

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
February 7, 2011**

**Members Present:**

Michael Gallagher  
Andrew Ozuna  
Liz Victor  
Edward Hardemon  
Helen Dutmer  
Mary Rogers  
Jesse Zuniga  
Mike Villyard  
Gene Camargo  
Harold Atkinson  
Mimi Moffat

**Staff:**

Christopher Looney, Interim Asst. Director  
Andrew Spurgin, AICP, Planning Manager  
Rudy Niño, Senior Planner  
Jacob Floyd, 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.

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**CASE NO. A-11-017**

Applicant – Lucia D. Oyervides  
Lot 1, Block 18, NCB 11458  
5102 Hemphill Drive  
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a Special Exception to allow a one operator beauty/barber shop.

Jacob Floyd, Senior Planner, presented background and staff’s recommendation of approval of the requested Special Exception. He indicated 26 notices were mailed, 2 were returned in favor and one was returned in opposition and no response from the Culebra Park Neighborhood Association.

Lucia Oyervides, applicant, stated there is enough space for customers to park in the backyard. She also stated she will have one customer at a time by appointment only. She further stated she is single parent and having this special exception will help her.

**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-11-017 closed.

## **MOTION**

A motion was made by **Ms. Victor**. Re Appeal No **A-11-017**, variance application for the **5102 Hemphill Drive**, subject property description is a **Lot 1, Block 18, NCB 11458**, the applicant's name is **Lucia D. Oyervides**, and the applicant is for **one operator beauty/barber shop**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-11-017**, application for a Special Exception for the subject property as described above, because the testimony 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 proposed one-operator beauty/barbershop will follow 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 in that this beauty/barbershop will operate within the parameters set forth by Section 38-399.01 and will serve as a public convenience within a residential area**. 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 a single-family residence. The request is utilizing for the one-operator beauty barbershop is only utilizing 18 percent of the residence. The applicant has proposed hours of 9 am to 5 pm, Tuesday thru Saturday, totaling no more than 40 hours weekly, and does not expect to have more than two people there at a time. 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 beauty/barbershop will remain confined to 25% or less of the gross floor area of the primary residence and again it is only going to be occupying 18%**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specified 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. This case set up at 5102 Hemphill for a two year-period with hours of operation not exceed 40 hours weekly. The motion was seconded by **Mr. Camargo**.

**AYES: Victor, Camargo, Hardemon, Villyard, Dutmer, Rogers, Atkinson, Zuniga, Moffat, Ozuna, Gallagher**

**NAY: None**

**THE SPECIAL EXCEPTION WAS GRANTED.**

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**CASE NO. A-11-018**

Applicant – Harry Jewett

Lot 30, Block 74, NCB 16334

19522 Brooke Place

Zoned: “PUD R-6 ERZD MLOD” Residential Single-Family Planned Unit Development  
Edwards Recharge Zone Military Lighting Overlay District

The applicant is requesting a 10-foot variance from the 20-foot perimeter setback requirement for residential uses in a Planned Unit Development, in order to allow a 10-foot rear setback.

Jacob Floyd, Senior Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 9 notices were mailed, 6 were returned in favor and none were returned in opposition and no response from the Sonterra or Stone Oak Property Owners Association.

Harry Jewett, applicant, stated the reason for this request is for a model home. He also stated they are amending the PUD plan also. He further stated the owner wants to block the noise from Blanco Rd.

**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-11-018 closed.

**MOTION**

A motion was made by **Mr. Camargo**. In Case No **A-11-018**, the applicant being **Harry Jewett** for the owner **McNair Custom Homes, L.P.**, on property located at **19522 Brooke Place**, also legally described as **Lot 30, Block 74, NCB 16334**, would recommend that a **10-foot variance from the 20-foot perimeter setback requirement for residential uses in a PUD, in order to allow a 10-foot rear setback for the following reasons**. It is felt that the request is not contrary to the property interest in that **from notices received there doesn’t appear to be any substantial opposition to this particular request specifically since the adjacent properties to the north and southeast are vacant**. The properties that are to the rear of the subject property are a considerable distance from the subject property. In fact the 120 foot right of way separates this property from other front properties across the street. Due to special conditions, a literal enforcement of this requirement should not be applicable. It appears that the purpose for the 20-foot setback on this parameter of this pud is in fact that the code justifiable reasons are that the adjacent property or the zoning on the adjacent property is a similar pud classification. It has been pointed that the adjacent pud property that this subject property is adjacent to is in fact is over 150 feet away from the property in question and should not offer any effects to that development. The spirit of the ordinance is observed and substantial justice to the setback requirement in that the intention of a 10 foot setback variance requirement is in fact justified by the fact of the adjacent pud property being such a far distance from this particular tract. Such variance will not authorize the

operation of a use of property that is not allowed in the zoning classification and that the proposed use is that of a single family residence. The use of the adjacent property will not be injured nor will the essential character of the district be altered as to the residential character of the adjacent properties. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property due to the fact that this property, although abutting a private right-of-way, sits considerable height above this major thoroughfare which is somewhat of an unusual situation that we find in other parts of the city. The motion was seconded by Mr. Hardemon.

**AYES: Camargo, Hardemon, Victor, Dutmer, Ozuna, Gallagher**

**NAY: Villyard, Zuniga, Rogers, Atkinson, Moffat**

**THE VARIANCE WAS NOT GRANTED.**

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**CASE NO. A-11-019**

Applicant – Robert and Barbara Collins

Lot 18, Block 54, NCB 1629

1313 South Hackberry Street

Zoned: “C-3 R AHOD” Restrictive Commercial Airport Hazard Overlay District

The applicant is requesting an 18-foot variance from the 30-foot rear setback requirement of the “C-3 R” district when abutting a residential use or zoning district, in order to allow a 12-foot rear setback from the east property line.

Jacob Floyd, Senior Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 25 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Denver Heights Neighborhood Association.

Robert Collins, applicant, stated this request is to provide a ice machine for the community. He also stated this would benefit the neighborhood.

**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-11-019 closed.

**MOTION**

A motion was made by **Mr. Ozuna**. Re Appeal No **A-11-019**, variance applicant for **Robert and Barbara Collins**, subject property located at **1313 South Hackberry Street**, subject property description is **Lot 18, Block 54, NCB 1629**, again situated at **1313 South Hackberry Street**, the request is for the applicant requesting an **18-foot variance from the 30-foot rear setback requirement of the “C-3 R” district when abutting a residential use or zoning district, in order to allow a 12-foot rear setback from the east property line**. I move that the

Board of Adjustment grant the applicant's request regarding Appeal No. **A-11-019**, 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 the variance will not be contrary to the property interest in that **the variance is contrary to the public interest in that the purpose of a zoning setback is to provide reasonable separation between compatible land uses, such as those permitted in "C-3R" and those of the "RM-4" district. The applicant has provided testimony that he owns the adjacent parcels which will not be built on and provide the necessary buffer from the occupied residential which is not owned by the applicant.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has provided testimony to us today that it is a safety issue regarding traffic coming in from Hackberry. If he doesn't have the necessary setback then the traffic going by Hackberry would provide a traffic condition which would be a safety concern for the applicant. A literal enforcement of the ordinance would again be a traffic and safety condition and hazard.** The spirit of the ordinance is observed and substantial justice is done in that **the variance will be in keeping with the spirit of the ordinance and that the way the project is right now that the setback requirements would not allow a commercially viable property to be put into commerce. The applicant has a lease that is pending in which the existing conditions prohibit the use of the property.** 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 existing "C-3 R AHOD" Restrictive Commercial Airport Hazard Overlay District is to remain and there are no considerations for changing the existing zoning for the property.** 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 will not injure the appropriate use of the adjoining conforming residential properties as they will enjoy the existing separation from commercial uses provided by the ownership of the applicant of the those two residential lots provide the adequate buffer. Additionally notification was sent to adjacent property owners and none were in opposition to the applicant's 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 plight of the property is subject to unique circumstances in that the commercial property is a 25 foot width, a very unique width of the property which is not allowed for the enjoyment of the property for commercial use which the applicant is requesting or needing.** The motion was seconded by **Mr. Zuniga.**

**AYES: Zuniga**

**NAY: Ozuna, Camargo, Victor, Villyard, Hardemon, Rogers, Atkinson, Moffat, Dutmer, Gallagher**

**THE VARIANCE WAS NOT GRANTED.**



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**Approval of the January 10, 2011 Minutes**

**The January 10, 2011 minutes were approved with all members voting in the affirmative.**

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There being no further discussion, meeting adjourned at 2:59 p.m.

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

DATE: 2-28-11

ATTESTED BY: Christina DATE: 2-28-11  
Executive Secretary