

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
December 7, 2009**

Members Present:

Michael Gallagher  
Andrew Ozuna  
Gene Camargo  
Liz Victor  
Edward Hardemon  
Helen Dutmer  
George Britton  
Mary Rogers  
Mike Villyard  
Paul Klein  
Maria Cruz

Staff:

Fernando De León, Assistant Director  
Rudy Niño, Jr., Senior Planner  
Jacob Floyd, Planner  
Michael Farber, Planner  
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.

Ms. Cruz arrived at 1:07 p.m.

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**CASE NO. A-10-003**

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

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

Mike Farber, Planner, presented background and staff’s recommendation of approval of the requested variances. He indicated 34 notices were mailed, 2 were returned in favor and none were returned in opposition.

Mary Alice Alvarez, representative, stated she feels loyal to her customers that are still coming around. She also stated she enjoys working from home which makes it comfortable for her clients which some of them live near her and walk to her house. She schedules her clients in one hour increments. She further stated her hours are Monday thru Friday from 9 am to 4 pm.

**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-10-003 closed.

**MOTION**

A motion was made by **Mr. Villyard**. I move that the Board f Adjustment that in Case No **A-10-003**, application for a **special exception to allow a one-operator beauty shop at the location of 326 Eastley**, also legal description of **Lot 10, Block 5, NCB 12455**, the zoning for this area is **residential single family**. **The applicant has proposed that the operation of this beauty shop be from 9 until 4 Monday to Friday with one client per hour as the normal schedule**. The special exception will be in harmony with the spirit and purpose of the chapter in that **the requested special exception is in harmony because the specified criteria established and the Unified Development code is met**. The public welfare and convenience will be substantially served in that **it will further serve the public in this area and the many long standing customer base that relies on Ms. Alvarez for beauty services**. The neighboring property will not be substantially injured by such proposed use in that **the primary use of this subject property will remain a single family residence**. 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 subject property is located in a building that will remain confined to 25% or less of the gross floor area of the primary residence**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district because **it will maintain an existing business in the area**. **This is for a four year period**. The motion seconded by **Mr. Hardemon**.

**AYES: Villyard, Hardemon, Klein, Cruz, Camargo, Dutmer, Rogers, Britton, Victor, Ozuna, Gallagher**

**NAY: None**

**THE SPECIAL EXCEPTION WAS GRANTED**



**CASE NO. A-10-005**

Applicant – Yael Garner  
Lot 315, NCB 11426  
307 Glove Avenue  
Zoned: “R-5” Residential Single-Family District

The applicant is requesting a 2-foot variance from the requirement that predominantly open front-yard fences not exceed 4 feet in height, in order to keep an existing 6-foot tall predominantly open-front yard fence.

Mike Farber, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 33 notices were mailed, two were returned in favor and none were returned in opposition.

Yael Garner, applicant, stated she did not know the regulations for the fence and that she needed a permit. She also stated the neighbors were trespassing into her property and they did not ask for permission to use her driveway, therefore she built this fence to protect her from her neighbors.

**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-10-005 closed.

**MOTION**

A motion was made by **Mr. Ozuna**. Re Appeal No **A-10-005**, variance application for **Yael Garner**, subject property description is **Lot 315 NCB 11426**, situated at **307 Glove Avenue**, again the application is **Yael Garner**. **The applicant is requesting a 2-foot variance from the requirement that predominantly open front yard fence not exceed 4 feet in height, to keep a 6-foot tall fence on the side yard within the front yard as per plot plan submitted.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-10-005**, 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 UDC, 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 evidence presented before us show that the fabric of the neighborhood is such that 6 foot side fences are predominant in the neighborhood. Additionally the applicant has presented evidence regarding police reports and trespassing on to her property that the side fence of 6 feet will help alleviate.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has provided evidence to us today that trespassing has occurred from the neighboring properties and that the 6 foot fence helps alleviate this trespassing.** By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done in that **it appears that the granting of this variance would 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 property for which the variance is sought is located in that **the existing "R-5" Residential Single Family District zoning would remain and no proposed changes to the land use are requested.** 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 **again evidence provided to us by the applicant shows that there is acceptance of 6 foot side ornamental fences throughout 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 unique circumstances with this case is that the neighbor again built a side parking adjacent to the applicant and there is a hardship in that the neighbors are trespassing onto the property.** The motion seconded by **Mr. Camargo**.

**AYES: Ozuna, Camargo, Cruz, Rogers, Dutmer, Britton, Gallagher**  
**NAY: Victor, Villyard, Hardemon, Klein**

**THE VARIANCE WAS NOT GRANTED.**

**CASE NO. A-10-006**

Applicant – Steven A. Bangel  
Lot 73, Block 31, NCB 11574  
210 East Broadview Avenue  
Zoned: “RM-4” Residential Mixed District

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

Mike Farber, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 18 notices were mailed, none were returned in favor and 5 were returned in opposition and Inspiration Hills Neighborhood Association is in opposition.

Steven A. Bangel, applicant, stated his fiancé will be offering services that are unique and will only serve customers one a time on Tuesday thru Saturday from 10 am to 6 pm.. He also they will not be advertising and will only service close personal friends because they do not want strangers in their home. He further stated parking would not be issue since only his wife will be at home during the day and his driveway can accommodate four vehicles at one time.

**The following citizens appeared to speak:**

Paul McDougal, citizen, spoke in opposition.

Alfred Gonzales, citizen, spoke in opposition.

Michael Denuccio, 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-10-006 closed.

**1<sup>ST</sup> MOTION**

A motion was made by **Mr. Camargo**. I would move that in case No **A-10-006**, a request of **Steven Bangel**, at **210 East Broadview Avenue**, on property legally described as **Lot 73, Block 31, NCB 11574**, that the **Board of Adjustment deny the requested change for an exception for a one operator beauty shop in that testimony that has been presented by the abutting property owners would in effect in my opinion injure the surrounding property. In the instance of the accessibility to this property is quite limited through an alley to the rear portion of the property to provide the required number of parking spaces that are required by the code. Mr. Camargo would like to amend his motion. The special exception will not be in harmony with the spirit and purpose of this chapter in that there is already infill**

**development that has occurred in the surrounding neighborhood.** The public welfare and convenience will not be substantially served in that **it is felt by the testimony that has been presented to the board that the detriment to the surrounding development in their opinion will occur.** The neighboring property will be substantially injured in by such proposed use in that **because of the parking situation and accessibility that has been brought to our attention.** The special exception will alter the essential character of the district and location in which the property for which the special exception is sought in that **the accessibility to the subject home occupation or exception is extremely limited by the width and size of the alley that provides access to this property.** The special exception will weaken the general purpose of the district or the regulations herein established for the specific district in that **it is felt by adjacent property owners that this use is totally out of character and one that is not felt appropriate for the neighborhood.** The motion seconded by **Mr. Villyard.**

**AYES: Camargo, Villyard, Rogers, Ozuna, Gallagher**

**NAY: Dutmer, Britton, Klein, Cruz, Victor, Hardemon**

**THE MOTION FAILS.**

#### **SUBSTITUTION MOTION**

A motion was made by **Mr. Ozuna.** Re Appeal No **A-10-006,** application for **Steven A. Bangel, 210 East Broadview Avenue, Lot 73, Block 31, NCB 11574,** application is requesting a **special exception to allow a one-operator beauty or barber shop.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-10-006,** 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 requirement 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 requested special exception is in harmony with the spirit and purpose of this chapter in that the existing one-operator beauty/barbershop follows 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 **the requested special exception will further serve the public welfare that this beauty/barbershop will operate within the parameters set forth by Section 35-399.01 and serve a public convenience within a residential area.** I would like to add that **the hours operation as stated at 10 am to 6 pm Tuesday to Saturday a proposed 40 hours of weekly operation.** The neighboring property will not be substantially injured by such proposed use in that **the granting of the special exception will not alter the use of the property for which the special exception is sought.** **The primary use of the subject property will remain single-family residential.** 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 does not appear that the granting of the special exception will alter the essential character of the district in which the subject property is located in that the existing beauty/barbershop will remain confined to 25% or less of the gross floor area of the primary residence.** 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 district is to promote the public health, safety, morals, or general**

welfare. The granting of this special exception will not weaken this purpose, nor will it weaken the regulations established for this district. The motion seconded by Ms. Cruz.

**AYES:** Cruz, Britton, Dutmer, Klein, Victor

**NAY:** Ozuna, Camargo, Villyard, Rogers, Hardemon, Gallagher

**THE VARIANCE WAS NOT GRANTED.**

Board members recessed for 10 minutes.

**CASE NO. A-10-007**

Applicant – Robert Watts

Lot 1 and the west 22 feet of Lot 2 (also known as Arbitrary Lot A-10), block A, NCB 597, save and except 0.035 of an acre out of Lot 1, Block A, NCB 597 (Per deed volume 11825, page 2485)

1304 East Commerce Street

Zoned: “AE-1 S” Arts and Entertainment District with as Specific Use Authorization for a Hotel

The applicant is requesting 39.31% variance from the requirement that at least 50% of the total area of the first floor street frontage consist of non-reflective glass, in order to erect a structure with 10.69% of the total first floor street frontage area consisting of non-reflective glass.

Mike Farber, Planner, presented background and staff’s recommendation of denial of the initial request and approval of an alternate recommendation for a 12% variance to allow 38% of the first floor street frontage to consist of non-reflective glass. He indicated 22 notices were mailed, none was returned in favor and none were returned in opposition and no response from the Downtown Residents Association

Jerry Arredondo, representative, stated the project was started in 2008 and the owner was never notified of the zoning change because of a change in ownership of the property. He also stated the owner tried to meet the code requirement and he never intended to meet any design requirements due to him not being notified of the zoning change. The owner has received a unanimous vote for the design with the zoning commission and the city council. He further stated the owner tried to make concessions but it didn’t work due to security.

Robert Watts, architect, stated they tried to do a zoning variance the building and the design with the property but were told they had to zone the building separate from the property. He also stated they have rezoned the property and asking for the variance on the property. He further stated the owner did not want the rooms facing Cherry Street for security reasons.

**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-10-007 closed.

**MOTION**

A motion was made by **Mr. Klein**. In Appeal **A-10-007**, this is a variance application for **1304 East Commerce Street**, the subject property is legally described as **Lot 1 and the west 22 feet of Lot 2 (also known as Arbitrary Lot A-10), Block A, NCB 597, save and except 0.0034 of an acre out of Lot 1, Block A, NCB 597 (Per deed volume 11825, page 2485)**, the zoning is **"AE-1 S" Arts and Entertainment District with a Specific Use Authorization for a Hotel**, the applicant is **Robert Watts**, the owner is **KMK Hotel, LLC**, the applicant is requesting a variance from the requirement that **at least 50% of the total area of the first floor street frontage consist of non-reflective glass, in order to allow a structure with 10.69% of said area to be non-reflective glass**. I move that the Board of Adjustment grant the applicant's request in this case for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not contrary to the public interest in that **the granting of this variance would not be contrary to the public interest because the City Council created Arts and Entertainment Districts had an intent of creating both development and pedestrian-friendly, and aesthetically pleasing urban corridors. The goal of this ordinance rather of the zoning will be served by this particular project**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the literal enforcement would be a difficulty on this particular site seeing that it is a corner lot, the geometry is very difficult to say the least as far as being a site that has the potential for development and also for economic benefit. This is characterized by the fact that 21 rooms are being provided with a very minimum of 17 required parking spaces that does meet the city requirements and the fact that this geometry does impact the overall development of the project**. The spirit of the ordinance is observed and substantial justice is done in that **granting of this variance will observe the spirit of this ordinance and the AE zoning and will not substantially injure the neighboring property and the use of this property is reasonable**. 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 owner has secured the specific use authorization for a hotel in the AE 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 did receive the specific use permit and the spirit of the ordinance does encourage development within this particular AE zoning area**. 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 AE zoning was enacted after the owner purchased the property and after they engaged the design team to move forward with a hotel on this particular property**. The motion seconded by **Mr. Hardemon**.

**AYES:** Klein, Hardemon, Camargo, Dutmer, Rogers, Britton, Cruz, Ozuna, Gallagher  
**NAY:** Villyard, Victor

**THE VARIANCE WAS GRANTED.**

**CASE NO. A-10-008**

Applicant – Anna Gonzales  
Lot 26, NCB 11574  
4603 Loma Linda Road  
Zoned: “R-4” Residential Single-Family District

The applicant is requesting a 2-foot requirement that predominantly open front-yard fences not exceed 4 feet in height, in order to erect a 6-foot tall predominantly open front-yard fence.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 35 notices were mailed, none were returned in favor and 2 were returned in opposition.

Jerry Gonzales, owner, stated his house has had a six foot fence around the entire house for the last fifty years. He also stated the contractor had informed him that he would get all the permits and that since there was already an existing six foot fence it would be okay to knock it down and build a new one. The contractor replaced it with a wrought iron fence and pillars to have a better appearance. He further stated the fence would serve as a safety and protection of his property. There have been break-ins into his boat, graffiti on his property, and neighborhood children trespassing into his swimming pool ever since his fence was damaged by a car.

Anna Gonzales, owner, stated this fence helps to secure their dog to ensure his safety and any of pedestrians walking by their 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-10-008 closed.

**MOTION**

A motion was made by **Ms. Rogers**. Re Appeal No **A-10-008**, variance application for a **2-foot variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, to erect a 6-foot tall fence in the front yard**, subject property description **Lot 26 NCB 11574**, situated at **4603 Loma Linda Drive**, the applicant is **Anna Gonzales**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No **A-10-008**, 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 **though the applicant did not**

obtain the necessary permits in order to erect the fence, it does not appear that the granting of the variance will be contrary to the public interest. The fence does not appear to create any sort of visual obstruction to the neighboring properties. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that it appears that the literal enforcement of the ordinance may result in unnecessary hardship. The unusual size of the subject property, measuring over an acre, may be considered a special condition that requires a fence exceeding 4 feet in height, in order to provide adequate security. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done in that it appears that the granting of the variance would observe the spirit of the ordinance as the intent of Section 514 is to allow for fences exceeding 4 feet in height for properties exceeding 20,000 square feet in size provided there is an R-20 or RE (both zoning districts for large-lot estate developments). 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 this variance would not authorize a use other than those specifically permitted in "R-4" zoning district. It is merely a fence around a private residence. 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 it does not appear that the granting of this variance would injure the appropriate use of adjacent conforming property. There was a fence which was removed which was considered by the applicant to be unsightly. The proposed fence would be of a more ecstastic type fence. 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 size of the lot appears to present a unique circumstance where literal enforcement of the ordinance would create an undue hardship. The motion seconded by Ms. Cruz.

**AYES:** Rogers, Cruz, Camargo, Dutmer, Villyard, Hardemon, Klein, Britton, Ozuna, Gallagher

**RECUSAL:** Victor

**NAY:** None

**THE VARIANCE WAS GRANTED.**

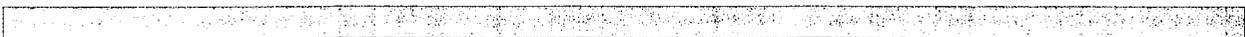


**Sign Master Plan No. 10-004**

Arturo Elizondo, Sign Inspector, briefed Board Members on Sign Master Plan for Sam Houston Center, located at Rittiman Road and Harry Wurzbach.

**Mr. Klein** made a motion to approve **Sign Master Plan No. 10-004** and was seconded by **Ms. Rogers** and all board members voted in the affirmative.

**THE SIGN MASTER PLAN WAS APPROVED.**





**Approval of the November 16, 2009 Minutes**

**The November 16, 2009 minutes were approved with all members voting in the affirmative.**



There being no further discussion, meeting adjourned at 4:34 p.m.

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

DATE: 2-1-10

ATTESTED BY: [Signature] DATE: 2/1/10  
Executive Secretary