

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
February 4, 2013**

Members Present:

Michael Gallagher  
Andrew Ozuna  
Frank Quijano  
Helen Dutmer  
George Britton  
Jesse Zuniga  
Mary Rogers  
Gene Camargo  
Maria Cruz  
Henry Rodriguez

Staff:

John Jacks, Assistant Director  
Margaret Pahl, Senior Planner  
Tony Felts, 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 a 1:10 pm.

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**CASE NO. A-13-016**

Applicant – DSW Inns, LLC  
Lot 17, Block 1, NCB 13146  
11322 East Coker Loop  
Zoned: "I-1 AHOD" General Industrial Office Airport Hazard Overlay District

The applicant is requesting a 25-foot variance from the 30-foot required side yard setback to allow a structure 5 feet from a side property line abutting a residential use.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 6 notices were mailed, none were returned in favor and none were returned in opposition.

Kevin Whitfield, applicant, stated this parcel would be used for storage and warehouses. He also stated there have not been any issues with surrounding 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-13-016 closed.

## MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No. **A-13-016**, variance application for **DSW Inns, LLC**, subject property is **Lot 17, Block 1, NCB 13146**, situated at **11322 East Coker Loop**, the applicant again being **DSW Inns, LLC**, the variance request is for a **25-foot variance from the 30-foot required side yard setback to allow a structure 5-feet from a side property line abutting a residential use**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-016**, 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 **building setbacks are designed to maintain orderly and safe development, and ensure access to air and light**. The applicant has provided testimony in this case that **there would be a 30-foot setback, which would be bored by the residential side, which in conjunction with the 5-foot side on the subject would provide adequate spacing for light, air, and safety which is in the public interest**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **imposition of a setback due to a non-conforming use could be considered an unnecessary hardship, as non-conforming uses are designed to terminate over time and become a conforming use**. Further, the location of the greater setback in the middle of the lot would create **disorganized property development and impose an unnecessary hardship**. The spirit of the ordinance is observed and substantial justice is done in that **the ordinance is designed to protect conforming uses, as non-conforming uses are intended to terminate over time**. As this area is, and has been, in transition, it is reasonable that the current use of 916 Clydeville as a residence will end. If that were to occur, the requirement for a setback would no longer be applicable. As such, the spirit of the ordinance will be granted and substantial justice will be done. 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 I-1 AHOD (Industrial) 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 variance, as presented, would not substantially injure the appropriate use of adjacent conforming properties**. While there may be an argument that the 5-foot setback may substantially injure the current residential use of 916 Clydeville, this residential use is inappropriate in this district, and is non-conforming. As such, this requirement is met. 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 circumstances existing on the property are unique and were not created by the owner**. This area is in transition, and the owner of the subject property has a reasonable expectation to be able to develop the property in accordance with the zoning of

**the property and surrounding properties, as well as the adopted land use and sector plans.**  
The motion was seconded by **Mr. Quijano**

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

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

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**CASE NO. A-13-017**

Applicant – Teresa Coles-Davila  
Lot 20, Block 6, NCB 9194  
4819 San Pedro  
Zoned: “O-1 AHOD” Office Airport Hazard Overlay District

The applicant is requesting **1)** a 20-foot 2-inch variance from the 30-foot rear yard set back, **2)** a 5-foot 2-inch variance from the 15-foot buffer yard, **3)** a 10-foot variance from the 20-foot side yard setback requirement to allow a two-story building addition within 9-feet 1-inches of the rear property line and 10-feet from the north side property line, and **4)** a 35% reduction in the minimum 50% requirement for door and windows on the front elevation, to allow 15 glass on the building elevation fronting on San Pedro.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of denial of the requested variances. She indicated 21 notices were mailed, none were returned in favor and three were returned in opposition.

Teresa Coles-Davila, applicant, stated the second story is a half story used for storage and attic space. She also stated this variance would provide her to have access to her files that are stored at another location.

Gene Hartman, representative, stated they did inquire about a building permit for the construction. He also stated the second story does not have any type of plumbing installed.

**The following citizens appeared to speak:**

Maria Torres, citizen, spoke in opposition.

Rebecca Salazar, citizen, spoke in opposition.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-13-017 closed.

**Mr. Britton called for the question to vote for the motion. All the members voted in the affirmative.**

## MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No. **A-13-017**, variance application for **4819 San Pedro**, subject property is **Lot 20, Block 6, NCB 9194**, situated at **4819 San Pedro**, the applicant and owner is **Teresa Coles-Davila**, the variance request is for **1) a 20-foot 2-inch variance from the 30-foot rear yard setback, 2) a 5-foot 2-inch variance from the 15-foot buffer yard, 3) a 10-foot variance from the 20-foot side yard setback requirement to allow a two-story building addition within 9-feet 10-inches of the rear property line and 10-feet from the north side property line, and 4) a 35% reduction in the minimum 50% requirement for door and windows on the front elevation, to allow 15% glass on the building elevation fronting on San Pedro**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-017**, 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 this case the public interest is the nearby residents and traveling public who see the building on a regular basis. The board previously approved the variances which are before us today with the exception of the two-story which is an incremental variance that the applicant is requesting to us today. We've seen some compatible concerns about the subject with the neighborhoods and the applicant provided testimony that across the street there is possibly perhaps a two-story building with gables and such that lend itself to compatibility with the subject. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that a literal enforcement of the ordinance would have limited the expansion of the building to no closer than 30 feet from the property line shared with the nearby residence and 20 feet from the property line. The applicant was previously provided a variance to allow them to build within the setbacks which was approved previously which basically cured that hardship. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance in this case is an evaluation of the purpose and value of setbacks. The UDC established an increased setback for a property which abuts a residential zone or use. This provision was included in the Code to buffer the impacts of a commercial building and use on the expected peace and enjoyment of nearby residential property owners. Sunlight and airflow are the tangible benefits given to neighbors by the setback. The applicant previously came before the board and the board granted the variance. The incremental increase for the two story is approximately 6-feet of floor plat height which is not a material impact in the setbacks or the sunlight blockage. 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 "O-1 AHOD" zoning districts so no other property uses will be allowed including car sales and restaurants. It is specifically zoned as an office zoning district in which there is no requested variance to that 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 in the original**

**variance request, the Board found that the impact of a reduced setback would not injure the adjacent property or alter the character of the neighborhood. The incremental height increase is not that the variance is before us today would not injure the character of the neighborhood in that the adjacent property is supposed to be a two-story, also San Pedro is a highly traffic corridor, and such uses adjacent to that are compatible with the 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 is requesting a variance from required setbacks that affect each parcel on San Pedro, where non-residential zoning abuts residential use or zoning. The applicant had previously come before the board, granted the variances to the setback based primarily on the site plans that were presented before the board. Those plans were substantially built according to the plans before the second floor addition that was added to the plans.** The motion was seconded by Ms. Dutmer.

**AYES: Ozuna, Dutmer, Rodriguez**

**NAYS: Camargo, Quijano, Cruz, Rogers, Britton, Zuniga, Gallagher**

**THE VARIANCE WAS NOT GRANTED.**

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**Board members recessed for 10 minutes.**

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**CASE NO. A-13-018**

Applicant – Juan Aguilar

Lot 27 & 28, Block 31, NCB 1933

2002 W Gramercy Place

Zoned: "R-6 H AHOD" Residential Single-Family Historic Airport Hazard Overlay District

The applicant is requesting a 15-foot variance from the minimum 20-foot required garage setback to allow a garage 5-feet from the property line.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested special exception. She indicated 27 notices were mailed, two were returned in favor and one was returned in opposition and received Jefferson and Woodlawn Lake Neighborhood Associations is in opposition.

Juan Aguilar, applicant, stated this variance would provide security from vandalism of the owners vehicles. He also stated the cars would be secured from theft.

**The following citizens appeared to speak:**

Jerry Long, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-13-018 closed.

## MOTION

A motion was made **Mr. Rodriguez**. I move that in Case No. **A-13-018**, applicant is **Mr. Juan Aguilar**, the owner is **Gerald Long & Margaret Pedrotti**, location is **2002 W Grammercy Place**, legal description is **Lot 27 & 28, Block 31, NCB 1933**, zoning is **"R-6 H AHOD" Residential Single-Family Historic Airport Hazard Overlay Districts**. I move that the Board of Adjustment grant the applicant's request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety and welfare of the public at large. The public in this case is the people of this neighborhood, especially the pedestrians using the sidewalks. A survey of the sidewalks shows that sidewalks are consistent along the east-west streets, where most houses have their frontage, but are inconsistent along the north-south streets.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance would require the applicant to relocate the garage to gain access from either the alley or W. Grammercy Place. The Office of Historic Preservation noted that a long driveway access from Grammercy would be inconsistent with the historic pattern within the neighborhood.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is represented by its equal application to all citizens. In certain instances however, a unique property characteristic warrants flexibility from a provision. For this lot, a few historic patterns are note-worthy. According to a GIS Senior Analyst, every corner house with a side yard on Vollum Avenue has a driveway access there. Many of these garages do not satisfy the 20 foot setback so there is the inconsistency.** 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 other than that specific use.** 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 **many of the surrounding garages in this historic neighborhood have less than the required 20-foot setback. The garage in the rear yard, with access from the "side-street", is a recurring pattern in this neighborhood.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **the applicant is requesting a variance from a provision in the UDC which requires a 20-foot setback from a garage. The property currently has a carport in the proposed location, but carports do not require the same setback. The owner is attempting to preserve the historic character of the property, constructing a new garage in the area where the original one was located. The applicant has indicated and shown that there is an electronic gate along Vollum Street and that the variance is being granted based on architectural plans that were submitted.** The motion was seconded by **Ms. Cruz**.

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

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

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**Approval of the Minutes**

The January 14, 2013 minutes were approved with all members voting in the affirmative.

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**Nominations**

Mr. Zuniga nominated Mr. Gallagher for the office of Chair and Ms. Cruz seconded the motion with all members voting in the affirmative

Mr. Zuniga nominated Mr. Ozuna for the office of Vice Chair and Mr. Camargo seconded the motion with all members voting in the affirmative.

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Mr. Zuniga departed at 3:19 pm.

Mr. Britton departed at 3:26 pm.

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There being no further discussion, meeting adjourned at 3:23 pm.

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

DATE: 3-4-13

ATTESTED BY: [Signature] DATE: 3-5-13  
Executive Secretary