

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
May 9, 2011**

Members Present:

Michael Gallagher
Helen Dutner
George Britton
Jesse Zuniga
Mary Rogers
Mike Villyard
Gene Camargo
Paul Klein
Maria Cruz
Harold Atkinson

Staff:

Barbara Nelson, AICP, Assistant Director
Andrew Spurgin, AICP, Planning Manager
Jacob Floyd, Senior Planner
Rudy Niño, Senior Planner
Andreina Dávila-Quintero, Planner
Paul Wendland, City Attorney

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

CASE NO. A-11-029

Applicant – Witte Museum
Brackenridge Park
3801 Broadway
Zoned: “R-6 HS RIO-1 UC-1 AHOD” Historic Significant Residential Single-Family River Improvement Overlay Broadway Urban Corridor Airport Hazard Overlay District

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

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 16 notices were mailed, 3 were returned in favor and none were returned in opposition and no response from the Mahncke Park Neighborhood Association.

Allison Chambers, applicant, stated this request is for an addition and construction has already begun at the Witte Museum. She also stated this variance is to extend the fencing around the new campus and for security purposes. She further stated the fence will be open bar steel and it will be painted green so it can fade into the background and will be attractive.

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-11-029 closed.

MOTION

A motion was made by **Mr. Villyard**. Re Appeal A-11-029, variance application for a **2-foot variance from the 6-foot maximum fence height standard on side and rear yards, in order to allow an 8-foot fence on the side and rear yards**, this property is located at **3801 Broadway**, the legal description is **Brackenridge Park**, zoning is **“R-6 HS RIO-1 UC-1 AHOD” Historic Significant Residential Single-Family River Improvement Overlay Broadway Urban Corridor Airport Hazard Overlay District**, the applicant is **Witte Museum**. I move that the Board of Adjustment grant the applicant’s request regarding this appeal, an 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 the variance will not be contrary to the public interest in that **the variance shall serve the public interest by maintaining the integrity of the highly secured museum campus**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property enjoys a collection of unique artifacts, archival material, and art objects which must be secured from theft and damage. This unique condition necessitates the additional security provided by a fence such as that proposed because a fence of lesser height is inadequate to provide a highly secured perimeter for the campus**. The spirit of the ordinance is observed and substantial justice is done in that **the variance will be in keeping with the spirit of the ordinance, will match the other fences in the area, and will do substantial justice by ensuring the security of the museum campus without obstructing the view of the public. Additionally, the proposed fence is consistent with the existing 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 variance will not authorize a use not specifically permitted in the “R-6 RIO-1” 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 variances will not injure the appropriate use of adjacent property nor will the essential character be altered. The proposed fence will not be located near adjacent properties and its design will conform to existing fences on the campus**. 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 variance is necessary due to the unique nature of the subject property and its location within a public park. These circumstances are not personal or financial in nature, nor are the result of general conditions in the district, but are due to the unique security concerns of the museum**. The motion was seconded by **Ms. Rogers**.

AYES: Villyard, Rogers, Dutmer, Zuniga, Klein, Britton, Camargo, Atkinson, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

Ms. Cruz arrived at 1:23 p.m.

CASE NO. A-11-032

Applicant – LMREC REO II, Inc.
Lot 1, Block 1, CB 4005
12800 Applewhite Road
Zoned: “MI-1 AHOD” Mixed Light Industrial Airport Hazard Overlay District

The applicant is an appeal of the Director’s decision not to recognize the right to operate a mobile home park pursuant to Article VII of the Unified Development Code.

Jacob Floyd, Senior Planner, presented background and staff’s recommendation that the Board of Adjustment affirm the determination of the Director of the Development Services. He indicated 17 notices were mailed, one was returned in favor and none were returned in opposition.

Patrick Christensen, applicant, stated the a master development plan was submitted for a mobile home park to the city in 2000 which was approved and a subdivision plat was approved in 2001 for a mobile home park. After the approval of the plat streets, water, and sewer lines were constructed. He also stated that prior to the Certificate of Occupancy that was obtained in 2003 there were no mobile homes on the property. The mobile homes were placed on the property after the Certificate of Occupancy was obtained and even after the annexation of the property in 2005. He further stated is not requesting non conforming rights but just asking for continuation of land use rights.

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-11-032 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that in Case **A-11-032**, the applicant being **LMREC REO II, Inc.**, on property located at **12800 Applewhite Road**, legally described as **Lot 1, Block 1, CB 4005**. I would move that this board overrule the determination of the **Director of Development Services** and that the applicant has shown in numerous instances that in fact the use for which a certificate of occupancy was issued on February 4, 2003, which list the use of premises as a **Manufactured Home Community Park non conforming use zone MH approved 1/24/2003** has not been abandoned for a period of greater than 12 months. I say that for the fact that it has been stated here and acknowledgement by the

applicant's representative that at the time of the issuance of the certificate of occupancy, that which existed on this property, were the streets that were constructed, the private streets, and accordance with the subdivision plat approved by the city earlier and the utilities that were constructed to allow the placement of manufactured homes on the property. It is my contention that for which the CofO was issued for has not been abandoned. The streets are still there, the utilities are still there, that certificate of occupancy, in my opinion, has not been abandoned and still in existence. Further has been shown that taxes have been paid on this property for that for which the certificate of occupancy was issued for, which was for a manufactured/mobile home park. The city during this process, in developing this property, in fact in accordance with the regulations approved a subdivision plat which would allow this manufactured home park. It is felt that the continuation of land use rights in accordance with state law has been shown on this property and I feel that this is the proper thing to do on this tract of land. The motion was seconded by Ms. Dutmer.

AYES: Camargo, Dutmer, Rogers, Cruz, Zuniga, Britton, Atkinson, Klein
NAY: Villyard, Gallagher

THE MOTION FAILS.

CASE NO. A-11-034

Applicant – Clemente Medina
6.706 acres out of NCB 10879
8039 Challenger Drive
Zoned: "C-3 AHOD" General Commercial Airport Hazard Overlay District

The applicant is requesting 1) a 3-foot, 6-inch variance from the maximum 4-foot front-yard fence height standard, in order to allow a 7-foot, 6-inch tall predominantly open fence in the front yard; and 2) a 1-foot, 6-inch variance from the maximum 6-foot side and rear yard fence height standard, in order to allow a 7-foot, 6-inch tall fence in the side and rear yards.

Jacob Floyd, Senior Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 3 notices were mailed, none were returned in favor and none were returned in opposition.

Clemente Medina, applicant, stated the reason for this request is for security. He also stated there is an adjacent call center that has an 8-foot center and they would like this fence to continue to the next project which will be a 911 center. This will allow for employees to be able to access both buildings.

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-11-034 closed.

MOTION

A motion was made by **Mr. Villyard**. Re Appeal A-11-034, variance application for 1) a **3-foot, 6-inch variance from the maximum 4-foot front-yard fence height standard, in order to allow a 7-foot, 6-inch tall predominantly open fence in the front yard** and 2) a **1-foot, 6-inch variance from the maximum 6-foot side and rear yard fence height standard, in order to allow a 7-foot, 6-inch tall fence to the side and rear yards**, legal description is 6.706 acres out of NCB 10879, its also known as **8039 Challenger**, the applicant is the **City of San Antonio**. I move that the Board of Adjustment grant the applicant's request regarding this appeal, 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 the variance will not be contrary to the public interest in that **it ensures that the facility is secured from vehicular attacks and intrusion**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property must be secured and due to special conditions involving vehicular attacks and intrusion in order to ensure the operational and able to provide emergency services**. The size of the property is not great enough to provide sufficient separation distance between the perimeter and the facility. Due to this, the proposed fence is necessary to ensure adequate security as it will **compensate for the inadequate separation distance between perimeter and building**. The spirit of the ordinance is observed and substantial justice is done in that **the variance will be in keeping with the spirit of the ordinance and will do substantial justice by ensuring that the facility is able to provide emergency services to the citizens of San Antonio and fulfill the City of San Antonio's obligation to ensure the safety of the public**. 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 will not authorize the use not specifically permitted in the "C-3" 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 variance will not injure the appropriate use of adjacent property nor will the essential character of the district be altered**. The subject property is located within **Brooks City-Base and is one of several facilities with security fences of this type**. 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 variance is necessary due to the unique nature of the facility, specifically its high security requirements**. These circumstances are not merely financial nor the result of conditions general to the district. The motion was seconded by **Ms. Dutmer**.

AYES: Villyard, Dutmer, Rogers, Cruz, Camargo, Klein, Zuniga, Britton, Atkinson, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.



Board members recessed for 10 minutes.

CASE NO. A-11-035

Applicant – Efrain E. Velez
Lot 19, Block 14, NCB 575
1430 East Houston Street
Zoned: “I-1 H AHOD” General Industrial Airport Hazard Overlay District Dignowity Hill Historic District

The applicant is requesting a 15-foot variance to the 30-foot minimum front setback requirement of the I-1 district, in order to allow a 15-foot front setback for a second story addition.

Andreina Dávila-Quintero, Senior Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 52 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Dignowity Hill Neighborhood Association.

Brian Nascke, representative, stated this project has been in the planning stages for about one to two years. He also stated the owner has been operating at this location for 30 to 45 years. He further stated this will enhance the administration building which is currently congested with the number of growing employees over the years. They are requesting to put a partial second story on the building to accommodate the employees. They have gone to HDRC and have conditional approval of the design.

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-11-035 closed.

MOTION

A motion was made by **Mr. Klein**. Re Appeal Case No **A-11-035**, this is a variance application in which the applicant request a **15-foot variance to the 30-foot minimum front setback requirement of the I-1 district, in order to allow a 15-foot front setback for an approximate 2,100 square foot second story addition**, the applicant is **Efrain E Velez**, the owner is **USA KBC, LLC, DBA Kerrville Bus Company**, the location address of the request is **1430 East Houston**, the legal description is **Lot 19, Block 14, NCB 575**, the zoning is **“I-1 H AHOD” General Industrial Airport Hazard Overlay District Dignowity Hill Historic District**. I move that the Board of Adjustment grant this appeal 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 the variance will not be contrary to the public interest in that

the variance request is to allow the construction of second story addition as part of the renovation of the existing administrative office building of the Kerrville Bus Company Facility. The proposed renovations will significantly improve the overall look of the building and property, and contribute in the redevelopment of the Houston Street Corridor that will meet the goals of the Dignowity Hill Neighborhood Plan. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the property was originally the older C or Central Business District zoning and the existing building was in compliance with zoning setbacks and ordinances at the time and a change of zoning over a period of time has provided a hardship in the property owner's interest to redevelop and promote the continuous use of the property.** The spirit of the ordinance is observed and substantial justice is done in that **the Board of Adjustment is given the authority to grant variances when they are special conditions in place that put a hardship on the property. This motion takes into account that there was an existing building on site complying at the time and that this proposed request for variance does not lessen the setback that currently exists.** 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 proposed variance is for a second story addition that will consist of additional office space for the Kerrville Bus Company, which is the owner, for their administrative office and it is the use permitted by right in the "I-1" 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 proposed addition aligns with the existing building façade on East Houston Street and does not adversely affect or injure the neighborhood.** 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 owner has charged the design team with an extensive look at the entire property which is looking at highest and best use but also with the same point is looking at improving environmental conditions related to the removal of field storage tanks, brush washing, and things of this nature which will improve the taxable value of the property and will also allow for continued better use of the property as it is currently being operated.** The motion was seconded by Mr. Zuniga.

AYES: Klein, Zuniga, Atkinson, Villyard, Dutmer, Camargo, Britton, Rogers, Cruz, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

Approval of the April 18, 2011 Minutes

The April 18, 2011 minutes were approved with all members voting in the affirmative

There being no further discussion, meeting adjourned at 3:14 p.m.

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

DATE: 6-20-11

ATTESTED BY: Barbara Nelson DATE: 6/21/2011
Executive Secretary