

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
June 2, 2008**

Members Present:

Michael Villyard
Michael Gallagher
Edward Hardemon
Helen Dutmer
George L. Alejos
Paul Klein
Mary Rogers
Gene Camargo
Peter Vallone

Staff:

Fernando De Leon, P.E. Assistant Director
Rudy Niño, Senior Planner
Michael Farber, Planner
Jacob Floyd, Planner
Paul Wendland, Asst. City Attorney

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Villyard, Chairman, called the meeting to order and called roll of the applicants for each case.

CASE NO. A-08-062

Applicant – Dean Design Group, PLLC
Lot 100, Block 2, NCB 11214
1803 Palo Alto Road
Zoned: “C-2” Commercial District

The applicant is requesting a 20-foot variance from the minimum 30-foot rear setback required in “C-2” zoning districts when abutting residential uses or residential zoning districts, in order to build a structure 10-feet from the rear property line.

Michael Farber, Planner, presented background and staff’s recommendation of denial on this case.

Michael Dean, representative, stated the reason for this request is because the buildable area is pretty much locked. He also stated a 30-foot minimum setback would only allow him a 3,900 sq ft of buildable area and stated he needs 5,280 sq feet to get the store, canopy and the distance between those two elements and the parking onto the site. He further stated if he could get a variance for a reduction of the rear setback to 10-feet he could have an available buildable area of 5,400 sq feet which would easily allow his concept. He stated he has some head-on parking that he would like to accomplish with some backup space which he will have to use angle parking.

The following citizen(s) appeared to speak:

Elsa Brown, 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-08-062 closed.

MOTION

A motion was made by **Mr. Gallagher**. Re Appeal Case No. **A-08-062** variance application for a **20-foot variance from the minimum 30-foot rear setback required in "C-2" zoning districts when abutting residential uses or residential zoning districts, in order to build a structure 10-feet from the rear property line**, the legal description being **Lot 100, Block 2, NCB 11214**, the address of **1803 Palo Alto Road**, the zoning is **"C-2" Commercial District**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-062** 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 owner of the property's representative has spoken to the neighbor next door who would be most affected and the neighbor has entered no objection to this structure**. Due to the special condition a literal enforcement of the ordinance would result in unnecessary hardship in that **because the way this land is situated there is little opportunity for this property to be improved unless this specific plan as we have seen today could be passed**. So that the spirit of the ordinance is observed and substantial justice is done in that **the owners have no other changes to the land seem to be sought**. 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 **there is no change presented to the use of this property that it is actually going to continue on as was the old business as it was there before**. Such variance will not substantially or permanently injure the districts in which that variance is sought in that **we have heard from this testimony that this actually an improvement to an area that needs improving**. Such variance will not alter the essential character of the districts in which the variance is sought in that **there are other similar businesses along this area**. Such variance will be in harmony with the spirit and purpose of this chapter in that **as we have heard from the representatives the owner today there attempting in great effort to try to provide a buffer between the property next door and themselves and including in that would be not only the security fence but also a small green space**. 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 **when we looked at this property we noticed that the actual private home at 114 Wainwright is a good it looks approximately 35 feet from the would be rear of the property in question**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **this is a specific variance for this specific property**. ~~The variance will not adversely affect the public health,~~

safety or welfare of the public in that **no traffic, pedestrian, or other safety concerns are involved in this project.** The motion seconded by **Mr. Hardemon.**

AYES: Gallagher, Hardemon, Vallone, Camargo, Dutmer, Klein, Alejos, Rogers, Villyard

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-063

Applicant – Jesus O. Hernandez
Lot 8, Block 11, NCB 14418
4923 Casa Espana
Zoned: “R-6” Residential Single-Family District

The applicant is requesting for a 1-foot 10-inch variance from the requirement that open fences in front yards shall not exceed 4 feet in height, in order to keep an existing 5-foot 10-inch tall open fence in the front yard.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of this variance.

Jesus O. Hernandez, owner, stated the reason for this request is to protect his wife and two daughters. He also stated there are six sex offenders living in his area. He further stated that other neighbors in his area do not have fences because most of them are not home owners. He also stated he hired a fence contractor to put up the fences. The fence contractor pulled the permit for a 4-foot fence and he mentioned to the homeowner that the 5-foot 10-inch fence would not be a problem.

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-08-063 closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that the Board of Adjustment in Case No. **A-08-063**, applicant being **Jesus Hernandez**, on property that is legally described as **Lot 8, Block 11, NCB 14418**, also known as **4923 Casa Espana Street**, be granted the request variance **to keep an existing fence on the above described property.** The variance will not be contrary to the public interest in that **the fact that this fence was constructed some five years ago and is just now come up for consideration of a variance even though the violation of the six foot high fence was detected some two years ago.** The variance will not authorize the operation of a uses other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that ~~the property is being used as a single family residence with fencing which is permitted to certain heights and for that this~~

variance is being requested to allow the owner to maintain that which is already been constructed. Such variance will not substantially or permanently injure the district in which that variance is sought in that **the design of fencing that has been erected and has been brought before us is a pleasant design which is an improvement to the area.** Such variance will not alter the essential character of the districts in which the variance is sought in that **the new facility will enhance the surrounding area.** Such variance will be in harmony with the spirit and purpose of this chapter in that **the proposed facility will promote welfare in the community and offer protection to the homeowner one of which is away from the residence for sometimes long periods of time.** 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 **the applicant has indicated that there is a large number of offenders of one sort or the other in the immediate area and it was felt by the applicant that this type of fencing to this height was necessary to offer security to the homeowner.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **this will not weaken the overall zoning plan.** The variance will not adversely affect the public health, safety or welfare of the public in that **the structure will not create a safety or traffic hazard.** The motion seconded by Ms. Dutmer.

AYES: Camargo, Dutmer, Klein, Vallone, Rogers, Alejos, Hardemon, Gallagher, Villyard

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-065

Applicant – Robert Gutierrez
1.631 acres out of NCB 14867
Zoned: “C-3” General Commercial District

The applicant is requesting a 15-foot variance from the minimum 30-foot rear setback required in “C-3” zoning districts when abutting residential uses or residential zoning districts, in order to build a structure 15-feet from the rear property line.

Michael Farber, Planner, presented background and staff’s recommendation of approval on this case. He indicated 8 notices were mailed, 3 were returned in favor and 0 were returned in opposition.

Alejandro Gomez, representative, stated the owner is requesting this variance because everything around this property is being used for commercial. He also stated it is next to a highway.

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-08-065 closed.

MOTION

A motion was made by **Mr. Klein**. Re Appeal Case No. **A-08-065**, the applicant is **Robert Gutierrez**, the owner **Dominion Building Systems, Inc.**, subject property is described as **1.631 acres out of NCB 14867, the address is not applicable at this point, zoning is "C-3" General Commercial District**, this motion is for a **15-foot variance from the minimum 30-foot rear setback required in "C-3" zoning districts when abutting residential uses or residential zoning districts, in order to build a structure 15-feet from the rear property line**. I move that the Board of Adjustment grant the application in this request for a variance of 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 "R-6" zoning which is driving the need for the 30-foot setback is in fact an automotive dealership and acquired the "R-6" zoning through incorporation into the City of San Antonio. It is not used for "R-6", it is not intended to be "R-6", and will probably never be "R-6**. Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the "R-6" zoning which is driving this particular case is not applicable. The immediate property surrounding this particular applicant's request is all "C-3" Commercial zoning**. So that the spirit of the ordinance is observed and substantial justice is done in that **no other changes to the land are sought by this applicant with respect to this project**. 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 **the property is zoned "C-3". The proposed development is in fact "C-3" and keeping with the dedicated zoning**. Such variance will not substantially or permanently injure the district in which the variance is sought in that **this is a commercial area along Hwy 16 or Bandera Rd. This is part of a new development which will further enhance and is in keeping with the development structure along Bandera Rd**. Such variance will not alter the essential character of the districts in which the variance is sought in that **this area is in fact commercial**. Such variance will be in harmony with the spirit and purpose of this chapter in that **neighbors in the immediate area are not impacted and the driving force behind this request is due to incorporation of the particular land in question and after some period of time it reverted to "R-6" which is not the use of the property. It is in fact being used as commercial. That's the adjoining neighbor**. 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 **this property's designation was gained through the incorporation back in the 1980s and that was not done by the property owner**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for specified district in that **the project will be used for commercial use and will receive all required permits**. The variance will not adversely affect the public health, safety or welfare of the public in that **it will comply with all necessary and appropriate standards of the city of San Antonio**. The motion seconded by **Ms. Dutmer**.

AYES: Klein, Dutmer, Vallone, Gallagher, Hardemon, Rogers, Alejos, Camargo, Villyard

NAY: None

THE VARIANCE WAS GRANTED.

Board members took a 10-minute recess.

Nominations for Office of Chair and Vice-Chair

The newly appointed Chair and Vice Chair will take their seat effective at the June 19, 2008 meeting which will be for two years. All members voted in favor.

Ms. Dutmer nominated Mr. Gallagher for the office of Chair Ms. Rogers seconded the motion. All members voted in affirmative

Mr. Camargo nominated Mr. Klein to the office of Vice Chair and Mr. Hardemon seconded the motion. All members voted in the affirmative

Postpone of July 7, 2008 Regularly Scheduled Meeting

Ms. Dutmer made a motion to cancel the July 7, 2008 regularly scheduled meeting and seconded by Mr. Vallone. All members voted in affirmative.



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

APPROVED BY: _____ OR Michael R. Gallagher
D. Mike Villyard, Chairman Michael Gallagher, Vice-Chair

DATE: June 16, 2008

ATTESTED BY: Christopher J. Looney DATE: 6-16-08
Christopher J. Looney
Development Services, Planning Manager