

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
June 4, 2012**

Members Present:

Michael Gallagher  
Andrew Ozuna  
Edward Hardemon  
Helen Dutmer  
Jesse Zuniga  
Mary Rogers  
Mike Villyard  
Gene Camargo  
Henry Rodriguez  
Maria Cruz  
Henry Atkinson

Staff:

Andrew Spurgin, Planning Manager  
Matthew Taylor, Senior Planner  
Margaret Pahl, Senior Planner  
Trenton Robertson, Planner  
Tony Felts, Planner  
James Cramer, Intern  
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-12-039**

Applicant – Thomas W Troll  
Lot P-1A, NCB, 17600  
1901 Encino Rio  
Zoned: “R-6 ERZD MLOD” Residential Single-Family Edwards Recharge Zone Military Lighting Overlay District

The applicant is requesting a 2-foot variance from the 6-foot maximum fence height standard in the rear yard, in order to allow an 8-foot tall fence in the rear yard.

Trenton Robertson, Planner, presented background and staff’s recommendation denial of the variance request. He indicated 48 notices were mailed, 4 were returned in favor and 4 were returned in opposition.

Thomas Troll, representative, stated the purpose of the requested variance is for security. He also stated trespassers at night climb the fence to utilize their pool.

**The following citizens appeared to speak:**

Brenda Weil, citizen, spoke in opposition.

Phil Delgado, 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-12-039 closed.

**MOTION**

The motion was made by **Mr. Ozuna**. Re appeal No. **A-12-039**, variance application for **1901 Encino Rio**, subject property description is **Lot P-1A, NCB 17600**, situated again at **1901 Encino Rio**, the variance request is for a **2-foot variance from the 6-foot maximum fence height standard in the rear yard, in order to allow an 8-foot tall fence in the rear yard**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-039**, 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 requested fence height variance will not adversely impact the well-being of the general public as it will not obstruct visibility for impending traffic. Further the applicant provided testimony that the 8-foot fence will provide deterrence to the public using the swimming pool and facilities against hours when it is closed and provide a safety concern**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the maximum fence height standard will require the applicant to maintain the height of 6-feet for the northwest 290-feet of fence. The subject property is uniquely influenced by special conditions of the pool. The applicant has provided testimony about police reports that have been issued for people trespassing into the pool and merely trying to provide additional deterrence to those trespassers. The 2-foot height addition would act as an added protection needed to safeguard from trespassers and vandalism, more so the 6-foot condition**. The spirit of the ordinance is observed and substantial justice is done in that **the requested fence variance height will be in keeping with the spirit of the ordinance in that the request is merely replacing an existing 8-foot fence which condition has been precedent for the past twenty or thirty years**. 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 "R-6" Single-Family Residence**. 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 fence height variance will not adversely impact the adjacent conforming properties. The subject property is surrounded by single-family residences. The recreation area is designated for the benefit of those properties within the Encino Park HOA. The properties in the surrounding area will be able to continue to use their property for single-family residential. The requested variance will not substantially injure the**

**appropriate use of the adjacent conforming properties.** 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 requested variance is due to trespassing, vandalism and privacy issues. The requested 8-foot fence provides deterrent to vandalism. Also provides a barrier for toys and such from the pool to flying over to the neighbors' yards and is a precautionary safety issue.** The motion was seconded by Ms. Dutmer

**AYES: Rodriguez, Dutmer, Gallagher**

**NAY: Ozuna, Rogers, Hardemon, Villyard, Atkinson, Camargo, Zuniga, Cruz**

**THE MOTION FAILS.**

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**CASE NO. A-12-047**

Applicant – Site Enhancement Services

Lot 8, Block 1, NCB 17172

1381 Southwest Loop 410

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

The applicant is requesting **1)** a 10-foot variance from the required 10-foot front set back to allow a 0-foot front setback for an on-premise pylon sign and **2)** an 11-foot, 10-inch variance from the 50-foot maximum expressway height standard to allow a 61-foot, 10-inch on-premise pylon sign.

Matthew Taylor, Senior Planner, presented background and staff’s recommendation denial of the variance request. He indicated 3 notices were mailed, none were returned in favor and none were returned in opposition.

Mike Demonair, representative, stated they are looking into amending the variance to a 1-foot 9-inch setback. He also stated they want to replace the existing cabinet because the current one is from the eighties and it is unsafe. He further stated the inside of the cabinet has deteriorated and creates a dangerous hazard.

**The 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-12-047 closed.

**MOTION**

The motion was made by **Mr. Camargo**. I would move that in case **A-12-047**, applicant being **Site Enhancement Services**, on property at **1381 Southwest Loop 410**, legally described as **Lot 8, Block 1, NCB 17172**, be granted a variance for an **8-foot 3-inch setback in an area where a 10-foot setback is required and an 11-foot, 10-inch variance from the 50-foot maximum**

expressway height standard to allow a 61-foot, 10-inch on this sign be approved. The applicant has clearly stated in their presentation the purpose stated in the code in reference to the nonconforming structures. It has been stated by the applicant the existing cabinet is cottage cheese and the engineer would not even want to touch it because of the danger of its construction. It is my feeling that when such situations occur on nonconforming structures, that reconstruction whether the sign or structure is meeting the intent of the ordinance, to bring into compliance regulations that exist on the property. Secondly, recently across the street, across the freeway there has been new construction that has been built under the current regulations, the IHOP and the Golden Wok. Those properties along the same portion of a freeway with same type of elevation have complied with the sign regulations that currently exist. Little by little along this portion of 410, that some signage that exists was erected prior to sign regulations in existence being brought into compliance that is thought to be comfortable and acceptable in this particular area. The motion was seconded by Ms. Rogers.

Mr. Camargo withdrew his motion.

#### SUBSTITUTE MOTION

The motion was made by Mr. Ozuna. Re Appeal No A-12-047, variance application for GMRI, Inc., location is 1381 Southwest Loop 410, Lot 8, Block 1, NCB 17172, situated at 1381 Southwest Loop 410, the applicant's request is for 1) an 8-foot 3-inch variance from the required 10-foot front setback to allow a 0-foot front setback for an on-premise pylon sign, and 2) an 11-foot, 10-inch variance from the 50-foot maximum expressway height standard to allow a 61-foot, 10-inch on-premise pylon sign. Specifically I find that the variance is not contrary to the public interest in that the applicant has provided testimony to us today and is showing the proponderous signs along that stretch of 410 are exceeding the height that is before the board today. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the variance request is to allow the most economically use of the sign and also a safety issue. The applicant provided testimony to us today that the inside the sign are such that to do a mere face replacement would put the community in danger, or the possibility of the sign collapsing. Also the requested change to the sign are not material in this board member's view in that the literal enforcement of the ordinance would provide a hardship in not being able that they would have comply with the existing sign ordinances. The sign would not provide the communication with the traveling public to identify quickly the location of Red Lobster and provide an ongoing use of commerce of the property which the property has enjoyed. The spirit of the ordinance is observed and substantial justice is done in that the variance request is such that it would allow the property to be used in the most economical sense. After seeking one or more of the findings of fact the board finds that granting the variance does not provide the applicant with a special privilege not enjoyed by other similarly situated or potentially similarly situated. Again the applicant provided the testimony and picture evidence of the existing properties along the stretch of 410 and exceeded the height that the applicant is requesting today. The applicant request will not have a substantially adverse impact on neighboring properties in such that testimony has been presented again that notifications were given to adjoining property owners and none were received in opposition to the requested variances. Also the adjoining properties

enjoy the use of the height that the applicant is merely requesting to enjoy the same favors the adjoining properties have. The granting of the variance will not substantially conflict with the stated purposes of this article in that **staff recognizes the importance of advertising the business community and off-premise advertising exists in securing the long term liability of the given business recognizing that the Red Lobster has tried to change the type phase and to keep the business viable. For all those reasons we know about the economic impact that the Red Lobster has.** The motion was seconded by **Mr. Hardemon.**

**AYES: Ozuna, Hardemon, Atkinson, Dutmer, Rogers, Rodriguez, Zuniga, Cruz, Gallagher**

**NAY: Villyard, Camargo**

**THE VARIANCE WAS GRANTED.**

**Board members recessed for ten minutes.**

**CASE NO. A-12-044**

Applicant – Carlos & Sylvia Dominguez  
Lot N 47' of E 75' of 4, Block 3, NCB 8637  
347 Tesla Drive  
Zoned: "R-6 AHOD" Commercial District

The applicant is requesting a 3-foot variance to allow a 6-foot solid wood fence in the front yard in the "C-2" Commercial District.

Trenton Robertson, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 25 notices were mailed, 4 were returned in favor and none were returned in opposition and the Memorial Heights Neighborhood Association is in favor.

Carlos Dominguez, applicant, stated originally there was a 4-foot chain link fence. He also stated there have been numerous break-ins in their home. He further stated the requested fence height would provide security and protection for his family.

**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-12-044 closed.

**MOTION**

The motion was made by **Mr. Rodriguez.** Case **A-12-044**, the applicant being **Carlos & Sylvia Dominguez of 347 Tesla Drive**, legal description **Lot N 47' of E 75' of 4, Block 3, NCB 8637**, the zoning is **"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District.** I move that we approve this exception because contrary it would create a hardship to this family.

The special exception will be in harmony with the spirit and purpose of the chapter in that **the special exception will be in harmony with the spirit and purpose of Chapter 35, UDC. The proposed fence meets the height, width, design and all other requirements established in Section 35-399.04(a) of the UDC.** The public welfare and convenience will be substantially served in that **the public welfare and convenience will be substantially granted by allowing the applicant to securely protect their property.** The neighboring property will not be substantially injured by such proposed use in that **the neighboring properties will not be substantially injured by granting the special exception. The design of the fence will not encroach on the neighboring properties or cause any undo hardship.** 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 **there are various properties throughout the neighborhood with similar ornamental-iron front yard fences. By granting the applicant's request for a special exception, the proposed fence and the encompassing property will maintain the harmony and character of the surrounding neighborhood. As a matter of fact more and more people are going with this type of fence, especially in that area, they are starting to pop up all over the place and they do provide for a safer environment for the residents. Like I said before I've scaled many of fences and this one is a hard to scale because there is nowhere to step on it.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the requested special exception will not weaken the general purpose of the "R-6" Residential Single-Family zoning district. The fence, as proposed, will comply with the additional standards set forth in Section 35-399.04(a) of the UDC.** The motion was seconded by Ms. Cruz.

**AYES: Rodriguez, Cruz, Atkinson, Villyard, Zuniga, Hardemon, Rogers, Dutmer, Camargo, Ozuna, Gallagher**

**NAY: None**

**THE VARIANCE WAS GRANTED.**

**Mr. Villyard departed the board room.**

**CASE NO. A-12-045**

Applicant – Brown and Ortiz, PC

1.78 acres out of NCB 11186

7800 block of IH-35 South

Zoned: "C-3 AHOD" Commercial Airport Hazard Overlay District

The applicant is requesting a variance from the required 25-foot Type D Bufferyard between the subject property and a neighboring zoning "I-2 AHOD" Heavy Industrial Airport Hazard Overlay District in order to construct a medical office with parking within the required buffer.

Tony Felts, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 3 notices were mailed, 2 were returned in favor and none were returned in opposition.

Daniel Ortiz, representative, stated a buffer will still be required on the industrial side of the property. He also stated the property is a commercial use next to a commercial use that is zoned industrial. He further stated there will be landscaping along the frontage IH-35.

**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-12-045 closed.

**MOTION**

The motion was made by **Mr. Ozuna**. Re appeal No. **A-12-045**, variance application for **7800 block of IH-35 South, 1.78 acres out of NCB 11186**, again situated at the **7800 block of IH-35 South**, the applicant is **Brown and Ortiz, PC**, and the owner is **MTB Properties, Ltd. And WOB Properties, Ltd.**, the applicant's request is for a **variance from the required 25-foot Type D Bufferyard between the subject property and a neighboring property zoned "I-2 AHOD" Heavy Industrial Airport Hazard Overlay District in order to construct a medical office with parking within the required buffer**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-045**, 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 **requested variance would waive the requirement of a Type D Bufferyard. Buffers are intended to shield less intense land uses from heavier land uses by reducing visual clutter and distraction. Buffers allow for increased enjoyment of open air, space, and light of adjacent properties and serve to break-up vast areas of impervious cover, curtail urban heat island, and reduce stormwater impacts. The applicant has provided testimony to us and staff has concurred that the adjoining property zoning of "I-2" is the heavy use in realty that is necessary to be screened against this lesser intense use of which the applicant's property is zoned. The burden and relief for that situation should be on the adjoining "I-2" versus the subject property. What the variance request is merely trying to do is to provide equity within the code to allow the development of the subject property in a use that is consistent with land uses along that stretch along IH-35 South. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the subject property is an unplatted 236 feet wide by 385 feet deep parcel. The proposed site plan depicts a 20,000 square-foot medical clinic which requires a minimum of 50 parking spaces but more importantly the proposed tenant for the subject property is mandated or requiring the parking spaces so that they can effectively carry out their necessary use of a medical clinic which would serve the entire community through medical services. If the literal enforcement were to be imposed upon this property the subject development could not move forward or would be impacted as such that it could not serve the community as proposed. The hardship again should be borne by adjoining property owner and not the subject project. The spirit of the ordinance is observed and substantial justice is done in that justice and the spirit of the ordinance typically focus on the equal**

**application of the rules to all property owners facing the same type of situation. Testimony by staff presented to us would create a situation where you would ultimately have a 50-foot buffer between the two property owners which conditions do not exist anywhere else on the city. Clearly that is an enforcement that we are not trying to impose on these two properties owners here. 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 “C-3” General Commercial base 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 adjoining property would continue to enjoy the automobile dealership use that currently exists and will not be impacted by the variance. 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 I can’t think of no other example of case that more deserves a variance on the subject in that the existing code does not address the situation where you have a more intense or lesser intense zoning requiring the burden of a 25-foot variance for buffer where by the industrial heavy use is not buffered at this time. Due to those unique circumstances I support the motion. The motion was seconded by Mr. Camargo.**

**AYES: Ozuna, Rodriguez, Camargo, Dutmer, Rogers, Hardemon, Zuniga, Atkinson, Cruz, Gallagher**

**NAY: None**

**THE VARIANCE WAS GRANTED.**

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**CASE NO. A-12-051**

Applicant – James Hogarth  
Lot 2 Block A NCB 624  
506 Dakota Street

Zoned: “RM-4 AHOD” Mixed Residential Airport Hazard Overlay District

The applicant is requesting a special exception to erect a 6-foot Ornamental-Iron Front Yard fence in the “RM-4 AHOD” Mixed Residential Airport Hazard Overlay District.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested special exception. He indicated 40 notices were mailed, 2 were returned in favor and none were returned in opposition and the Alamodome Gardens Neighborhood Association is in support.

Theresa Hogarth, applicant, stated the home had a partial fence when they purchased. She further stated there have vandalism and burglaries in the area. She further stated the fence will provide security, safety, and enhance the appearance of the neighborhood.

**The following citizens appeared to speak:**

Carrie Iverson, 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-12-051 closed.

**MOTION**

A motion was made by **Mr. Hardemon**. Case **A-12-051**, applicant is **James Hogarth**, address is **506 Dakota Street**, legal description is **Lot 2, Block A, NCB 624**, zoning is **“RM-4 AHOD” Mixed Residential Airport Hazard Overlay District**. I move that the special exception be approved by this board in order for Mr. and Mrs. Hogarth to be able to enjoy the property. The special exception will be in harmony with the spirit and purpose of the chapter in that **the requested plan, meeting all of the design requirements established in Section 35-399.04 of the UDC, is in harmony with the spirit and purpose of the chapter**. The public welfare and convenience will be substantially served in that **the public welfare and convenience will be substantially served by allowing the applicant to securely protect the property from vandalism, trespassing, and further neglect**. Additionally, any redevelopment would likely be beneficial for the neighborhood as a whole as the applicant has so stated that they want to try and improve the neighborhood, bring new families into the community. The neighboring property will not be substantially injured by such proposed use in that **the neighboring properties will not be substantially injured by granting the special exception**. The design of the fence will not encroach on the neighboring properties or cause any undo hardship. The abutting property to the east is in a state of disrepair, while the abutting property to the west is a newer home constructed in 2010. As stated in section “B”, any redevelopment would likely be beneficial for the greater neighborhood above. 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 **there are no properties within the immediate vicinity of the subject property which have an ornamental-iron front yard fence**. However, there are several examples of ornamental-iron front yard fences, of varying heights, within the surrounding neighborhood. Additionally, there is a 6-foot iron fence at the eastern terminus of Dakota Street, approximately 450 feet from the subject property and within view that runs the length of Cherry Street in the Alamodome vicinity. By granting the applicant’s request for a special exception, the proposed fence will maintain the harmony and character of the district. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the requested special exception will not weaken the general purpose of the “RM-4” Mixed Residential zoning district**. The fence would not infringe upon density or housing choice options, and would help to preserve a single-family home which is in disrepair. The motion was seconded by **Mr. Atkinson**.

**AYES: Hardemon, Atkinson, Camargo, Dutmer, Rogers, Rodriguez, Zuniga, Cruz, Ozuna, Gallagher**

**NAY: None**

**THE SPECIAL EXCEPTION WAS GRANTED.****CASE NO. A-12-053**

Applicant – Rene Patton  
Lot 26, Block 2, NCB 16612  
4035 Fire Sun  
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a special exception to allow a 6-foot Ornamental-Iron Front Yard Fence

Trenton Robertson, Planner, presented background and staff’s recommendation of approval of the requested special exception. She indicated 44 notices were mailed, 4 were returned in favor and one was returned in opposition and no response from the Sunrise Neighborhood Association.

Rene Patton, applicant, stated she lives across the street from an unsupervised halfway house. She also stated she has been harassed and there have been numerous break-ins in the neighborhood. She further stated the fence would provide safety and security for her home.

**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-12-053 closed.

**MOTION**

A motion was made by **Ms. Rogers**. Re Appeal No. **A-12-053**, application for a **special exception to allow a 6-foot Ornamental-Iron Front Yard fence**, applicant is **Rene Patton**, location is **4035 Fire Sun, Lot 26, Block 2, NCB 16612**, zoning is **“R-5 AHOD” Residential Single-Family Airport Hazard Overlay District**. I move that this special request be approved by the Board of Adjustment. The special exception will be in harmony with the spirit and purpose of the chapter in that **the special exception will be in harmony with the spirit and purpose of Chapter 35, UDC. The proposed fence will meet the height, width, design and all other requirements established in Section 35-399.04(a) of the UDC.** The public welfare and convenience will be substantially served in that **the public welfare and convenience will be substantially granted by allowing the applicant to securely protect herself and her property from occupants from half way house across the street who have harassed her as well as teenage gangs in the neighborhood, police reports substantiating these claims.** The neighboring property will not be substantially injured by such proposed use in that **the neighboring properties will not be substantially injured by granting the special exception. The design of the fence will not encroach on the neighboring properties or cause any undo hardship. There were forty-four notices sent out, only three received in favor and one in opposition.** 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 **there are various properties throughout the neighborhood with similar ornamental-iron front yard fences.**

**By granting the applicant's request for a Special Exception, the proposed fence and the encompassing property will maintain the harmony and character of the surrounding neighborhood.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the requested special exception will not weaken the general purpose of the "R-5" Residential Single-Family zoning district.** **The fence, as proposed, will comply with the additional standards set forth in Section 35-399.04(a) of the UDC.** The motion was seconded by **Mr. Rodriguez.**

**AYES: Rogers, Rodriguez, Zuniga, Atkinson, Camargo, Cruz, Hardemon, Ozuna, Dutmer, Gallagher**

**NAY: None**

**THE SPECIAL EXCEPTION WAS GRANTED.**

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**Approval of the May 14, 2012 Minutes**

**The May 14, 2012 minutes were approved with all members voting in the affirmative.**

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There being no further discussion, meeting adjourned at 4:04 p.m.

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

DATE: 6-25-12

ATTESTED BY: [Signature] DATE: 6-26-12  
Executive Secretary