

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
December 2, 2013**

Members Present:

Michael Gallagher  
Andrew Ozuna  
Frank Quijano  
Helen Dutmer  
George Briton  
Maria Cruz  
Mary Rogers  
John Kuderer  
Gene Camargo  
Paul Klein  
Henry Rodriguez

Staff:

Catherine Hernandez, Planning Manager  
Margaret Pahl, Senior Planner  
Andrew Perez, Sign Inspector  
Paul Wendland, City Attorney

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**Call to Order**

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

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**CASE NO. A-14-006**

Applicant – Luis Gonzalez.  
Lot 1, Block 5, NCB 17763  
14903 Burning Creek Drive  
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the maximum 6-foot side and rear yard fence height, as detailed in Section 35-514(d) of the Unified Development code, to allow an 8-foot side and rear yard fence.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 12 notices were mailed, none were returned in favor and none were returned in opposition and the Pepperidge Neighborhood Association and the El Chaparral Fertile Valley Association are in favor

Luis Gonzalez, applicant, stated he is requesting the fence for protection of his family. He also stated there have been several trespassers’ who have jumped the fence into his 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-14-006 closed.

## MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-14-006**, variance application for a **2-foot variance from the maximum 6-foot side and rear yard fence height, as detailed in Section 35-514 (d) of the Unified Development code, to allow an 8-foot side and rear yard fence**, subject property description **Lot 1, Block 5, NCB 17763**, situated at **14903 Burning Creek Drive**, applicant **Luis Gonzalez**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-006**, 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 applicant is requesting that the property be granted approval for an 8-foot fence, stating that the busy arterial justifies the additional height. The fence is setback from the street right away so as to not interfere with visibility exiting the subdivision.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property is not unique in shape or size, but its location abutting a secondary arterial street may be considered a special condition. In addition, immediately south of the property is a vacant lot with a drainage easement. The requirement that the easement remain unobstructed will reduce any anticipated negative impact from the additional height of the requested fence, potentially making literal enforcement unnecessary.** The spirit of the ordinance is observed and substantial justice is done in that **the intent of allowing privacy fencing is to afford a family a level of privacy and security and has had several break-ins. The applicant explains that the home is very near a high school, resulting in an increase in pedestrian traffic. The owners have experienced trespass and in-home invasion and wanted additional security.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-6 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 two neighborhood associations have both submitted letters in support of the requested fence variance, one of which cited discussions with neighboring property owners. From the residential street, Burning Creek Drive, the fence is camouflaged by the evergreen hedge, reducing the impact of the additional height. The fence will not likely impact the drainage easement to the south.** 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 a desire for security and a concern for his young children, with the subject property’s close proximity to a busy arterial, a vacant property and a high school. This location creates**

unique pressures that may warrant additional security measures.” The motion was seconded by Mr. Rodriguez.

**AYES: Dutmer, Rogers, Quijano, Kuderer, Klein, Rodriguez, Britton, Cruz, Camargo, Ozuna, Gallagher**

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

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**CASE NO. A-14-007**

Applicant – Mary Alice Alvarez  
Lot 10, Block 5, NCB 12455  
326 Eastley Drive  
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a special exception to allow a four-year renewal of a special exception for a one-operator beauty shop in a single family home.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 34 notices were mailed, 2 were returned in favor and one was returned in opposition.

Mary Alice Alvarez, applicant, stated she has served her clients for several years. She also stated she has been doing this type of occupations for a long time. She further stated the beauty salon allows her work from her home and she enjoys it.

**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-14-004 closed.

**MOTION**

A motion was made by **Ms. Dutmer**. “Re Appeal No. **A-14-007, Mary Alice Alvarez at 326 Eastley Drive, Lot 10, Block 5, NCB 12455**, is zoned “**R-6 AHOD**” Residential Single-Family Airport Hazard Overlay District. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-14-007**, application for a Special Exception for the subject property s 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 35-399.01. 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 hours of operation, the location, and the number of years it’s been in business are spirits and purposes in the chapter**. The public welfare and convenience will be substantially served in that **it is an in home shop, it’s easily gotten into traffic wise, its been in operation for a number of years with no complaints, and so their purpose perfectly**. The neighboring

property will not be substantially injured by such proposed use in that **there is ample parking space, the hours of operation are not excessive, and they are generally neighborhood operation hours.** 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 **it gives the appearance of just the neighborhood home, there is nothing to indicate that there is a business there, the property is well kept up, the shop is separated from the family portion of the home, and is not open to everyone on the weekends. It's a one shop operator and it is necessary to have an appointment so it will not disturb the neighborhood in any way or form.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that Optional conditions may be established **it adheres to everything that a home employment can imagine to be a benefit rather a distraction for the entire area. If you drove down the street you would never know that anyone is there. With these recommendations I recommend approval of the shop for four years with specific hours and they are stated in the application."** The motion was seconded by Ms. Rogers.

**AYES: Dutmer, Rogers, Quijano, Kuderer, Klein, Rodriguez, Britton, Cruz, Camargo, Ozuna, Gallagher**

**NAYS: None**

**THE SPECIAL EXCEPTION WAS GRANTED.**

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**CASE NO. A-14-008**

Applicant – Color Printing & Signs

Lots 1 & 2, Block 2, NCB 14043

9735 IH-35 N

Zoned: "C-3 IH-1 AHOD" General Commercial Airport Hazard Overlay District

The applicant is requesting a variance from the "IH-1 Northeast Gateway" sign standards, as detailed in Section 35-339.01 of the UDC, to allow the replacement, rather than the repair, of the 100-square foot incandescent message center with a 32 square foot LED message center on an existing nonconforming sign.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 9 notices were mailed, none were returned in favor and none were returned in opposition.

Jason Schubert, representative, stated they were trying to upgrade the image of the hotel and attract a better clientele. He also stated the new sign will use less energy and be more legible to travelers. He further stated they would like reduce the footprint of the sign. They do not want to use the enormous sign and save money with a smaller sign that is less expensive.

**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-14-008 closed.

**MOTION**

A motion was made by **Mr. Camargo**. “Re Appeal No. **A-14-008**, variance application from the “**IH-1 Northeast Gateway**” sign standards, as detailed in **Section 35-339.01** of the UDC, to allow the replacement, rather than the repair, of a 100-square foot incandescent message center with a 32 square foot LED message center on an existing nonconforming sign, subject property description **Lots 1 & 2, Block 2, NCB 14043**, situated at **9735 IH-35 N**. applicant being **Color Printing & Signs**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-008**, 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. In the adoption of the corridor design guidelines, the City Council labeled the gateway corridor an economic asset to residents and visitors. The applicant is requesting approval to replace an existing incandescent message center with a new LED one, 66% smaller than the current sign. The Board may determine that the smaller sign is in the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **literal enforcement of the regulations would require the owner to repair the existing 100 sq feet message center rather than replace it. The owner has decided to do this repair if the variance is not granted.** The spirit of the ordinance is observed and substantial justice is done in that **the Board must determine the “spirit” of the ordinance as contrasted with the “strict letter” of the law for each unique case.** 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 IH-1 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 proposed variance will allow a small change to the existing signage; the height of the sign and the two cabinets will remain the same. The applicant states that the newer sign will improve the character of the area because it is easier to read. The Board may determine that the variance in this case will not injure the adjacent 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 applicant states that the need for the variance was created by the advance in technology, offering an opportunity to provide the customer with readable print in a smaller space.”** The motion was seconded by **Mr. Quijano**.

**AYES: Dutmer, Rogers, Quijano, Kuderer, Klein, Rodriguez, Britton, Cruz, Camargo, Ozuna, Gallagher**

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

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**Approval of the Minutes**

The November 18, 2013 minutes were approved with all members voting in the affirmative.

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There being no further discussion, meeting adjourned at 2:00 pm.

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

DATE: 12-16-13

ATTESTED BY:  DATE: 12-17-13  
Executive Secretary