villyard**. Re Appeal No **A-11-012**, variance application for **1) a 2-foot, 8-inch variance from the requirement that sport court fencing not exceed a height of 6 feet, in order to allow a sport court fencing with a height of 8 feet, 6 inches; 2) an 8-foot, 11-inch variance from the requirement that sport court fencing be located no closer than 20 feet to a side or rear property line adjacent to a public street, in order to allow sport court fencing 11 feet, 1 inch from the property line adjacent to a public street; and 3) a 4-foot variance from the requirement that sport court fencing be located no closer than 20 feet to a side or rear property line of an adjacent single-family use or residential zoning district, in order to allow sport court fencing 16 feet from a residential zoning district**, subject property described as **Lots 21, 23, Block 2, NCB 3103**, situated again at **1406 Michigan Avenue**, the applicant is **Capital Improvement Management Services Department of the City of San**

Antonio. I move that the Board of Adjustment grant the applicant's request regarding this appeal, 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. The variance is not contrary to the public interest in that **we have seen that the variance requests are not contrary to the public interest as they will allow the improvement of vacant land with park space and a basketball court to be utilized by the residents of the area.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property is largely a drainage easement with storm water management infrastructure that prohibits placement of the basketball court fencing in strict compliance with the setback requirements for sports court fencing. Additionally, the proximity to streets necessitates a fence of this height to ensure the safety of park users and motorists.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed by granting these variances, which will allow the property to be improved as a park to serve the public. Were the variances denied, the basketball court could not be placed on the property. I would also say that the community association has strongly worked with CIMS to ensure that this court be established here.** 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 granting of the variances will not authorize the operation of a use other than those specifically authorized in the "R-6" 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 granting of the variances will not injure the appropriate use of adjacent conforming property nor will the essential character of the district be altered through the improvement of a long vacant, largely unusable property.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **the plight of the property owner is due to the unique circumstances of the property being mostly with a drainage easement that proscribes the location of the basketball court in a manner that strictly complies with the setback requirements. Additionally, the nature of the basketball court and the proximity to the street mandates a fence with adequate height to contain the activities within the court and maintain a safe environment.** The motion was seconded by **Mr. Rodriguez.**

AYES: Villyard, Rodriguez, Rogers, Camargo, Zuniga, Britton, Victor, Ozuna, Gallagher

NAY: Hardemon Cruz

THE VARIANCE WAS GRANTED.



CASE NO. A-11-013

Applicant – Theodore F. Ford
Lot 13, Block 3, NCB 6091
358 Pershing Avenue
Zoned: “R-4 NCD-6” Residential Single-Family Mahncke Park Neighborhood Conservation District

The applicant is requesting a complete variance from the “NCD-6” requirement that replaced windows match the existing windows in framing and material, in order to replace wood framed single-pane and aluminum louvered windows with vinyl-framed double-paned windows.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 28 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Mahncke Park Neighborhood Association.

Theodore Ford, applicant, stated all the windows will match. He also stated these windows will help with the dirt filtration. He further stated this will filter the noise.

The following citizens appeared to speak:

Carlynn Ricks, 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-11-013 closed.

MOTION

A motion was made by **Ms. Rogers**. In regards to Appeal No **A-11-013**, variance application for **from the “NCD-6” requirement that replaced windows match the existing windows in framing and material, in order to replace wood framed single-pane and aluminum louvered windows with vinyl-framed double-paned windows**, subject property **358 Pershing Avenue, Lot 13, Block 3, NCB 6091**, and the applicant being **Theodore F. Ford**. I move that the Board of Adjustment grant this applicant’s request regarding this Appeal No **A-11-013**, for the 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. The variance is not contrary to the public interest in that **the variances requested are not contrary to the public interest as the proposed windows will provide substantial energy savings and will match the dimensional proportions and configuration of the existing windows**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the existing windows are configured in such a way that wood window frames are susceptible to water damage and the location of the subject property on a very busy corner exposes the structure to traffic noise and airborne pollutants not experienced by the majority of the Mahncke Park district**. Consequently, the literal enforcement of the window materials requirement result sin

unnecessary hardship as it prevents the use of windows that will significantly mitigate these negative influences. The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed by granting these variances, which will allow the replacement of the existing windows in a manner that meets the intent of the "NCD-6" standards to perpetuate historically common building configurations, as the proposed windows will match the existing conditions in dimensions, proportions, and configuration.** 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 granting of the variances will not authorize the operation of a use other than those specifically authorized in the "R-4" 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 granting of the variances will not injure the appropriate use of adjacent conforming property nor will the essential character of the district be altered in any way, as the appearance and configuration of the replacement windows will be in keeping with the character of the Mahncke Park District as a whole.** 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 property owner is due to the unique circumstances of its location at the intersection of Pershing Avenue, a local street, and North New Braunfels Avenue, a Secondary Arterial, which exposes the subject structure to environmental hazards not generally affecting the Mahncke Park district as a whole.** The motion was seconded by Mr. Camargo.

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

NAY: Victor

THE VARIANCE WAS GRANTED.

Sign Master Plan No. 10-014

Andrew Perez, Sign Inspector, briefed Board Members on Sign Master Plan for Bulverde Marketplace, located at 3800 North Loop 1604 East.

Ms. Rogers made a motion to approve **Sign Master Plan No. 10-014** and was seconded by **Mr. Hardemon** and all members voted in the affirmative.

THE SIGN MASTER PLAN WAS APPROVED.

Approval of the November 29, 2010 Minutes

There was no action taken on the November 29, 2010 minutes. They will be continued until the next regularly scheduled meeting.

