

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
March 1, 2010**

Members Present:

Michael Gallagher
Andrew Ozuna
Gene Camargo
Liz Victor
Edward Hardemon
Helen Dutmer
George Britton
Mary Rogers
Mike Villyard
Mimi Moffat
Maria Cruz

Staff:

Fernando De León, Assistant Director
Rudy Niño, Jr., Senior Planner
Jacob Floyd, Planner
Michael Farber, 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.

Ms. Cruz, arrived at 1:15 p.m.

CASE NO. A-09-093

Applicant – Paul Hiers
Lot 15, block 13, NCB 17643
8919 Deer Park
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay Conservation District

The applicant is requesting for a complete variance from the requirement that a minimum 20-foot setback be maintained (Volume 9506, Page 151, Deed and Plat Records of Bexar County), in order to keep an existing carport on the front property line

Jacob Floyd, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 34 notices were mailed, 4 were returned in favor and none were returned in opposition.

Paul Hiers, owner, stated he was unaware of city easements and property line and was under the impression that his property went up to the sidewalk. He also stated the carport looks good and increases the value of the property. The carport does interfere with traffic and anybody's view. He further stated it will be a financial detriment in removing this carport.

The following citizens appeared to speak:

Roxanne Hiers, citizen, spoke in favor.

Roosevelt Burton, 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-09-093 closed.

1st MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-09-093**, variance application for **Paul Hiers**, subject property address of **8919 Deer Park**, subject property description is **Lot 15, Block 13, NCB 17643**, again situated at **8919 Deer Park**. The variance application is the request for a complete variance from the requirement that a minimum 20-foot front setback be maintained, as recorded in Volume 9506, Page 151 Deed and Plat Records. I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-09-093**, 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 UDC, 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 testimony presented by the applicant and records show that there has been no opposition to the structure that is completed and there is no neighborhood association or any speakers that came before the board to opposed the garage structure**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **again the applicant came before us and provided testimony that the parking garage as built was integral to the construction of the residence and that would be a hardship to deconstruct basically to maintain the existing ordinance**. The spirit of the ordinance will be observed and substantial justice will be done in that **again the existing 20-foot line could be possibly if it was a newer subdivision be a 10-foot which is a new code and that there wouldn't necessarily be an extraordinary overlap of the garage into the setback line if the 10-foot setback was used today**. 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 existing zoning which is "R-6 AHOD" will remain and no changes to the zoning is proposed**. 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 **again the applicant provided testimony that there are some garages that are over the building setback line in the neighborhood and there has been no opposition to what the applicant had built on his 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 **I would say that the curve of Deer Park Ave and the setback lines contributed to basically having an unusable front setback for the applicant to build any kind of a usable structure to protect the investment of the two cars that his sons have. The basic combination of the curvature of Deer Park and the setback lines made it impossible for him to build the garage and the structure that he built. I would add that part of the testimony that the applicant brought forward to us today was that any electrical and plumbing or any other of the safety issues that proper permits would be pulled for that and are required to have proper permitting for that electrical work that has been completed. The motion was seconded by Ms. Rogers.**

AYES: Ozuna, Cruz, Rogers, Hardemon, Victor, Dutmer, Britton, Gallagher

NAY: Camargo, Moffat, Villyard

Alternate Motion

A motion was made by **Mr. Camargo**. I would move that in Appeal Case No **A-09-093**, on property which is located at **8919 Deer Park**, also known by legal description **Lot 15, Block 13, NCB 17643**, in an **"R-6 AHOD" Residential zoning where a complete variance is requested to the 20-foot building setback line that is currently shown on the subdivision plat for this particular property. That this board deny the requested change as submitted and in lieu there of grant approval of a 10-foot variance to allow a 10-foot setback on this property which is that which is currently required by the zoning regulations in existence as of this date and on this property. Specifically we find that such variance will not be contrary to the public interest in that of the notices sent even for the complete variance to the 20-foot setback none were returned in opposition. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that currently the way the property exist the owner of the property would need to comply with a setback requirement that was imposed at the time that zoning regulations on this subdivision existed and no longer are in place. The spirit of the ordinance will be observed and substantial justice will be done in that the alternate motion to allow a 10-foot setback is in keeping with zoning setbacks that are required on properties that are zoned "R-6". 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 property as proposed is for an open carport. 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 it has been stated although we did not see it in the visual that was provided by staff that apparently there are other structures within this 20-foot front setback that is currently in existence on this subdivision plat. 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 property owner the applicant in this case obviously was not the responsible person to establish the 20-foot setback on the subdivision plat on property which the individual acquired. To the best of knowledge and I think this still occurs when someone buys a piece of property there are in**

fact given a survey or copy of the plat in which as we have in our file clearly indicates a 20-foot setback. The motion was seconded by Mr. Ozuna.

AYES: Camargo, Ozuna, Villyard, Rogers, Hardemon, Cruz, Britton, Victor, Dutmer, Gallagher

NAY: Moffat

THE ALTERNATE MOTION WAS GRANTED.

CASE NO. A-10-017

Applicant – Esther Ponce
The East 61.5 feet of Lot 16, Block 111, NCB 45
1220 Wyoming Street
Zoned: “MF-33 AHOD” Multi-Family Airport Hazard Overlay District

The applicant is special exception to allow a one operator beauty/barber shop.

Michael Farber, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 28 notices were mailed, 2 were returned in favor and none were returned in opposition and the Denver Heights Neighborhood Association is in favor.

Esther Ponce, applicant, stated she is requesting this special exception to build unity and community to the east side. She also stated this would help neighbors to get to know each other. She further stated her customers would be by appointment.

The following citizens appeared to speak:

Charles Williams, 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-10-017 closed.

MOTION

A motion was made by **Ms. Rogers**. Re Appeal No **A-10-017**, application for a **special exception to allow a one-operator beauty shop**, subject property description **the East 61.5 feet of Lot 16, Block 111, NCB 45**, located at **1220 Wyoming Street**, applicant being **Esther Ponce**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No **A-10-017**, because the testimony and evidence 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 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 shop will follow all of specified criteria established in Sec 35-399.01 of the Unified Development Code**. The public welfare and convenience will be substantially served in that **this special exception will serve the public welfare by providing this beauty shop operating within the**

parameters set forth again in Section 35-399.01. It will serve as a public convenience within a residential area and as pointed out the neighbors in that area want this shop there. The neighboring property will not be substantially injured by such proposed use, it will not alter the use of the property for which this special exception is sought the primary use of the property will remain a multi-family residence. 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 in any way in which the subject property is located in that the proposed beauty shop will remain confined to 25% or less of the gross floor area of the primary residence. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that the purpose of the district is to promote the health, safety, morals, general welfare and the granting of this special exception will not weaken this purpose, nor will it weaken the regulations established, it will strengthen the regulations in that as the gentlemen said economic development needs to be on the eastside and this will help bring it about. The hours of operation will be 9 to 7 Tuesday thru Saturday not to exceed 50 hours. The motion was seconded by Mr. Hardemon.

AYES: Rogers, Hardemon, Cruz, Britton, Villyard, Moffat, Camargo, Dutmer, Victor, Ozuna, Gallagher

NAY: None

THE SPECIAL EXCEPTION WAS GRANTED.

Board members took a 10-minute recess.

CASE NO. A-10-018

Applicant – Brown & Ortiz, P.C.
 Lot 38, Block 2, NCB 8416
 2907 Fredericksburg Road
 Zoned: “C-3 R” General Commercial Restrictive Alcoholic Sales District

The applicant is requesting to appeal the decision of the Director of the Planning & Development Services Department to deny the registration of a non-conforming use for a nightclub.

Michael Farber, Planner, presented background and staff’s recommendation to uphold the Director’s decision to deny the registration of a non-conforming use. He indicated 11 notices were mailed, none were returned in favor and 4 were returned in opposition.

Daniel Ortiz, applicant, briefed board members on the details about the Texas Supreme case of Martin Marietta. He also stated the intent of the use was to open a nightclub called Club Pulse. He further stated the intended use was very clear in the lease agreement.

The following citizens appeared to speak:

Mark Murray, citizen, in support.

Michelle Matthews, citizen, spoke in support.

Bianca Maldonado, citizen, spoke in opposition.

Ferne Burney, citizen, spoke in opposition.

Sherry Deeken, citizen, spoke in opposition.

Earline Valdez, citizen, spoke in opposition.

Josette Gonzalez, citizen, spoke in opposition.

Randy Sanchez, 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-10-018 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that the Board of Adjustment in Case **A-10-018**, in case the one I just restated **A-10-018**, applicant being **Brown & Ortiz Attorneys**, on property located at **2907 Fredericksburg Road**, also known as **Lot 27, Block 2, NCB 8416**, that this Board overrule the decision of the Director of Planning & Development Services to deny the registration of nonconforming use for a nightclub on property that is zoned "C-3 R" General Commercial Restrictive Alcohol Sales District. We've had a lot of information submitted: building permits, certificates of occupancy, lease agreements, applications to TABC. It seems to this member that the main thing that needs to be considered is whether in fact there was intent for a use to occupy this property prior to the imitation of zoning to rezone the above stated property. It has been stated and challenged whether the term Club Pulse signifies that it is to be a nightclub with alcohol on premises. It has been stated by the applicants representative that the day after or shortly after the filing or rather completion of the lease to lease the property to their clients, a TABC notice was posted on the window indicating that an alcohol application had been submitted. It has also been stated and it has not been challenged that the surrounding property owners were not aware that a use was to go on to the property that would include the sale of alcoholic beverages. All of this having occurred prior to the initiation in June by the city council to rezone this property to prohibit that use. Obviously I am aware of the strong opposition to the use going on to this property and just based on the information that has submitted I think that this is the right decision for the board. The motion seconded by Ms. Moffat.

AYES: Camargo, Moffat, Villyard, Britton

NAY: Ozuna, Victor, Dutmer, Cruz, Hardemon, Rogers, Gallagher

THE MOTION FAILS.

Board members took a 10-minute recess.

CASE NO. A-10-020

Applicant – Trudy E Hamilton
Lot 35, Block 2, NCB 17238
13115 Brook Arbor

Zoned: “PUD RM-4 AHOD MLOD-1” Residential Mixed Planned Unit Development Airport Hazard Overlay Military Lighting Overlay District

The applicant is requesting an 18-foot variance from the requirement that a 20-foot perimeter setback be maintained for residential uses in a Planned Unit Development, in order to keep an existing deck 2 feet from the rear property line.

Jacob Floyd, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 63 notices were mailed, 1 was returned in favor and none were returned in opposition.

Bill Kruba, representative, stated the (6:10:00)

The following citizens appeared to speak:

Trudy Hamilton, 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-10-020 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-10-020**, variance application for **Trudy E. Hamilton**, subject property description is **Lot 35, Block 2, NCB 17238**, address location is **13115 Brook Arbor**. The applicant is **requesting an 18-foot variance from the requirement that a 20-foot perimeter setback be maintained for residential uses in a Planned Unit Development. Existing deck structure is located approximately 2 feet from the perimeter of the PUD.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No **A-10-0020**, 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 UDC, 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 does appear the granting of the variance would not be contrary to the public interest. The intent of the setback is to ensure reasonable amount of open space to provide the flow of air and light penetration. The existing deck does not impede the air in light filtration and we have seen that the city code allows for a six foot fence along the perimeter. The subject eight foot intrelous merely adds another twenty-four inches which is not contrary to the public interest in preventing the air and light penetration.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property is characterized by what I would consider a circumstance with the adjacent property in the back being so much unsightly and the applicant is merely trying to protect their vested interest on the property by screening some of the visual clutter in the back. Additionally the applicant received an approval by the builder and the homeowners association approved of the improvements that were constructed.** The spirit of the ordinance will be observed and substantial justice will be done in that **it does appear that the spirit of the ordinance can be observed through the granting of this variance. The reasonable use of the property can be denied in absence of this variance.** 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 existing "RM-4" zoning district is to remain, no proposed changes to the land uses are in the variance.** 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 improvements that are constructed will need to conform to existing fire code and any other codes that are appropriate within the city code.** 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 **again the city code would allow for a flat horizontal construction of a deck no greater than 30 inches above the ground. Specific topographical and screening requirements are required that the applicant build the deck to the current configuration therefore necessitating the variance.** The motion seconded by Mr. Camargo.

AYES: Ozuna, Camargo, Dutmer, Villyard, Cruz, Victor, Rogers, Britton, Hardemon, Gallagher

NAY: Moffat

THE VARIANCE IS GRANTED.

Sign Master Plan No. 10-006

Arturo Elizondo, Sign Inspector, briefed Board Members on Sign Master Plan for Bulverde Marketplace, located at Bulverde and Loop 1604.

Mr. Camargo made a motion to approve **Sign Master Plan No. 10-006** and was seconded by **Mr. Villyard.**

AYES: Rogers, Briones, Victor, Camargo, Hardemon, Dutmer, Britton, Gallagher

NAY: Moffat, Villyard

THE SIGN MASTER PLAN WAS APPROVED.

Consideration of the cancellation of the March 15, 2010 public hearing.

Mr. Villyard made a motion to cancel the March 15, 2010 public hearing. Ms. Dutmer seconded the motion and all members voted in the affirmative.

Mr. Hardemon departed at 5:02 p.m.

Mr. Britton departed at 5:05 p.m.

Approval of the February 1, 2010 Minutes

The February 1, 2010 minutes were approved with all members voting in the affirmative.

Board members departed the Board Room for executive session in the Tobin Room at 5:11 p.m. and returned to the Board Room at 5:50 p.m.

There being no further discussion, meeting adjourned at 5:51 p.m.

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

DATE: 4-5-10

ATTESTED BY: Richard A. King DATE: 4-6-10
Executive Secretary