

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
June 3, 2013**

Members Present:

Michael Gallagher
Andrew Ozuna
Frank Quijano
Edward Hardemon
Helen Dutmer
George Britton
Jesse Zuniga
Jesse
Mary Rogers
John Kuderer
Gene Camargo

Staff:

John Jacks, Assistant Director
Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, 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.

CASE NO. A-13-037

Applicant – Francisco B Baez
Los 1, 2, 3, 32, 33, & 34, Block 15, NCB 7414
500 Chipinque
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting 1) an 8-foot sign height variance from the 8-foot maximum sign height to allow two 16-foot high freestanding signs; 2) a 14 square-foot size variance from the 36 square-foot maximum sign area to allow two freestanding signs 50 square feet in area; 3) a 9-foot setback variance from the 15-foot required setback from public rights-of-way to allow a freestanding sign 6 feet from the public right-of-way of Camilo Street; and 4) a 2-foot setback variance from the 15-foot required setback from public rights-of-way to allow a freestanding sign 13 feet from the public right-of-way of Chipinque Street at a nonresidential use in a residential zoning district along a local street.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the height variance and denial of the setbacks and area variances. He indicated 43 notices were mailed, 2 were returned in favor and 2 were returned in opposition and no response from the Southwest Community Association.

San Juana Baez, applicant, stated the variances would prevent vandalism to the sign. She also stated the sign would make it easily accessible to the public. She further stated the sign is only viewable from one side of the street.

Romero Morales, representative, stated the main reason for the variance of the sign would be for the citizens to view the sign. He also stated the sign it is difficult to locate the church with the current location of the sign.

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-13-038 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. A-13-037, variance application for **Francisco B. Baez**, subject property is **Lots 1, 2, 3, 32, 33, & 34, Block 15, NCB 7414**, the address is **500 Chipinque**, the applicant is **Francisco B. Baez**. The variance request that I am proposing is for all four of the variances that that applicant has brought before us. The requests are for **1) an 8-foot sign height variance from the 8-foot maximum sign height to allow two 16-foot high freestanding signs at a nonresidential use in a residential zoning district along a local street; 2) a 14 square-foot size variance from the 36 square-foot maximum sign area to allow two freestanding signs 50 square feet in area at a nonresidential use in a residential zoning district along a local street; 3) a 9-foot setback variance from the 15-foot required setback from public rights-of-way to allow a freestanding sign 6 feet from the public right-of-way of Camilo Street at a nonresidential use in a residential zoning district along a local street; 4) a 2-foot setback variance from the 15-foot required setback from public rights-of-way to allow a freestanding sign 13 feet from the public right-of-way of Chipinque Street at a nonresidential use in a residential zoning district along a local street.** I move that the Board of Adjustment grant the applicant’s request regarding appeals numbers one thru four, 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. **I would also like to enter into the testimony of the plot plan as we see today, identifying the specific locations of the proposed signs.** Specifically, we find that such variance will not be contrary to the public interest in that **the applicant has brought forth to us both testimony and a petition with over twelve surrounding property owners who are in support of the various variance request** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the locations of the sign have been required to be moved inward as proposed would provide a safety issue from traffic not being able to see the signs and react timely enough to get into the parking lot. Also the locations of the one sign on the parking lot would create a safety issue in terms of cars trying to navigate the parking lot with a sign pole in the middle of the parking lot.** The spirit of the ordinance is observed and substantial justice is done in that **the granting of the applicant with a special privilege would not provide a special privilege**

not enjoyed by others similarly situated or potentially similarly situated in that the testimony that we have provided show that their signage is in place. The hardship is that the signs have been tagged before. The applicant is merely trying to move the signs out of the way of vandals and provide easier visibility for the public to view 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 existing zoning for the property which is "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District will remain. There is no proposed changes to the existing use zoning of the property.** 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 merely requesting the additional sign height and the setbacks to move the property out of the way of vandals and provide visibility of the signs from the community and the adjoining roadways.**" The motion was seconded by Mr. Hardemon.

AYES: Ozuna, Hardemon, Rogers, Quijano, Kuderer, Dutmer, Camargo, Britton, Zuniga, Smith, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-043

Applicant – Shawn Hater, Rio Perla

Remaining portion of Lot 1, Block 1, NCB 14164

312 Peal Parkway

Zoned: "IDZ RIO-2 AHOD" Infill Development Zone River Improvement Overlay Airport Hazard Overlay Districts

The applicant is requesting a 6-foot building height variance from the 120-foot/10 story height limitation in the RIO-2 zone to allow a building 126 feet/10 stories in height.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 12 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Tobin Hill Community Association.

Sean Hatter, representative, stated they want to accommodate live/work units on the first floor in order to accommodate the residential portion of the mixed commercial use. He also stated they want to add a mezzanine which would require an additional 6-foot.

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-13-043 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-13-043**, a request for a **6-foot building height variance from the 120-foot/10 story height limitation in the RIO-2 zone to allow a building 126 feet/10 stories in height**, subject property description is the **remaining Portion of Lot 1, Block 1, NCB 14164**, situated at **312 Pearl Parkway**, the applicant is **Rio Perla Properties, LP**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-043**, application for a sign 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. The variance is not contrary to the public interest in that **building height limitations in the “RIO” overlay are designed to promote similarity of building heights along the river for visual continuity**. The overall character of the Pearl Brewery development is an urban, pedestrian oriented community of retail, multi-family residential, and live/work units. The historic Pearl Brewery buildings, including the smokestack (now a historic design element) range in height from 114 feet to 175 feet. Because of the existing building heights, and the overall character and design of the development, an extra six feet of building height will not be contrary to the public interest and will have the potential to enhance the development. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant is requesting the additional height in order to allow for live/work units on the ground floor of the building, which is consistent with the pedestrian oriented character of the development**. Additional ceiling height is usually necessary to accommodate these types of uses, to allow for ground level commercial and second floor residential. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done in that **as the “RIO” overlay is designed to promote similarity of building heights and scale along the river, allowing the extra height will be consistent given the height of the existing historic buildings of the Pearl Brewery complex**. Additionally, the building, as proposed, will be only 10 stories even with the additional height, which is consistent with the standards of the overlay district. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought 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 “IDZ” or “RIO-2” districts**. 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 requested variance will not injure the appropriate use of adjacent conforming properties but rather the variance would likely have the effect of enhancing the quality of the development by contributing to and enhancing the pedestrian oriented development already occurring**. 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 unique circumstances existing on the property are due to the historic nature of the site, and the desire to create an urban, pedestrian oriented experience which is consistent with the purposes of the “RIO-2” district**.” The motion was seconded by **Hardemon**.

AYES: Quijano, Hardemon, Camargo, Dutmer, Kuderer, Britton, Zuniga, Smith, Rogers, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

Board members recessed for five minutes.

CASE NO. A-13-044

Applicant – Aetna Sign Group
Lot 20, Block 16, NCB 823
607 Camden St

Zoned: “FBZ T5-1 & T4-1 AHOD” Form-Based Zone Development, River North Transects, Airport Hazard Overlay District

The applicant is requesting 1) a 4 square-foot variance from the 8 square-foot maximum size allowed for a monument sign to allow a 12 square foot monument sign, 2) a 14-foot 9-inch variance from the 12-foot maximum elevation allowed for a band sign to allow a band sign 26-feet 9-inches above ground level and 3) a 24 square-foot variance from the 6 square-foot maximum size allowed for a plaque sign to allow a 30 square-foot plaque sign.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of denial of the larger monument sign variance, denial of the second band sign variance and approval of the logo sign variance. She indicated 22 notices were mailed, none were returned in favor and none were returned in opposition.

Larry Gottsman, representative, stated about forty percent of their patients are from outside the San Antonio area. He also stated several trees block the sign that is viewable by the ambulance. He further stated the sign would cover some of the decorative design under the windows and is not aesthetically pleasing.

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-13-044 closed.

MOTION

A motion was made by **Ms. Rogers**. “Re Appeal No. **A-13-044** variance application for **1) a 4 square-foot variance from the 8 square-foot maximum size allowed for a monument sign to allow a 12 square-foot monument sign; 2) a 14-foot 9-inch variance from the 12-foot maximum elevation allowed for a band sign to allow a band sign 26-feet 9-inches above ground level; and 3) a 24 square-foot variance from the 6 square-foot maximum size**

allowed for a plaque sign to allow a 30 square-foot plaque (logo) sign, this for Aetna Sign Group, owner GABLG, LLC, 607 Camden St., Lot 20, Block 16, NCB 823. I move that the Board of Adjustment grant the applicant's request as stated above, 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 **there is no opposition. The River North Master Plan was created to define a clear vision and policy direction for the future of River North and to define a clear path to achieving that vision. The central notion of this Master Plan is a unified urban design that employs building and landscape. This signage is a more aesthetic characteristic and much more visible and as much as this entire building was built in accordance with the city's new policy of setting the buildings forward and having windows at a street level with parking in the rear.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it would require that the applicant likely eliminate the band sign and the plaque sign which would not be in keeping with the visibility for people approaching the building from a distance. The way the buildings along the street are situated, it would be more difficult to see. There is no architecturally acceptable location between the first and second stories on this end of the front façade for the proposed band sign. Typically, the architect will design future sign locations into the original layout of the building. The plaque (logo) sign provisions literally require a small rectangle, not similar at all to the sign requested by the applicant. However, the only other wall sign envisioned in the code was specifically required to be painted onto the wall. The applicant is requesting a variance to allow a logo on the rear façade, just to provide customers arriving in the ambulance assurances that they are arriving at an appropriate location.** The spirit of the ordinance is observed and substantial justice is done in that **various zoning court cases have provided guidance as to the "spirit" of the ordinance as contrasted with the "strict letter" of the law. In observing the spirit, we are weighing the competing interests of the property owner. The spirit of the River North Master Plan is a unified urban design and these buildings the built environment. Incremental deviations from the design standards crafted to guide development of the area. These do not detract from this vision of the building.** 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 "FBZD T5-1 & T4-1 AHOD" 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 requested variances will allow signage that does and is oriented in favor of automobile traffic and that is ambulances arriving would be able to see it more clearly. So therefore the proposed signage will fulfill basic functions of identifying the tenant and way-finding and it will contribute to the character of the neighborhood and help to define the role of spaces (street, sidewalk, private space, etc.) in the built environment. The requested variance for the logo sign will not injure the adjacent property or alter the character of the district because it is hidden from the public's view.** 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 described by the applicant are that the property is in the River North Master Plan area, with pedestrian oriented sign regulations. These requirements are generic to all properties within the form-based zoning district. Many of these can also claim auto-oriented clientele. The form-based code is young and it will take time to develop and we feel that this particular request is in keeping with all the requirements of the city. Incorporate those specific locations of the signage as requested.** The motion was seconded by Ms. Dutmer.

AYES: Rogers, Camargo, Hardemon, Kuderer, Quijano, Zuniga, Dutmer, Ozuna, Britton, Smith, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-045

Applicant – George M Ryan, Texas Non Advertising Co.
Lo 23, Block 10, NCB 10506
408 Bushick Street
Zoned: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting 1) a variance to allow two freestanding signs on a platted lot with one street frontage where only one freestanding sign is permitted, 2) a 23-foot, 6-inch variance from the 16-foot maximum sign height to allow a freestanding sign 39 feet, 6 inches high along a local street, and 3) a 163 square-foot variance from the 75 square-foot maximum sign size to allow a 238 square-foot freestanding sign along a local street.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variances. He indicated 26 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Highland Hills Neighborhood Association.

Andy Perez, Sign Inspector, spoke regarding the classification of Bushick Street and the variance provision in Chapter 28 related to elimination of distinctions between street classifications. He also mentioned that a Sign Master Plan could be discussed with the applicant and surrounding property owners.

George Ryan, representative, stated he favors a continuance until further notice.

The Chair declared the public hearing of Case No. A-13-045 closed and asked for a member to make a motion.

MOTION

A motion was made by **Mr. Camargo**. “I motion that we **continue Case A-13-045 in order for the applicant and city staff to meet and discuss that particular provision that was just cited.**”

In addition to that given some thought that when that regulation was written the thought and mind was that this sign was located adjacent to a right of way. When you look at the plot plan, this sign is quite a distance from major arterial and collector streets. I don't think that the intent of that particular provision was intended to apply to a situation such as that. So city staff if you can hear, take that into consideration when they meet with the applicant." The motion was seconded by **Mr. Camargo**.

AYES: Rogers, Camargo, Hardemon, Kuderer, Quijano, Zuniga, Dutmer, Ozuna, Britton, Smith, Gallagher

NAYS: None

THE MOTION PASSES.

CASE NO. A-13-046

Applicant – Soul Harvest Church
Lo 28, Block 1, NCB 15025
5800 Culebra
Zoned: "C-3 AHOD" Commercial Airport Hazard Overlay District

The applicant is requesting a 40-foot variance from the minimum 150-foot spacing between free-standing signs to allow a new free-standing sign 110-feet from an existing sign.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 21 notices were mailed, two were returned in favor and one was returned in opposition.

Isaac Maldonado, representative, stated the request is simply for space. He also stated the church does not have a way to identify their services. He further stated this is not a commercial business and do not intend to attract people.

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-13-045 closed.

MOTION

A motion was made by **Mr. Quijano**. "Re Appeal No. **A-13-046** variance application for a **40-foot variance from the minimum 150-foot spacing required between free-standing signs on a single parcel to allow a new free-standing sign 110-feet from an existing sign**, subject property description is **Lot 28, Block 1, NCB 15025**, the applicant is **The Pal Foundation**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-046**, application for a sign 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 board at minimum that number one or number two is applicable or both in order to approve this sign variance. The variance is necessary because 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. A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. **This is a case that demonstrates the philosophy behind creating a variance provision in the sign code. With the existing cross categorized as a sign, the applicant is restricted to simply communicating that the building's use is religious in nature. This message is not clear or adequate; it leaves many necessary details absent. The patron is not informed as to the type of religious community or the time of service, both essential to the success of the church. Strict enforcement prohibits any reasonable opportunity to provide adequate signage.** After seeking one 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. **In some situations, having two signs may be a special privilege. Indeed, some businesses have walls signs, window signs, directional signs and a pole sign, overwhelming the customer with their logo, motto, sales and the like. In this case though, the church used volunteer labor and materials to install the cross as a rudimentary "sign". In the meantime, they began a capital campaign to collect enough money to install a professional sign. Considering similar cases, one can easily visualize churches that also have statues or other religious symbols as an integral part of their site, eliminating the potential privilege.** Granting the variance will not have a substantially adverse impact on neighboring properties. **Granting the variance to allow the installation of a professional sign will potentially improve the business climate for neighboring properties. Signage helps establish a professional image for any business and the same can be said for a worship community. The proposed signage is lower than the maximum height allowed in the district and smaller in sign area as well.** Granting the variance will not substantially conflict with the stated purposes of this article. **The legislative purpose of the adopted sign regulations is to provide minimum standards to protect the general public by regulating the design, construction, location, use and maintenance of outdoor advertising signs. In this case, the regulation regarding separation is meant to reduce clutter and distractions. If the variance is granted, the sign will be 110-feet away from the existing cross, 40-feet closer than the ordinance requirement. However, because the cross has no lettering, external lighting or other distracting elements, granting the variance will not substantially conflict with the purpose of the sign code."** The motion was seconded by Mrs. Dutmer.

AYES: Quijano, Dutmer, Rogers, Hardemon, Camargo, Britton, Kuderer, Smith, Zuniga, Ozuna, Gallagher

NAYS: None

THE VARIANCES WERE GRANTED.

Approval of the Minutes

The June 3, 2013 minutes were approved with all members voting in the affirmative with Ms. Dutmer abstaining from the approval of the minutes.

There being no further discussion, meeting adjourned at 3:04 pm.

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

DATE: 6-17-13

ATTESTED BY: J.P.J. DATE: 6-17-13
Executive Secretary