

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
May 14, 2012**

Members Present:

Michael Gallagher
Andrew Ozuna
Edward Hardemon
Helen Dutmer
Jesse Zuniga
Mary Rogers
Mike Villyard
Gene Camargo
Paul Klein
Maria Cruz

Staff:

John Jacks, Assistant Director
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

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. Rogers made a motion to move Case No. A-12-042 to the end of the agenda. Mr. Hardemon seconded the motion with all members voting in the affirmative.

Mr. Ozuna made a motion to postpone Case No. A-12-42 until the June 25, 2012 Board of Adjustment meeting with all members voting in the affirmative.

CASE NO. A-12-021

Applicant – Taylor Collins, William D. Sutherland, VI, Patrick Kennedy, Jr. and Dana McGinnis
Lot 2 and Lot 5 and the West 50 feet of Lot 6, Block 2, NCB 6581 and Lots 11 and 13, Block 1,
NCB 6580
115, 130, 139, 146 Oakmont Court
Zoned: “R-5 H AHOD” Residential Single-Family Monte Vista Historic Airport Hazard
Overlay District

The applicant is requesting an appeal of the Development Services Department Director’s decision to issue Certificates of Occupancy, which permits Trinity University to use the properties on 115, 130, 139 and 146 Oakmont Court as offices.

Ricardo Reyna, attorney representating the City of San Antonio, presented background and recommended administrative determination be affirmed.

Larry Macon, representative, stated the university had their professors temporarily staying on these properties. He also stated the university applied for a zoning change when they did not need one. He further stated he was in support of the appeal.

The following citizens appeared to speak:

James Griffin, citizen, spoke in favor.

Ken Brown, citizen, spoke in favor.

Allen Pierce, citizen, spoke in favor.

Patrick J Kennedy Jr., citizen, spoke in favor.

Blair Labatt, citizen, spoke in favor.

Clair O'Malley, citizen, spoke in favor.

Patricia Wagner, citizen, spoke in favor.

Ellis Wilson, citizen, spoke in favor.

Taylor Collins, citizen, spoke in favor.

Lisa Beck, citizen, spoke in favor.

Matthew Wilder, citizen, spoke in favor.

Kathleen Kennedy, citizen, spoke in favor.

James Billups, citizen, spoke in favor.

Garda Boswell, citizen, spoke in favor.

Rob Killen, citizen, spoke in opposition.

Dennis Ahlburg, citizen, spoke in opposition.

John Korbell, citizen, spoke in opposition.

Hugh Daschbach, citizen, spoke in opposition.

Maribel Plasencia, citizen, spoke in opposition.

Phyllis Browning, citizen, spoke in opposition.

Mark Brodl, 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-12-021 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that the Board of Adjustment in Case No A-12-021, applicants being **Taylor Collins, William D Sutherland VI, Patrick Kennedy, Jr., and Dana McGinnis**, on property known as **115, 130, 139, 146 Oakmont Court**, also legally described as **Lot 2 and Lot 5 and the West 50 feet of Lot 6, Block 2, NCB 6581 and Lots 11 and 13, Block 1, NCB 6580**, overturn the decision of the Director of Development Services for the following reasons. Although is has been very good and has indicated passionate presentations, it is this member's opinion that the individuals that would know best what this property has been used for in the past would be the immediate adjacent property owners. It is my opinion that the majority of those that have appeared before the board have indicated to the best of their knowledge that these properties have been used for residential use. It has been stated by individuals representing Trinity that is has been a combination, off and on, of residential and college use also. It certainly appears that over the past years that it would set the precedent of what this property has been used for in a residential classification is that of residential and for those reasons I would encourage this board to approve this motion. The motion was seconded by **Ms. Rogers**.

AYES: Camargo, Rogers, Hardemon, Villyard, Gallagher

NAY: Klein, Zuniga, Dutmer, Cruz, Ozuna

THE MOTION FAILS.

Case A-12-047 has been continued to the June 4, 2012 Board of Adjustment meeting.

CASE NO. A-12-043

Applicant – Sharon Quezada
Lot 45, Block B, NCB 11508
3359 West Woodlawn Avenue
Zoned: "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a special exception for a 6-foot Ornamental-Iron Front Yard fence in the "R-5" Residential Single-Family District,

Trenton Robertson, Planner, presented background and staff's recommendation denial of the variance request. He indicated 19 notices were mailed, none were returned in favor and three were returned in opposition.

Daniel White, representative, stated the house does qualify for the maximum height because of the lot size. He also stated the fence has been reduced to have the top of the crown on the pillars at 6-feet. He further stated the wrought iron fence will be less then 6-foot in height.

The citizens appeared to speak:

Sharon Quezada, citizen, spoke in favor.

Irma Hernandez, citizen, spoke in opposition.

Donald Trevathan, 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-12-043 closed.

MOTION

The motion was made by **Mr. Camargo**. I would move that in case **A-12-043**, on property located at **3359 West Woodlawn Avenue**, legally described as **Lot 45, Block B, NCB 11508**, be granted the requested **exception for a 6-foot Ornamental-Iron Front Yard fence in the "R-5" Residential Single-Family District and the reason for that is because the fence is totally out of character with the surrounding area**. The motion was seconded by **Mr. Ozuna**.

AYES: None

NAY: Camargo, Ozuna, Villyard, Hardemon, Rogers, Cruz, Zuniga, Klein, Gallagher

THE SPECIAL EXCEPTION WAS NOT GRANTED.

Board members recessed for five minutes.

CASE NO. A-12-046

Applicant – Richard Kirschenmann, State Federal Contractors
Lot 13, Block 19, NCB 14035
4303 Hyatt Place Drive
Zoned: "C-2" 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.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 34 notices were mailed, 3 were returned in favor and 1 was returned in opposition.

Richard Kirschenmann, applicant, stated he is requesting this fence for security for the guests of the hotel. He also stated there have been numerous break-ins. He further stated the adjacent property owners have conventions which overcrowds and his employees are in the parking lot monitoring the parking. The existing restaurants are not in opposition of the fence height.

The following citizens appeared to speak:

Javier Segura, 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-12-046 closed.

MOTION

The motion was made by **Mr. Ozuna**. Re Appeal No. **A-12-046**, application for **Richard Kirschenmann, State Federal Contractors**, subject property description is **Lot 13, Block 19, NCB 14035**, situated at **4303 Hyatt Place Drive**, the applicant again is **BRE/AmeriSuites TXNC Properties, LP**. The variance request is for a **3-foot variance in order to allow a 6-foot solid wood fence in the front yard as depicted on the exhibit plot plan we see before us to include the radius of cul-de-sac**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-046**, 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 is to allow the construction of a 6-foot high solid, wooden privacy fence within the front yard area. The purpose of the fence is to protect the personal property of patrons of the hotel from break-ins as well as to discourage the unauthorized use of the parking lot by the adjacent restaurant patrons for parking. The granting of the variance would not be contrary to the public interest as public safety and access to enjoyment of open air, space, and light of adjacent properties would not be adversely impacted.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the definition of front yard requires that the entire area between the property line and the nearest principal structure wall be considered. Because of the orientation of the building and the irregular shape of the lot, an unusually large portion of the lot is considered as a front yard. In fact, approximately 55-feet of the 280-foot side property line would be considered to be within the front yard, which allows a maximum fence height of 3-feet. The allowed 3-foot height is not sufficient for the applicant's stated purpose. Due to the unique lot shape as well as the existing building orientation, a literal enforcement of the ordinance would result in an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the UDC regulates fence design in order to ensure that unnecessarily high fences do not impact public safety or the enjoyment of property by adjacent property owners.** 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-**

2” 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 fence abuts existing commercial properties consisting of parking and overflow parking for restaurants and businesses. The parking lots and vacant lots are allowed to have a 6-foot high solid fence in the front yard, unless they abut a use which requires a lower fence. In this case, as the subject property would ordinarily only allow a 3-foot solid fence, the adjacent properties would be able to more fully enjoy the benefit of a higher fence allowed by the UDC under other circumstances. As such, the variance would not substantially injure the appropriate use of adjacent conforming properties or alter the essential character of the district.** 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 the unique configuration of the lot combined with the existing building’s layout on the lot.** The motion was seconded by Ms. Cruz.

AYES: Ozuna, Cruz, Rogers, Hardemon, Zuniga, Klein, Villyard, Camargo, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-048

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 requesting a special exception to allow a one operator beauty or barber shop in a residential zoning district.

James Kramer, Planner, presented background and staff’s recommendation of approval of the requested special exception for four years with hours of operation not to exceed fifty hours.. He indicated 28 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Denver Heights Neighborhood

Esther Ponce, applicant, stated she her hours of operation will be from 9:00 am until 7:00 pm on Tuesday thru Saturday. She also stated she provides services to her surrounding neighbors. She further stated she is improving the neighborhood and setting an example to the children of the neighborhood.

The following citizens appeared to speak.

Charles Williams Sr, citizen, spoke in favor.

Tai Matthews, 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-12-048 closed.

MOTION

The motion was made by **Ms. Rogers**. In regards to Appeal No. **A-12-048**, variance application for **Esther Ponce**, location **1220 Wyoming Street**, legal description the **East 61.5 feet of Lot 16, Block 111, NCB 45**, application for a **special exception to allow a one-operator beauty or barber shop**. I move that the Board of Adjustment grant the applicants request as stated, 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 find 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/barbershop will follow the specified criteria established in Section 35-399.01 of the Unified Development Code**. The public welfare and convenience will be substantially served in that **the requested special exception will further serve the public welfare in that this beauty/barbershop will operate within the parameters set forth by Section 35-399.01 and will serve as a public convenience within a residential area**. The neighbors testified that she would be a positive asset to the neighborhood. In addition she would be providing a service for the ladies in the neighborhood and possibly the gentlemen. The neighboring property will not be substantially injured by such proposed use in that **the granting of the special exception will not alter the use of the property for which the special exception is sought**. The primary use of the subject 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 of the zoning district in which the subject property is located in that the proposed beauty/barbershop has and will remain confined to 25% or less of the gross floor area of the primary residence and there is no plans to alter the outside in any way**. 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 zoning district is to promote the public health, safety, morals, or general welfare**. The granting of this special exception will not weaken this purpose, nor will it weaken the regulations established for this district. There will be a maximum of fifty hours. The hours of operation are 9:00 am until 7:00 pm, Tuesday thru Saturday. The motion was seconded by Mr. Hardemon.

AYES: Rogers, Hardemon, Zuniga, Cruz, Camargo, Klein, Villyard, Ozuna, Gallagher
NAY: None

THE SPECIAL EXCPETION WAS GRANTED.

CASE NO. A-12-049

Applicant – Laborde & Associates, PC
NCB A-16, Lot 12 & 13 of the Laborde Development Subdivision
116 Clay Street
Zoned: “I-1 AHOD”, General Industrial Airport Hazard Overlay District

The applicant is requesting 1) A 20 foot variance from the required 25 foot landscape buffer and 2) A 25 foot variance from the required 30 side yard setback in an I-1 Industrial District, to allow a new building 5 feet from the property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of denial of the requested variance. She indicated 21 notices were mailed, none were returned in favor and one was returned in opposition and Lone Star Neighborhood Association.

Andrew Guerrero, representative, stated the owner wants storage for his business. He also stated adjacent property owners are in support. He further stated the property owner plans to continue to operate his CPA business and would utilize the structure for storage.

The following citizens appeared to speak:

Frank Laborde, 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-12-049 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No. **A-12-049**, variance application for **116 Clay Street**, subject property description is **NCB A-16, Lot 12 & 13 of the Laborde Development Subdivision, “I-1 AHOD” General Industrial Airport Hazard Overlay District**, applicant again is **Laborde & Associates, PC**. The variance request is for **1) a 20-foot variance from the required 25-foot buffer yard and 2) a 25-foot variance from the required 30-foot side yard setback to allow a new structure to be built 5-feet from the side property lien abutting a residential zoning district**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-12-049**, 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 applicant asserts that granting the variance is not against the public interest in that the structure does not require the relocation of employees and clients parking spaces or the demolition of an existing accessory structure on lot 12**. The applicant has provided testimony to us today about the amount of investment he has made within the property, how it has been catalyst to the neighborhood, and received a certificate from the conservation society attesting to the improvements and how its created an asset to the

community which is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement would result in the applicant not being able to move forward with the improvements as he is proposing and would create a financial hardship to the applicant in building the structure that he needs to protect his property and provide storage to allow the continuance operation of his CPA firm.** The spirit of the ordinance is observed and substantial justice is done in that **it will allow the applicant to move forward with the improvements which are in conformity with the neighborhood and with the conformity to the stylistic renovations that the applicant has made to his buildings.** 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 variance request will not authorize the operation of a use on the subject property other than those specifically permitted in the I-1 District. The current use of the property is office, but the list of uses allowed in the "I-1" district include heavy equipment repair, outdoor flea market, or a carpentry shop. The applicant asserts that the building will be used for storage.** 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 has provided testimony and provided the letter from the adjoining property that is most affected by the location of the building who is in support of the proposed improvements.** 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 could, through financial hardship, replat the property and still locate the building as it is proposed to be located. The variance request merely provides an easier and most efficient use of the applicant's money to provide the building for the parking and the storage of his material to continue the use of the property for his CPA and his residence.** The motion was seconded by **Mr. Klein.**

Mr. Camargo made a motion to postpone this case until the July 16, 2012 Board of Adjustment meeting. Mr. Rogers seconded the motion.

AYES: Rogers, Hardemon, Zuniga, Cruz, Camargo, Klein, Villyard, Ozuna, Gallagher
NAY: None

THE MOTION PASSES.

Approval of the April 23, 2012 Minutes

The April 23, 2012 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 5:38 p.m.

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

DATE: 6-4-12

ATTESTED BY: [Signature] DATE: 6-7-12
Executive Secretary