

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
March 12, 2012**

Members Present:

Michael Gallagher
Andrew Ozuna
Edward Hardemon
Helen Dutmer
George Britton
Mary Rogers
Mike Villyard
Paul Klein
Henry Rodriguez
Harold Atkinson

Staff:

Andrew Spurgin, Planning Manager
Jacob Floyd, Senior Planner
Matthew Taylor, Senior Planner
Andreina Dávila-Quintero, Planner
Ernest Brown, 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.

Mr. Rodriguez, arrived at 1:07 p.m.

Ms. Dutmer made a motion to move Case No. A-12-026 to the end of the agenda. Mr. Rodriguez seconded the motion with all members voting in the affirmative.

CASE NO. A-12-023

Applicant – Ricardo R. Rodriguez

Lot 34, NCB 11927

151 Knibbe Avenue

Zoned: “NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District

The applicant is requesting **1)** an 8-foot, 6-inch variance from the 20-foot minimum front setback requirement, in order to allow an 11-foot, 6-inch front setback for the new addition; and **2)** a 1-foot, 4-inch variance from the requirement that no eaves may project closer than 3-feet to any property line, in order to allow the roof eave of the new addition to project up to one foot, eight inches from the west side property line.

Andreina Dávila-Quintero, Planner, presented background and staff’s recommendation of partial approval of the request in order for the front setback variance. Staff recommends denial as it does not comply with all approval criteria for granting a variance. However staff does

recommend approval of the projecting architectural feature variance because it does comply with all the request. She indicated 24 notices were mailed, 5 were returned in favor and none were returned in opposition and no response from the Oak Park Northwood Neighborhood Association.

Ricardo Rodriguez, applicant, stated there is other properties in the neighborhood that a similar projection of what he wants for his property. He also stated the character of the neighborhood is not being altered by his request.

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-12-023 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No. **A-12-023**, variance application for **151 Knibbe Avenue**, subject property **Lot 34, NCB 11927**, situated again at **151 Knibbe Avenue**, Applicant is **Ricardo Rodriguez**, the request is for **1) an 8-foot, 6-inch variance from the 20-foot minimum front setback requirement, in order to allow an 11-foot, 6-inch front setback for the new addition; and 2) a 1-foot, 4-inch variance from the requirement that no eaves may project closer than 3-feet to any property line, in order to allow the roof eave of the new addition to project up to one foot, eight inches from the west side property line.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-023**, 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. Such variance will not be contrary to the public interest in that **the requested variances are to allow a new addition to be set back a minimum of 11-feet, 6 inches from the south front property line, and a roof overhang to project up to 1-foot, 8 inches from the west side property line. Minimum setbacks are required in order to provide reasonable separation between structures on abutting properties, and a sense of openness on street frontages and along rights-of-way. The proposed setbacks will still provide adequate separation between the structures on the abutting property to the west for fire access and prevention, as well as maintain a sense of openness along the right-of-way. The requested variances are not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that in regards to the roof overhang projection, a small portion of the new addition will be setback a minimum of three 3-feet from the west side property line to follow the building line of the existing structure, as well as provide relief and break along the west building façade. Due to the existing conditions of the structure, the UDC provides allowances for the proposed 3-foot west side setback. However, this standard conflict with the projecting architectural feature requirement as it would prohibit any sort of roof overhangs on this portion of the addition. Thus, a literal enforcement of the projecting architectural feature requirement would result in unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that the "NP" Neighborhood Preservation Districts were created in order to avoid congestion in the streets, prevent safety hazards, protect the health and general**

welfare of subdivision residents, provide adequate light and air, and prevent overcrowding of land, among others. The requested variances, if approved, will allow the placement of a building over 11-feet from the south front property line, and a roof overhang to project up to one foot, four inches into the required 3-foot side yard setback. The proposed setbacks will still provide the minimum separation required between structures, as well as maintain light, air and a sense of openness along the street frontage. Thus, by granting these variances will preserve the spirit of the ordinance of the UDC as observed. 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 "NP-8" Neighborhood Preservation 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 applicant has provided testimony and evidence before the board today of neighboring properties that are consistent with what the applicant is proposing in terms of a bump out of the garage and the sides of the façade easement.** 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 variances are due to the existing conditions of the structure that was built in the 1960s. The plot of land that the structure is sitting on is such that the front foot requires the building to be located within the sideline to sideline and the improvements could not be built obviously on the size because the existing perimeter of the lot.** The motion was seconded by Ms. Dutmer

AYES: Ozuna, Dutmer, Villyard, Atkinson, Rogers, Hardemon, Klein, Britton, Rodriguez, Gallagher

NAY: None

THE VARIANCES WERE GRANTED.

CASE NO. A-12-025

Applicant – Connie Grizzard

Lot 12, Blk.16, NCB 14584

14706 Turkey Ridge

Zoned: "R-5 AHOD MLOD-1" Residential Single Family Airport Hazard Overlay Military Lighting Overlay District

The applicant is requesting a 5-foot variance from the 5-foot minimum side setback requirement of the "R-5" Residential Single-Family District, in order to allow a carport on the southeast side property line.

Ernest Brown, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 30 notices were mailed, none were returned in favor and 12 were returned in opposition.

Riley Grizzard, applicant, stated he went to one of the city community link centers to obtain a permit and was informed that if the carport was freestanding, he did not need a permit. He also stated he informed the clerk how much feet was on the side of the house and how big the carport was going to be.

No citizens appeared to speak.

Frederick Wheatley, citizen, spoke in opposition.

Marian Wheatley, citizen, spoke in opposition.

Robert Condit, citizen, spoke in opposition.

Sharon Raisch, 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-12-025 closed.

MOTION

CASE FAILS DUE TO LACK OF MOTION.

CASE NO. A-12-030

Applicant – Brian Moczygamba
Lots 6A and 7A, NCB 11690
4404, 4408 and 4412 West Avenue
Zoned: “C-2 AHOD” Commercial Airport Hazard Overlay District and “C-2 CD AHOD” Commercial Airport Hazard Overlay District with a Conditional Use for an Auto Repair Facility

The applicant is requesting 1) a 4-foot variance from the 4-foot maximum predominantly open fence height standard in the front yard, in order to allow an 8-foot tall predominantly open fence along the west front property line in the front yard, and 2) a 5.5-foot variance from the 4-foot maximum predominantly open fence height standard in the front yard, in order to allow a 9.5-foot tall predominantly open fence along the north side property line in the front yard.

Andreina Dávila-Quintero, Planner, presented background and staff’s recommendation of denial approval of the request. She indicated 23 notices were mailed, none were returned in favor and none were returned in opposition and no response from the North Central Neighborhood Association and the Dellview Area Neighborhood Association.

Robert McMahan, representative, stated they are building a fence within a fence. He also stated the fence that is being constructed is built in to a fence that had an existing permit. He did not know that they needed a new permit. He was under the impression that they were grandfathered.

He further stated the fence is going to enhance the neighborhood. They are going to put landscaping and decorative stone on the fence. The fence will serve as security from trespassers.

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-12-030 closed.

MOTION

A motion was made by **Ms. Rogers**. Re Appeal No. **A-12-030**, variance application for **1) a 4-foot variance from the 4-foot maximum predominantly open fence height standard in the front yard, in order to allow an 8-foot tall predominantly open fence along the west front property line in the front yard, and 2) a 5.5-foot variance from the 4-foot maximum predominantly open fence height standard in the front yard, in order to allow a 9.5-foot tall predominantly open fence along the north side property line in the front yard** subject property description **Lots 6A and 7A, NCB 11690, located at 4404, 4408 and 4412 West Avenue**, the applicant being **Brian Moczygemba**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-030**, as stated above. Specifically we find that such variance will not be contrary to the public interest in that **the requested fence height will not adversely impact the well-being of the general public as it does not obstruct visibility for impending traffic. The subject property is an interior lot with approximately 160-feet of frontage. The fence, where proposed, will be located along the front and side property lines, and will be set back approximately 5-feet from the edge of the sidewalk. The proposed 5-foot setback will allow a wider separation between the edge of pavement and the fence.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property uniquely influenced by oppressive conditions in the area which requires the requested fence. The property is an interior commercial lot with buildings set back approximately 118-feet from the west front property line with a parking lot in front of the buildings. It is surrounded by other commercial and service type uses and specifically a bar which creates unusual situations. The additional fence height is needed due to the crime activity of the area, a truck being stolen off of the property and beer bottle and littering onto the property. Thus a literal enforcement of the ordinance will not result in unnecessary hardship due to the criminal activity.** The spirit of the ordinance is observed and substantial justice is done in that **the applicant will be able to combat the criminal activity and there is no objection by neighbors to this fence.** 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 variances will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-2" Commercial or "C-2 CD" Commercial with the conditional use of Auto Repair Facility base zoning 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 **prior to rezoning in 2009, some higher industrial commercial fences exist, which are not inconsistent with the applicant's request.** 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 are not created by the owner but by the criminal activity in the area.** The motion was seconded by **Mr. Klein.**

AYES: Rogers, Klein, Villyard, Hardemon, Rodriguez, Ozuna, Dutmer, Britton, Gallagher

NAY: Atkinson

THE VARIANCES WERE GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-12-031

Applicant – Sue Ann Pemberton

Lot 8, Block 20, NCB 822

511 Dallas Street

Zoned: “HS FBZ T4-1 AHOD” Historic Significant Form Based Zoning Transect 4-1 Airport Hazard Overlay District

The applicant is requesting **1)** a variance from the requirement that sixty percent (60%) of the façade must be set back a minimum of 10 feet and a maximum of 15 feet from the front property line, in order to allow the façade a 16-foot, 10-inch setback; **2)** a 2-foot, 1-inch variance from the maximum 7-foot side setback requirement, in order to allow a 9-foot, 1-inch side setback from the west property line; **3)** a 7-foot, 7.5-inch variance from the maximum 7-foot side setback requirement, in order to allow a 14-foot, 7.5-inch side setback from the east property line; and **4)** a variance from the requirement prohibiting a common yard private frontage in transect 4-1, in order to permit a common yard private frontage.

Jacob Floyd, Senior Planner, presented background and staff’s recommendation of approval of the request. He indicated 33 notices were mailed, 6 were returned in favor and none were returned in opposition and no response from the Downtown Residents Association.

Sue Ann Pemberton, applicant, stated because the property is a designated historic landmark, they can not remove it from the property and has unusual dimensions. She also stated they have replatted the land and the whole area is being redeveloped very rapidly. She further stated they obtained an approval permit for the shell construction. The need for the variances arose when they submitted for the finish out of the permit.

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-12-031 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No. **A-12-031**, applicant **Sue Ann Pemberton**, located at **511 Dallas Street**, legal description **Lot 8, Block 20, NCB 822**, zoning is **"HS FBZ T4-1 AHOD" Historic Significant Form Based Zoning Transect 4-1 Airport Hazard Overlay District**. I move that the Board of Adjustment grant the applicant's request regarding this appeal. Specifically we find that such variance will not be contrary to the public interest in that **the requested variances will allow the subject property to be redeveloped to include the rehabilitation of the historic building and the construction of an addition to this building which emphasizes and distinguishes the new construction from the historic structure. The proposed addition will set back approximately 2-feet from the existing façade in order to visually differentiate the new construction from the historic building, as directed by the HDRC. The proposed side setbacks will provide adequate separation between the abutting properties to avoid providing additional fire resistance rated protective openings along the west elevation, which would have led to alterations of the original windows, and to provide adequate vehicular access along the east side of the property. Additionally, the provision of the proposed common yard will allow the front yard to blend with the surrounding frontage types within the block. Thus, the requested variances are not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the existing historic building is positioned approximately 14-feet 3-inches from the front property line and 9-feet one 1-inch from the west property line. The proposed addition will be set back approximately 2-feet from the existing facades in order to differentiate between the existing historic building and the new construction, as directed by the HDRC. Additionally, the proposed 14-foot seven and ½ inch east setback is necessary to comply with vehicular access requirements. Consequently, a literal enforcement of the ordinance will create unnecessary hardship due to the orientation of the historic building on the site and the vehicular circulation requirements. The spirit of the ordinance is observed and substantial justice is done in that one objective of the "FBZ" Form Based Development is that the preservation and renewal of historic buildings shall be facilitated to affirm the continuity and evolution of society. The proposed redevelopment of the site and addition to the historic building are observant of this objective and follow the Transect Zone T-4 development standards to the greatest extent practical while preserving and rehabilitating the historic structure. The proposed addition will match the existing historic building in building materials in every which way. 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 "FBZ T4-1" Form Based Zoning Transect 4-1 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 not substantially injure the appropriate use of the adjacent conforming properties nor alter the essential character of the district. The proposed setbacks will allow the addition to be located in a way that will emphasize the historic building on the site, as well as the historic structure located on the property abutting to the west. 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 variances are due to the position and orientation of the existing historic building on the site and the need to comply with vehicular circulation requirements. The existing building does not comply with the maximum setbacks within Transect Zone 4-1 and in order to adhere to the direction given by the HDRC the proposed addition must be set back from the existing façade to clearly differentiate between the existing and new construction. The incorporation of a historic building in the redevelopment of this site is a unique condition and not general to the district as a whole.** The motion was seconded by Ms. Rogers.

AYES: Rodriguez, Rogers, Hardemon, Villyard, Dutmer, Klein, Britton, Ozuna, Atkinson, Gallagher

NAY: None

THE VARIANCES WERE GRANTED.

CASE NO. A-12-026

Applicant – Speedco, Inc.

Lots 13 and 14, Block 1, NCB 17978

1855 North Foster Road

Zoned: “C-3 AHOD” General Commercial Airport Hazard Overlay District and “I-1 AHOD” General Industrial Airport Hazard Overlay District

The applicant is requesting 1) a 40-foot variance from the 40-foot maximum sign height standard for single-tenant signs when located on an Arterial Type A, in order to allow an 80-foot tall sign, and 2) a 78-square foot variance from the 240-square foot maximum sign area standard for single-tenant signs when located on an Arterial Type A, in order to allow a 318-square foot sign.

Andreina Dávila-Quintero, Planner, presented background and staff’s recommendation of denial of the requested variance. Staff recommends an alternative sign variance of 10-feet to allow a 50-foot tall sign. She indicated 9 notices were mailed, none were returned in favor and none were returned in opposition.

Keith Tolley, applicant, stated (4:09:21) stated the trees block the visibility of the sign. He also stated he is amending his request to fifty feet. He further stated

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-12-026 closed.

MOTION

A motion was made by **Mr. Ozuna** Re Appeal No **A-12-026**, variance application for **1855 North Foster Road**, subject property is **Lots 13 and 14, Block 1, NCB 17978**, the applicant is **Speedco, Inc.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-026**, 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 applicants request is for **1) a 40-foot variance from the 40-foot maximum sign height standard for single-tenant signs when located on an Arterial Type A, in order to allow a 50-foot tall sign, and 2) a 78-square foot variance from the 240-square foot maximum sign area standard for single-tenant signs when located on an Arterial Type A, in order to allow a 318-square foot sign.** Specifically, we find that 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 After seeking one or more of the findings set forth in (1) or (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 and Granting the variance will not have a substantially adverse impact upon neighboring properties and Granting the variance will not substantially conflict with the stated purposes of this article. 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 or a denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. **The applicant has provided testimony to us today regarding the property and the adjacent trees which have blocked the visibility and sight lines to the sign. Additionally the applicant is proposing to put wind turbines on the side which need an unobstructed wind flow to be able to generate the green electricity. The existing conditions of the sign prohibit the free flow of air because the trees block the wind basically.** 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. **The property is located in close proximity to the freeway. Existing signs along the freeway exceed the 50-foot that the applicant is seeking, therefore we do not believe that it is a benefit exclusively a privilege to the applicant.** Granting the variance will not have a substantially adverse impact on neighboring properties. **Again the applicant provided testimony of signs that are within the height that we are proposing today.** Granting the variance will not substantially conflict with the stated purposes of this article. **The sign regulations allow for height up to 50-feet without reclassification of the Arterial A designation of the property.** The motion was seconded by **Mr. Atkinson.**

AYES: Ozuna, Atkinson, Villyard, Hardemon, Rogers, Dutmer, Klein, Britton, Rodriguez, Gallagher

NAY: None

THE VARIANCES WERE GRANTED.

Approval of the February 20, 2012 Minutes

The February 20, 2012 minutes were approved with all members voting in the affirmative.

Ms. Dutmer made a motion to approve the Rules and Procedures. Mr. Hardemon seconded the motion with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 3:54 p.m.

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

DATE: 4-2-12

ATTESTED BY: [Signature] DATE: 4-2-12
Executive Secretary