

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
June 16, 2008**

Members Present:

Michael Gallagher
Paul Klein
Liz Victor
Edward Hardemon
Helen Dutmer
George Alejos
Mary Rogers
Andrew Ozuna
Peter Vallone
Mimi Moffat

Staff:

Fernando De Leon, P.E. Assistant Director
Christopher Looney, Planning Manager
Rudy Niño, Senior Planner
Michael Farber, Planner
Jacob Floyd, Planner
Paul Wendland, Asst. City Attorney
Andrea Giles, Planning Comm. & Dev.

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.

CASE NO. A-08-064

Applicant – Carlos Abelar
The West 326.06 feet of Lot 17, Block 8, NCB 8992
841 Southwest 34th Street
Zoned: "R-6" Residential Single-Family District

The applicant is requesting a 2-foot 9-inch variance from the requirement that a predominantly open front yard fence shall be no taller than 4 feet in order to keep an existing 5-foot 6-inch tall fence with a 6-foot 9-inch tall gate posts in the front yard.

Michael Farber, Planner, presented background and staff's recommendation of denial on this case. He indicated 29 notices were mailed, none were returned in favor and 1 was returned in opposition and no response from Los Jardines Neighborhood Association.

Carlos Abelar, representative, stated the reason for this request for protection and safety from vandalism done to the house. He further stated the owner put the fence himself and he failed to inform the owner to apply for permits for the fence.

No citizens 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-08-064 closed.

MOTION

A motion was made by **Mr. Vallone**. Re Appeal Case No. **A-08-064**, for a variance requesting a **2-foot, 9-inch variance from the Unified Development Code standard for predominantly open front yard fence that is not permitted to be more than 4-foot tall**, subject property is located at **841 Southwest 35th Street, the wet 326.06 feet of Lot 17, Block 8, NCB 8992**, this area is zoned **"R-6" Residential Single-Family District**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-064** 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 **it has been noted in the report to the Board of Adjustment that there are similar fences in the area**. Due to the special condition a literal enforcement of the ordinance would result in unnecessary hardship in that **the fence would have to be modified and is of steel construction**. So that the spirit of the ordinance is observed and substantial justice is done in that **the fence is not unusual for the neighborhood**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **this is a residential area with similar fences**. Such variance will not substantially or permanently injure the districts in which that variance is sought in that **simply because other properties have similar fences**. Such variance will not alter the essential character of the districts in which the variance is sought in that **again because of other similar fences the staff has noted in their report**. Such variance will be in harmony with the spirit and purpose of this chapter in that **there are descriptions for this type of fence that allows this type of fence even this one does not comply with those exceptions**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial and are not due to or the general conditions in the district in which the property is located in that **there was reported vandalism such as tagging and even though no police reports were provided this fence is supposed to provide some security to such events**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **similar fences are located here. The fence seems to blend with the property**. The variance will not adversely affect the public health, safety or welfare of the public in that **the fence does not seem to provide any obstructions to blindness, sight, traffic, and does still provide some openness**. The motion seconded by **Ms. Dutmer**.

AYES: Vallone, Dutmer, Alejos, Ozuna, Camargo, Rogers, Klein

NAY: Hardemon, Victor, Moffat, Gallagher

THE VARIANCE WAS NOT GRANTED.



CASE NO. A-08-066

Applicant – Kaufman & Associates, Inc.
Lot 13, NCB 14595
4111 Medical Drive, Building 2
Zoned: “C-1” Commercial District

The applicant is requesting for a 1) a 65-foot variance from the Unified Development Code Standard that the maximum building setback in “C-1” zoning districts shall not exceed 20-feet, in order to erect a structure that would sit 85 feet from the front property line 2) a 22,000 square-foot variance from the Unified Development Code Standard that the maximum building size in “C-1” zoning districts shall not exceed 5,000 square feet, in order to erect a structure that would not exceed 27,000 square feet 3) a 20-foot variance from the Unified Development Code Standard that buildings in “C-1” zoning districts may not exceed 25 feet in height in order to erect a structure that would stand 46 feet in height 4) a variance from the Unified Development Code Standard that parking in “C-1” zoning districts be restricted to the rear of the principal use or building, in order to keep an existing parking area at the front of the proposed principal structure.

Michael Farber, Planner, presented background and staff’s recommendation of denial of these variances. He indicated that there were 295 notices mailed, 6 were returned in favor and 2 were returned in opposition.

Rob Killen, representative, stated the reason for this request is to construct building #2 in the same way it was. This building was demolished due to a fire. He also stated he is not requesting excessive variances but asking for what is needed to construct the building. He further stated they would lose several months of building if they were to rezone.

The following citizen(s) appeared to speak:

Michael Shackelford, council aide for Councilwoman Diane Cibrian, spoke in favor.

Steve, citizen, spoke in favor.

Steve Pearson, citizen, spoke in favor.

Megan Williams, citizen, spoke in favor.

Dustin Arnold, 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-08-066 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re: Appeal No. **A-08-066**, subject property description **Lot 13, NCB 14595**, located at **4111 Medical Drive Building 2**, the applicant is **Kaufman & Associates, Inc.** I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-066**, application for a variance to the subject property as described above, because the testimony presented to us, and 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 variance simply provides relief to the property owners who which have been burned out of their house. The plight was not caused by the borrowers and that it was in effect an issue that was a result of the zoning change imposed by the city.** Due to the special conditions a literal enforcement of the ordinance would result in unnecessary hardship in that **the delays in construction has left the 24 families homeless to date. The building to be built will stay within visual harmony of the building consistent with the existing condominium association.** So that the spirit of the ordinance is observed and substantial justice is done in that **the project when built was in compliance with the existing building codes and zoning codes in effect back in 1980. Again the cases before us is a function not created by the borrower but a function of the change of the zoning classifications by the city.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **the building can not be situated in any other location due to certain easements and locations of pool and other amenities to the project.** Such variance will not substantially or permanently injure the district in which that variance is sought in that **the applicant's request is simply to replace an existing multi-family structure that was there before and no additional structures are being requested to be constructed.** Such variance will be in harmony with the spirit and purpose of this chapter in that **the building to be replaced will stay within a building envelope that substantially replaces what was burned down before.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **again the situation was not a plight created by the borrower it was in effect the combination of an existing structure being burned down and a perfect alignment of the city zoning change that created the plight.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **the variance allows for the cure of this plight and that the "C-1" existing zoning district is more restrictive than an "MF-33" alternative zoning option.** The variance will not adversely affect the public health, safety or welfare of the public in that **the new construction would be completed within the current city codes and requirements which would include an upgrade more than likely in the fire codes and other codes that are in effect now that would have been an upgrade since the building was completed in 1980.** The variance requests are 1) a 65-foot variance from the Unified Development Code Standard that the maximum building setback in "C-1" zoning districts shall not exceed 20-feet in order to erect a structure that would sit 85 feet from the front property line, 2) a 22,000 square-foot variance from the Unified Development Code Standard that the maximum building size in "C-1" zoning districts shall not exceed 5,000 square feet, in order

to erect a structure that would not exceed 27,000 square feet 3) a 20-foot variance from the Unified Development Code Standard that buildings in "C-1" zoning districts may not exceed 25 feet in height, in order to erect a structure that would stand 45 feet in height, 4) a variance from the Unified Development Code Standard that parking in "C-1" zoning districts be restricted to the rear of the principal use or building, in order to keep an existing parking area at the front of the proposed principal structure. The motion seconded by Ms. Rogers.

AYES: Ozuna, Rogers, Victor, Vallone, Dutmer, Klein, Alejos, Hardemon, Camargo, Gallagher

NAY: Moffat

THE VARIANCE WAS GRANTED.

Board members took a 15-minute recess.

CASE NO. A-08-067

Applicant – David Perez
Lots 10 and 11, Block 31, NCB 8663
Zoned: "I-3" General Industrial District

The applicant is requesting a 25-foot variance from the minimum 30-foot rear setback required in "I-1" zoning districts when abutting residential uses or residential zoning districts, in order to build a structure 5 feet from the rear property line.

Jacob Floyd, Planner, presented background and staff's recommendation of denial on this case. He indicated 22 notices were mailed, none were returned in favor and 2 were returned in opposition and no response from Mission San Jose Neighborhood Association.

David Perez, owner, stated he wanted to withdraw his case.

CASE WAS WITHDRAWN BY THE APPLICANT.

CASE NO. A-08-068

Applicant – B & E Contractors, Inc.
Lot 8, Block 1, NCB 16672
13206 Monte Rio
Zoned: "R-6" Residential Single-Family District

The applicant is requesting for a 5-foot 5-inch variance from the minimum 20-foot setback required for garages, in order to keep an existing garage 14-feet 7 inches from the front property line.

Michael Farber, Planner, presented background and staff's recommendation of approval of these variances. He indicated that there were 28 notices mailed, 6 were returned in favor and none were returned in opposition and Valencia Neighborhood Association is in favor.

Carl Raymond, representative, stated he overlooked the plans of the garage and did not check one side of the garage. He also stated he did not mean to violate city codes. He further stated the garage looked good and surrounding neighbors did not have any opposition.

The following citizen(s) appeared to speak:

Rick Edenger, 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-08-068 closed.

MOTION

A motion was made by **Ms. Rogers**. Re Appeal No. **A-08-068**, variance application for a **5-foot 5-inch variance from the minimum 20-foot setback required for garages, in order to keep an existing garage 14-feet 7 inches from the front property line**, legal description **Lot 8, Block 1, NCB 16672**, applicant being **B & E Contractors, Inc.** I move that the Board of Adjustment grant the applicant's request regarding appeal No. **A-08-068**, 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. Such variance will not be contrary to the public interest in that **it will not affect the overall area**. Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **due to the irregular shaped lot on the corner of the culdesac and the unique front yard dimensions**. So that the spirit of the ordinance is observed and substantial justice is done in that **the garage could not reasonably meet the setback requirements for the front entry garage due to the unique shape of the property**. Such variance will not authorize the operation of a use other than uses specifically authorized for the districts in which the property for which the variance is sought is located in that **this is residential use**. Such variance will not substantially or permanently injure the district in which that variance is sought in that **it will not have a negative impact on any of the surrounding properties**. Such variance will not alter the essential character of the districts in which the variance is sought **in that the amount of the setback does not affect the surrounding properties on the culdesac**. Such variance will be in harmony with the spirit and purpose of this chapter in that **setback variance will affect the existing streetscape**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **the property is located on a cul-de-sac creating a problem for the placing of the garage**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established in for the specified district in that **the proposed variance will not weaken the**

overall zoning plan. The variance will not adversely affect the public health, safety or welfare of the public in that **no safety hazard will be created as a result of this setback.** The motion seconded by **Mr. Hardemon.**

AYES: Rogers, Hardemon, Camargo, Moffat, Ozuna, Alejos, Klein, Victor, Dutmer, Gallagher, Vallone

NAY: None

THE VARIANCE WAS GRANTED.

Sign Master Plans

All three Sign Master Plans were not heard due to David Simpson not being present.

Mr. Michael Taylor, Senior Planner with the Planning and Community Development Department, briefed board members on proposed Arts and Entertainment Districts.

Approval of the Minutes

Mr. Camargo made a motion to approve June 2, 2008 minutes as amended and all members voted in the affirmative.

Mr. Camargo made a motion to approve May 19, 2008 minutes **Mr.** and all members voted in the affirmative.

There being no further discussion, meeting adjourned at 4:05 p.m.

APPROVED BY: Michael R. Mulvey OR _____
Michael Gallagher, Chairman Paul Klein, Vice-Chair

DATE: _____

ATTESTED BY: Chris Looney DATE: 8-4-08
Christopher J. Looney
Development Services, Planning Manager