

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
November 16, 2009**

Members Present:

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

Staff:

Fernando De León, Assistant Director  
Rudy Niño, Jr., Senior Planner  
Jacob Floyd, Planner  
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-10-001**

Applicant – John & Dianne MacDiarmid  
Lot 6 and the East 25 Feet of Lot 5, Block 5, NCB 3262  
305 West Kings Highway  
Zoned: “H R-5” Residential Single-Family Monte Vista Historic District

The applicant is requesting **1)** a 302 square foot variance from the requirement that the total floor area of an accessory structure in residential zoning districts not exceed two thousand five hundred (2,500) square feet, to increase the total floor area of said structure to 2,802 feet and **2)** a 2-foot variance from the requirement that fences in rear yards not exceed 6 feet in height, in order to build an 8-foot tall fence in the rear yard.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the requested variances. He indicated 21 notices were mailed, three were returned in favor and none were returned in opposition and no response from the Monte Vista Historical Association.

Marvin Young, applicant, stated because of the way the garage and the existing dog run are constructed on the property there have been security issues. He also stated the Historic Review Board has approved the garage area and that it is not going to be a two-story unit. The existing

roof of the carport was built over the fence and is structurally deteriorated due to the bad construction of the carport. He further stated the existing two-story guest house will not be touched.

**The following citizens appeared to speak:**

Dianne MacDiarmid, citizen, spoke in favor.

Rick Lewis, citizen spoke in opposition.

Emily Bushay, 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-10-001 closed.

**MOTION**

A motion was made by **Mr. Camargo**. I would like to move that in Case No A-10-001, the applicant being **John and Dianne MacDiarmid**, on property located at **305 West Kings Highway**, also legally described as **Lot 6 and the East 25 feet of Lot 5, Block 5, NCB 3262**, be granted a variance to **reconstruct an accessory structure that will eventually amount to a total square footage of 2,802 square feet**. It is this board's opinion that the variance will not be contrary to the public interest in that **of the notices that were mailed to the adjacent property owners none were returned in opposition to the request, there was opposition present at the meeting but in this member's opinion the opposition that was before the board was in fact in most part to the height and type of construction which is not the issue that is before this board**. The issue before this board as mentioned earlier is a square foot variance to an accessory structure. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it has been indicated by the applicant's representative and contractor that the existing structure is structurally unsafe and that reconstruction or rebuilding of this property is necessary in order for life safety**. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done in that **the properties in this historic district for the most part have secondary accessory structures at the rear of the lot. Many of which exceed those requirement that are currently in the Unified Development Code**. 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 **even though there has been statements made that there was concern that perhaps the property would be used for uses other than those allowed in the single family classification. It has felt that there are sufficient number of departments and divisions within the city to monitor if any possible zoning violations that would occur**. 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 specifically stated earlier that there are many similar structures within this historic district and specifically on this property the adjacent property to the north is of substantial size and setback as what is proposed by the applicant**. 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 **ironically a survey that has been presented into evidence shows the true location of the property outline which extends beyond what normally to a person viewing this property would assume is the property line. So in fact this particular property, according to a registered engineered survey, in fact is more spacious that what it appears from the slides that we have seen. The motion includes only item #1 which is that to the variance on the square footage and does not include any reference to any 8-foot fence that was advertised.** The motion seconded by Mr. Hardemon.

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

**NAY: None**

**THE MOTION PASSES.**

**Approval of the October 19, 2009 Minutes**

**The October 19, 2009 minutes were approved with all members voting in the affirmative.**

**Approval of the November 2, 2009 Minutes**

**The November 2, 2009 minutes were approved with all members voting in the affirmative.**

There being no further discussion, meeting adjourned at 2:26 p.m.

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

DATE: 12-7-09

ATTESTED BY: [Signature] DATE: 12/9/09  
Executive Secretary