

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
February 1, 2010**

Members Present:

Michael Gallagher
Andrew Ozuna
Gene Camargo
Edward Hardemon
Helen Dutmer
George Britton
Mary Rogers
Maria Cruz
Harold Atkinson
Steve Walkup

Staff:

Fernando De León, Assistant Director
Rudy Niño, Jr., Senior Planner
Jacob Floyd, Planner
Michael Farber, 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. Camargo made a motion to move Case No. A-10-014 to the end of the agenda with all members voting in the affirmative.

CASE NO. A-10-009

Applicant – Virginia Losoya
Lot 71A, Block B, NCB 11508
248 West Cheryl Drive
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay 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 special exception for a four-year period. He indicated 24 notices were mailed, none were returned in favor and none were returned in opposition and no official response from the University Park Neighborhood Association.

Virginia Losoya, applicant, stated she has had this special exception six times. She also stated this helps her out with rent. She further stated most of her clients are from the neighborhood and people they recommend since she does not advertise this beauty shop.

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-10-009 closed.

MOTION

A motion was made by **Ms. Rogers**. Re Appeal No **A-10-009**, application for a **special exception to allow a one-operator beauty or barber shop**, subject property description being **Lot 71A, Block B, NCB 11508**, located at **248 West Cheryl Drive**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-10-009**, application for a Special Exception for the subject property as described above, because the testimony and evidence presented o 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 this chapter because **the requested special exception is in harmony with the spirit and purpose in that existing one-operator beauty/barber shop 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 further serves public welfare in that this beauty/barber shop has continuously operated for a number of years within the parameters set forth by Section 35-399.01 and has served as a public convenience within a residential area and the file indicates that there have been no infractions of the rules regarding the operation of this shop**. The neighboring property will not be substantially injured by such proposed use because **the primary use of the subject property still remains 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 that the existing beauty/barber shop has and 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 granting of this special exception will not weaken the regulations established for this district**. The hours of operation will be **10 am to 5 pm Tuesday and Friday; 10 am to 6 pm on Thursday; and 9 am to 4 pm on Saturday**. Weekly proposed operation hours will only total **29 hours** and the duration of this special exception will be for **four years**. The motion seconded by **Mr. Walkup**.

AYES: Rogers, Walkup, Camargo, Dutmer, Cruz, Britton, Atkinson, Ozuna, Hardemon, Gallagher

NAY: None

THE SPECIAL EXCEPTION WAS GRANTED.

CASE NO. A-10-012

Applicant – Northwest Christian School
Lot 2, Block 1, NCB 18123
8511 Heath Circle Drive
Zoned: “NP-10 AHOD” Neighborhood Preservation Airport Hazard Overlay District

The applicant is requesting a complete variance from the regulations that no sign nor part of any sign shall move, flash, rotate, or change its illumination, to erect a free-standing sign with an LED electronic message center.

Mike Farber, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 15 notices were mailed, none were returned in favor and 2 were returned in opposition.

Edward Juarez, representative, stated this sign would help to inform parents about any events or information regarding school functions. He also stated the sign would not rotate, change color, flashing, or changing its illumination. He further stated this sign would better the community, neighborhood, and the surrounding area.

The following citizens appeared to speak:

Rev. Glenn Thigpen, citizen, spoke in favor.

Lynn Phillips, 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-10-012 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-10-005**, variance application for **Northwest Christian School**, property address **8511 Health Circle Drive**, subject property description is **Lot 2, Block 1, NCB 18123**, property again situated at **8511 Heath Circle Drive**, the applicant being **Northwest Christian School**. The applicant is requesting a **complete variance from the regulation that no sign nor part of an y sign shall move, flash, rotate, or change its illumination, to erect a free-standing sign with an LED electronic message center**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-10-012**, 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 according to Section 28-247 of Chapter 28: Signs and Billboards in order for a variance to be granted the applicant must demonstrate: The variance is necessary because the strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography. **It does appear that**

the site possesses unique features, in terms of dimensions or topography, which would prohibit the reasonable opportunity to provide adequate legal signage on the site as the applicant provided testimony to us about safety concerns on Heath Drive and necessity to communicate with students about important community messages such as health, shots, and such that would be impactful to the community. A denial of the variance would probably cause a cessation of legitimate, longstanding, active commercial use of the property. **That is not necessary applicable in this case because the project of the property is not an active commercial use and that it is a school and seen that the enrollment has increased.** After seeking on or more of the findings set forth in subparagraphs 1 and 2, the board finds that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated that **the granting of this requested variance would not provide a special privilege to the applicant enjoyed by others similarly situated or potentially similarly situated.** Granting the variance will not have a substantially adverse impact upon neighboring properties in that **the granting of the request will not have an adverse impact on the neighbors as the applicant provided evidence today about the distances between the signage and the neighboring properties and provided evidence of the two hundred plus signatures of the neighborhood supporting the proposed sign.** Granting the variance will not substantially conflict with the stated purposes of this article in that **granting the requested variance would not conflict with the stated purpose of this article in that the design of the proposed sign would be in harmony with the function of this portion of Heath Circle Drive as a local street.** Also the applicant purported that the signage is going to be small in size and it will not actually flash or rotate and that it would have a static image that would be changing somewhat frequently but will not be flashing or be a distraction to drivers. The motion seconded by Ms. Dutmer.

AYES: Ozuna, Dutmer, Walkup, Rogers, Hardemon, Atkinson, Britton, Cruz, Gallagher
NAY: Camargo

THE VARIANCE WAS GRANTED.

CASE NO. A-10-013

Applicant – Pastor Jose D. Montanez
Lot 21, NCB 6874
210 Calles Street
Zoned: “MF-33 AHOD” Multi-family Airport Hazard Overlay District

The applicant is requesting a an 11-foot 4 13/16 inch variance from the requirement that a 20-foot setback be maintained from the south property lien, as shown on the plat recorded in Volume 8900, Page 59, Deed and Plat Records of Bexar County, Texas, in order to build an addition 8 feet 7 3/16 inches from the south property line.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 18 notices 70 were mailed, 4 were returned in favor and none were returned in opposition.

Pastor Jose D. Montanez, applicant, stated he wants to build he addition on the same line as the existing building that was built in the late 70s and early 80s. He also stated he has been in contact with City Public Service and they are approved a plan to put a post.

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-10-013 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal **A-09-013**, variance application for **Pastor Jose D. Montanez**, subject property address is **210 Calles Street**, property description is **Lot 21, NCB 6874**, the applicant again is **Pastor D. Montanez**. The applicant is requesting **an 11.4-foot variance from the requirement that a 20-foot setback be maintained from the south property line, as shown on the plat recorded in Volume 8900, Page 59, Deed and Plat Records of Bexar County, Texas, to build an addition 8.6 feet from the south property line and also to respect the existing front build out to be within that setback line as well with the enclosed portion of the building.** I move that the Board of Adjustment grant the applicant's request regarding **A-10-013**, 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 be contrary to the public interest in that **it does not appear that the granting of the variance would be contrary to the public interest. The current zoning setback would permit a structure closer to the property line than that proposed by the applicant.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it does appear that the literal enforcement of the ordinance would result in unnecessary hardship in that the platted setback is significantly in excess of the setback required by the zoning ordinance.** The spirit of the ordinance is observed and substantial justice is done in that **it does appear that the granting of the variance would do substantial justice in that it will allow the church to reasonably use the property and 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 granting of the variance will not authorize the operation of a use other than uses specifically permitted in the "MF-33" existing 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 **it does not appear that the granting of the variance will injure the appropriate use of adjacent conforming property, nor will it alter the essential character of the district. The surrounding neighborhood is characterized by residences situated within approximately seven to eight feet from the front property lines, as the plat for this subdivision dictates a 7.5 foot front setback line.** 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 20-foot platted setback**

from which the variance is sought is unique to this property, as the surrounding neighborhood possesses 7.5 foot platted setbacks. The variance requested would allow the reasonable use of the property, while still providing some separation between the proposed building and the public right-of-way. The motion seconded by Mr. Camargo.

AYES: Ozuna, Camargo, Dutmer, Atkinson, Hardemon, Rogers, Walkup, Cruz, Britton, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-10-015

Applicant – Sundial Development
Lot 123, Block 1, NCB 18338
23103 I.H. 10 West

Zoned: “O-1 GC-1 MLOD-1” Office Hill Country Gateway Corridor Overlay Military Lighting Overlay District and “C-2 GC-1 MLOD-1” Commercial Hill Country Gateway Corridor Overlay Military Lighting Overlay District

The applicant is requesting a 6-foot, 6-inch variance from the Hill Country Gateway Corridor Overlay District requirements that a minimum 25-foot natural buffer be maintained on the front property line for properties along IH-10, in order to allow an 18-foot, 6-inch natural buffer along the front property line.

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

Chad Stringhan, representative, stated his client purchased this property and is trying to make amends to everything that was done by the previous owner. He also stated the previous owner left over a thousand trees that have to be mitigated. He further stated that they are not asking for the whole 25-foot buffer but only for a 6-foot 6-inch for additional parking for the retail areas and for flexibility of tenants.

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-10-015 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that the Board of Adjustment in case **A-10-015**, applicant being **Sundial Development**, on property located at **23103 I.H. 10 West**, also known by legal description as **Lot 132, Block 1, NCB 18338**, be granted a **6-foot 6-inch variance from the Hill Country Gateway Corridor Overlay District requirements that require a minimum 25-foot natural buffer be maintained on the front property line of properties along IH-10**. Specifically we find that such variance will be contrary to the public interest in that **from the notices that were mailed to adjacent property owners which there are several and large tract of lands only very limited opposition were in fact returned**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the configuration of this particular lot and the location of an existing commercial building which requires a set number of parking spaces dictates that the parking that is indicated on the site plan submitted is necessary to meet other code requirements of the UDC**. The spirit of the ordinance is observed and substantial justice is done in that **with the 6-foot 6-inch variance a buffer area of 18.6 inch width landscape buffer will still remain along and parallel to the access road of IH-10**. The applicant's representative, the landscape architect, has indicated that **within reason they will attempt to plan the same amount of natural material and lay the trees that would of been required along within the 25-foot buffer had they been provided**. 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 **I say adjacent conforming property in the finding that we have been shown slides in where the adjacent property to the north I believe it was does not comply at all with the UDC requirements for buffering and the other property to the south has limited landscaping and has been indicated by staff that perhaps that property is grandfathered and for that reason they do not maintain the 25-foot buffer but they do provide landscape in accordance with the landscape ordinance according to the slides that we saw**. 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 should be noted that this particular lot is a very irregular shape and according to plat and information submitted there appears to be a fairly large drainage channel that traverses the property in a northeast south west direction that limits the accessibility to the remainder of the property**. The motion seconded by **Mr. Walkup**.

AYES: Camargo, Dutmer, Britton, Ozuna, Gallagher

NAY: Walkup, Rogers, Hardemon, Cruz, Atkinson

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-10-016

Applicant – City of San Antonio
Lot 28, Block 2, NCB 12572
1039 NE Loop 410
Zoned: “C-2 CD” Commercial Airport Hazard Overlay District with a Conditional Use for Nightclub

The applicant is requesting in accordance with Section 406 of the Unified Development Code (Chapter 35), the Director of the City of San Antonio’s Planning and Development Services Department is recommending that the Board of Adjustment revoke Certificate of Occupancy No. 1573107 for the Headliners Showclub.

Rudy Niño Jr., Senior Planner, presented background and staff’s recommendation that the board support the Director’s decision to revoke the CofO of the Headliners Showclub. He indicated 10 notices were mailed, none was returned in favor and none were returned in opposition.

Jim Degear, representative, stated there are live dancers and DJ’s at the location every day of the week. He also stated there was an ordinance that was passed in August by the city council granting the right for this nightclub a C-2 CD with a conditional use for a nightclub and that there is not into code of ordinances that states that accessory use is some use that the city deems to be three or more per week. He further stated the application the client filed with the City of San Antonio to obtain a Certificate of Occupancy states that there will be alcohol sales with and that may provide live entertainment.

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-10-016 closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that the Board of Adjustment in Case No **A-10-016**, applicant in this case being the **City of San Antonio**, on property which is owned by **Headliners Showclub**, located at **1039 NE Loop 410**, also legally described as **Lot 28, Block 2, NCB 12572** that **this board uphold the Director of Planning and Development Services recommendation to revoke the CofO on the above mentioned property. I feel that the board realizes and has been presented evidence that the Headliners Showclub was issued a Certificate of Occupancy by the city to operate a nightclub. The board finds that the zoning of the area that has been previously described is in fact on a “C-2 CD AHOD” which is a Commercial Airport Hazard Overlay District with a conditional use for a nightclub and that such zoning under the Unified Development Code allows the operation of nightclub with live entertainment on a limited basis and that has been shown by tables and ordinances that have been presented to the board by staff. The board finds that under Chapter 35 of the city code live entertainment is a use that allows for dancers to perform at a nightclub but limits such activity to less than three nights per week. By admission by the**

representative of the business that there is in fact live entertainment and music provided at this location seven days a week. The board finds that the live entertainment which occurs more than three times per week and in fact, becomes in this members opinion and in accordance with the regulations that have been submitted, a primary use of the property. Such use again by code requires a classification that is more intense in that which this property enjoys which is a "C-2" Commercial District. The board finds that based on the evidence presented by police reports and city inspector reports that in fact this is occurring, this meaning performance of live entertainment and music, more than three times per week at this particular location which in fact in this members opinion is a violation of that which is stated in the certificate of occupancy. The motion seconded by Ms. Rogers.

AYES: Camrgo, Rogers, Atkinson, Hardemon, Cruz, Ozuna, Britton, Dutmer, Gallagher
NAY: Walkup

THE MOTION PASSES.

CASE NO. A-10-014

Applicant – IBC Bank
Lot 17, NCB 12057
12400 U.S. Highway 281 North
Zoned: "C-3 AHOD" General Commercial Airport Hazard Overlay District

The applicant is requesting a 206-square foot variance from the requirement that the maximum size for an individual tenant's portion of a freestanding multiple tenant sign in a nonresidential zoning district not exceed 375 square feet, in order to build a freestanding multiple tenant sign with a 581-square foot portion for an individual tenant.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 7 notices were mailed, none were returned in favor and none were returned in opposition.

Paul Sullivan, representative, stated that if a tenant sign is installed then a video sign, the tenant sign will not be seen. He also stated the sign will only be visible when you get near the property. He further stated the square footage is below the square footage that is allowed below the zoning square footage.

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-10-014 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Case No **A-10-014**, variance application for **IBC Bank**, property description is **lot 17, NCB 12057**, located at **12400 U.S. Highway 281 North**, the applicant being **IBC Bank**. I move that the Board of Adjustment grant the applicant's request regarding Case No. **A-10-014**, application for a sign variance to the subject property as described above, because the testimony presented to us and the facts presented to us are persuasive. The request is for a **206-square foot variance from the requirement that the maximum size for an individual tenant's portion of a freestanding multiple tenant sign in a nonresidential zoning district not exceed 375 square feet, to build a freestanding multiple tenant sign with a 581-square foot portion for an individual tenant**. Specifically we find that the variance is necessary because the strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site including the topography with the tree canopy which limits sight lines both north and south on 281. Other features to include is the proposed Wurzbach Parkway which would be traversing the property which would put the property on a highly traffic commercial site in which it would impact the visibility of the signage to the property. We find that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated in that on-premise tenant signage is allowed under the existing development codes. Granting the variance will not have a substantially adverse impact upon neighboring properties in that notifications were mailed out to surrounding property owners and there was no opposition and there was no testimony presented today to any neighboring properties to the impact that would adversely create on them. Granting the variance will not substantially conflict with the purposes of Chapter 28. There are no conflicts with Chapter 28. Specifically we find that additionally a denial of the variance will probable cause a cessation of a legitimate longstanding active commercial use of the property and that the tenant not being able to advertise adequately impacts the liability of the properties used as an office building and to the customers of the applicants. The motion seconded by **Ms. Dutmer**.

AYES: Ozuna, Camargo, Hardemon, Gallagher

NAY: Dutmer, Cruz, Walkup, Rogers, Britton, Atkinson

THE VARIANCE WAS NOT GRANTED.

Approval of the January 11, 2010 Minutes

The January 11, 2010 minutes were approved with all members voting in the affirmative.



There being no further discussion, meeting adjourned at 4:09 p.m.

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

DATE: MARCH 1, 2010

ATTESTED BY: [Signature] DATE: March 2nd, 2010
Executive Secretary