

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
November 17, 2008**

Members Present:

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

Staff:

Fernando De Leon, P.E. Assistant Director
Rudy Niño, Senior Planner
Jacob Floyd, Planner
Paul Wendland, City Attorney
Jacob Floyd, Planner
Michael Farber, Planner
Michael Taylor, Senior Planner

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-08-053

Applicant – Steven Benke
Lot 39, Block 8, NCB 10995
4018 Vance Jackson
Zoned: “C-1” Light Commercial District

The applicant is requesting for **1)** a 172-foot variance from the Chapter 28-239(e) requirements that signs be set back a minimum of 200 feet from the nearest residential zone, in order to allow a sign to be 28 feet from the nearest residential property, and **2)** a 65-foot variance from the requirement that signs be setback a minimum of 100 feet from the nearest street (Chapter 28 requires these setbacks for expressway size signs on lots which do not have expressway frontage, but that are within 500 feet of an expressway). In the alternative the applicant is requesting **3)** a 17.999-foot variance from the Chapter 28-239(d) requirement that free-standing on-premise signs on an Arterial Type B shall not exceed an overall height of 32 feet, in order to erect a 49.999-foot tall free-standing on-premise sign.

Michael Farber, Planner, presented background and staff’s recommendation of denial of the requested variances. He indicated 20 notices were mailed, 1 was returned in favor and 2 were returned in opposition and no response from Dellview Area Neighborhood Association.

Andrew Perez, Chief Sign Inspector, stated the board members have to approve variance one and variance two together. The third variance is an alternative if the board members decide not to approve the first two variances which the third variance is only for the height. He also stated that they are saying it is an Arterial B which is only allowed 24 feet for a single-tenant sign and 32 feet for a multi-tenant sign and you can't go from an Arterial B, skip an Arterial A, and go directly to highway.

Steven Benke, applicant, stated that the statute states that if you are within 500 feet of the freeway you can have up a 60 foot sign and he is within 300 feet of the freeway. He also stated he already has preexisting foundation issues which he does not know if the structure would support the sign on the road. He also thought it would ecstasically look better if the sign was on a pole. He further stated there are some telephone wires that look like the sign might obstruct. He would like space to place the sign and he is not going to put the type of capital investment that it requires into a sign that nobody can see.

Edward Juarez, representative, stated they have a permit for multi-tenant sign for a commercial building and for the placement of the sign. The parking lot is very small and cluttered which makes of the placement of the sign is very important in order for it to be visible. He also stated if you put the sign back the building would block the sign. He further stated the sign would be low enough for vandalism, graffiti, and the possibility of cars hitting the sign.

The following citizens appeared to speak:

Joe Pina, 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-08-053 closed.

1ST MOTION

A motion was made by **Ms. Rogers**. Re Appeal No **A-08-053**, variance application for a **17.999-foot variance from the Chapter 28-239(d) requirement that free-standing on-premise signs on an Arterial Type B shall not exceed an overall height of 32 feet, in order to erect a 49.999-foot free-standing on-premise sign**, subject property description **Lot 39, Block 8, NCB 10995**, located at **4018 Vance Jackson**, the applicant being **Steven Benke**. I move that the Board of Adjustment grant the applicants request regarding Appeal No **A-08-053**, 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. Such variance will not be contrary to the public interest in that **it will not alter the overall appearance or character of the area and that there are several other large height signs in the vicinity**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a lesser height sign would result in it not get full visibility from drivers in the area**. So that the spirit of the ordinance is observed and substantial justice is done in that **advertisement for the business would be provided**. 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 it is a sign for advertising a business and I wouldn't see that it would authorize any other use of the sign other than that mentioned. Such variance will not substantially or permanently injure the district in which the variance is sought in that it would not have a negative impact on the neighborhood or the surrounding area. I can say this because the notices sent out there were very few that were returned and only two were against. Such variance will not alter the essential character of the district in which the variance is sought in that the proposed sign will be in keeping with other taller signs in the area. Such variance will be in harmony with the spirit and purpose of the chapter in that the structure will cosmetically finished to blend in with the other type signs and accordance with the applicant would be of a first quality sign. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that the alignment of the property causes a problem for the placing of the sign due to the high overhead wires and the positioning of the property to the other arterial highways. The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district in that the proposed variance does not weaken the overall zoning plan or affect the rest of the area. The variance will not adversely affect the public health, safety or welfare of the public in that it does create any adverse affect to the general public. The motion seconded by Ms. Cruz.

AYES: Rogers, Cruz, Villyard, Hardemon, Alejos, Dutmer, Victor, Gallagher
NAY: Moffat, Camargo

THE 1ST MOTION FAILED.

2ND MOTION

A 2nd motion was made by Mr. Camargo. I would like to propose a motion in Case No A-08-053, the request of Steven Benke, on property which is known as Lot 39, Block 8, NCB 10995, with an address of 4018 Vance Jackson, for a variance to erect an on-premise sign to a maximum height of 36 feet. It is my feeling and even though I don't have the findings of facts before me but it is my feeling the variance for the signage that I am proposing gives the applicant the opportunity to advertise his business and still allow some form of structure to be erected above the height of the existing building and make it visible from the arterial street Vance Jackson. I feel that is not against the public interest and as stated before by a motion maker that of the many notices that were mailed, there was one notice returned in favor and two returned in opposition. I feel that the use of this property is certainly within keeping of the "C-2" Commercial classification which the property enjoys and I feel that the health, safety, and welfare of the city will be served and that the permits will be issued to a licensed on-premise sign contractor and the necessary inspections to insure stability will be made.

MR. CAMARGO WITHDREW HIS MOTION DUE TO CONFLICTS WITH THE STATED PURPOSES OF THE CHAPTER.

THE VARIANCE WAS NOT GRANTED.

Board members took a 10-minute recess.

CASE NO. A-08-096

Applicant – The University of the Incarnate Word
Lots P-71D, P-71E, P-71M, P-101, and P-103, NCB 14446
9729 Datapoint Drive
Zoned: “C-3” General Commercial District

The applicant is requesting a 17-foot variance from the requirement that an on-premise, multi-tenant sign fronting an Arterial B street classification be no taller than 32 feet tall, in order to erect a 49-foot tall free standing on-premise sign.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of this variance. He indicated that there were 23 notices mailed, 1 was returned in favor and none were returned in opposition.

Andrew Perez, Sign Inspector, stated he recommended approval because there were no residential zoning around the property and it was all commercial. The applicant is 72 feet from the 500 mark that he would meet from highway standards. He also stated there is a Wendy’s that has a high-rise in the area.

Mike McChesney, applicant, stated the 49 feet height would be at the roof of the Motel 6 nearby. He also stated his sign would be almost the same height as the Wendy’s sign. He feels the clinic and school is something the community needs to be aware of this facilities.

No citizens 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-08-096 closed.

MOTION

A motion was made by **Mr. Villyard**. Re Appeal No **A-09-096**, variance application for a **17-foot variance from the requirement that an on-premise, multi-tenant sign fronting an Arterial B street classification be no taller than 32 feet tall, in order to erect a 49-foot tall free standing on-premise sign**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No **A-08-096**, 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 that the variance is necessary because strict enforcement of this article prohibits any reasonable

opportunity to provide adequate signs on the side, considering the unique features of a site such as its dimensions, landscaping, or topography **indicate that is 72 feet from the highway standard.** After seeking I move that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated **in that there are no comparable tenants in the area and it provides a unique role.** Granting the variance will not have a substantially adverse impact upon neighboring properties **since there are numerous commercial signs in the area that will match it in height.** Granting the variance will not substantially conflict with the stated purposes of this article in that **it does blend with the community and there are no single-family homes in the immediate vicinity.** The motion seconded by **Mr. Hardemon.**

AYES: Villyard, Hardemon, Camargo, Alejos, Gallagher

NAY: Moffat, Cruz, Dutmer, Rogers, Victor

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-08-108 B

Applicant – Villa Park Architecture

Lot 41, Block 1, NCB 14592

11303 O'Connor

Zoned: "C-3 IH-1" General Commercial Northeast Gateway Corridor Overlay District

The applicant is requesting a 19-foot variance from the requirement from the Northeast Gateway Corridor Overlay District requirement that a minimum 20-foot side setback be maintained, in order to erect a structure 1 foot from the side property line.

Michael Farber, Planner, presented background and staff's recommendation of approval of this variance. He indicated that there were 9 notices mailed, none were returned in favor and none were returned in opposition.

David Corona, representative, stated due to the unique shape of the location, complying with the 20-foot side yard setback and the reduction of parking spaces it would create a hardship to the owner, pretty much not giving a reasonable use of the property to develop it. He further stated this project is an extension to the development next door and it will be very similar in design and colors and elements on the building. He feels the variance will not detract with the Northeast Gateway Corridor Overlay due to the fact that the property is not highly visible from IH 35.

No citizens 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-08-108 B closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that in Case No A-08-108 B, the request of the applicant which is **Villa Park Architecture**, requesting a **19-foot variance from the Northeast Gateway Corridor Overlay District requirement that a minimum 20-foot side setback be maintained, in order to erect a structure 1 foot from the side property line, on property known as Lot 41, Block 1, NCB 14592, address being 11303 O'Connor**, be granted a variance. That such variance will not be contrary to the public interest in that **all the notices that were mailed to the adjacent property owners none were returned in opposition**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the basic underline zoning classification for this property and the property immediate to the northwest being a "C-3" commercial technically would not require a side yard setback at all were it not in the corridor overlay zoning classification**. So that the spirit of the ordinance is observed and substantial justice is done in that **the applicant has stated that in the addition to the 1-foot setback from the property line, I'm assuming that it is on the adjacent property, that a 16-foot fire lane is to be maintained between the structures**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **are specifically allowed in the "C-3" classification for which the proposed use fits that category**. Such variance will not substantially or permanently injure the district in which that variance is sought in that **the property to the southwest, although it is zoned I believe residential, it is in fact utilized as approximately a 200-foot wide overhead utility easement abutting the property in question**. Such variance will not alter the essential character of the districts in which the variance is sought in that **other commercial uses in this property enjoy similar setbacks that were imposed prior to the corridor overlay classification**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **for one those being the irregular shape of this property caused by the major arterial O'Connor Road which forces the designer to design the proposed commercial structure further to the northwest to allow for parking that the southern southeastern portion of the property in question**. The variance will not adversely affect the public health, safety or welfare of the public **commercial uses such as this will require necessary permits from the department and inspections to be completed prior to the occupancy of the building**. The motion seconded by **Ms. Dutmer**.

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

NAY: None

THE VARIANCE WAS GRANTED.



CASE NO. A-09-004

Applicant – Christopher Erck

The north irregular 242.27 feet of Lot 10, Block 1, NCB 34732E (Leon Springs Development Subdivision “IH 10 W/Dominion” Annexation)

24135 West IH-10 West

Zoned: “C-3 GC-1” General Commercial Hill Country Gateway Corridor Overlay District

The applicant is requesting 1) a Special Exception fro the relocation of a building from 23361 IH-10 West to 24135 IH-10 West and 2) a variance from the Hill Country Gateway Corridor District Plan requirement that the exterior surfaces of primary and accessory buildings that are located within the corridor district boundaries, and that are visible from IH-10, consist of one of the permitted materials specified by the Hill Country Gateway Corridor Overlay District (*Building Materials – Permitted*), in order to relocate a structure with wood siding exterior surfaces.

Michael Farber, Planner, presented background and staff’s recommendation of approval of this variance. He indicated that there were 34 notices were mailed, none were returned in favor and none were returned in opposition and no response from Timber Ridge Neighborhood Association.

Christopher Erck, applicant, stated the structure is a house that has been sitting six block from the Leon Springs dancehall for about eight years and that it is in decent shape, it is structurally sound, but it is weathered. He also stated that his goal is to move it six blocks up, put it the grass area that is the yard of the dancehall, and convert into a small restaurant. It fits the neighborhood because directly across the street there are four or five houses that are exactly similar construction materials and same siding. He further stated he would put a new foundation under the structure and it is wide open inside perfectly suited for a dining room space. It is not visible from the expressway. It is going to be a separate company on the same property as the Leon Springs dancehall.

The following citizens appeared to speak:

Mike Barker, 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-09-004 closed.

MOTION

Mr. Camargo made a motion to move this case to the end of the agenda to allow Mr. Erck and Mr. Baker to discuss some concerns Mr. Baker had. Ms. Rogers seconded it and all members voted in the affirmative.

CASE NO. A-09-005

Applicant – Candlewood Suites
Lot 16, Block 6, NCB 14445
9350 IH 10 West
Zoned: “C-3” General Commercial District and “C-2” Commercial District

The applicant is requesting a 5-foot variance from the requirement that front-yard solid screen fences shall not exceed 3 feet in height, in order to erect an 8-foot tall solid screen front yard fence.

Mike Farber, Planner, presented background and staff’s recommendation of approval of this variance. He indicated that there were 11 notices mailed, none were returned in favor and one was returned in opposition.

Jacqueline Chavez, applicant, stated the reason for this request is because of vandalism and graffiti. The fence will also serve as security to the vehicles of the guests at the hotels. She also stated they have taken into consideration the fact that the fire hydrant will be fenced in. She further stated cameras in the parking lot will be a liability to the hotel owners.

No citizens 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-09-005 closed.

MOTION

A motion was made by **Mr. Villyard**. Re Appeal Case **A-09-005**, variance application for a **5-foot variance from the requirement that front-yard solid screen fences shall not exceed 3 feet in height, in order to erect an 8-foot tall solid screen front yard fence**, subject property described at **Lot 16, Block 6, NCB 145**, also at **9350 IH 10 West**. I move that the Board of Adjustment grant the applicants request regarding Appeal No **A-09-005**, 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 **there are numerous 8-foot fences in the immediate area and this would not create a hardship**. Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has reported numerous cases of vandalism and theft in the area and feels that this would end most of that**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located **as I said before there are numerous 8-foot fences in the area and this would blend with the area**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **the**

vandalism problem has plagued this area and hopefully this will ease that. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **this would complete a previous variance that had been granted by this board several months ago.** The variance will not adversely affect the public health, safety or welfare of the public. The motion seconded by **Mr. Camargo.**

AYES: Villyard, Camargo, Rogers, Alejos, Cruz, Hardemon, Dutmer, Victor, Gallagher
NAY: Moffat

THE VARIANCE WAS GRANTED.

CASE NO. A-09-004

Applicant – Christopher Erck

The north irregular 242.27 feet of Lot 10, Block 1, NCB 34732E (Leon Springs Development Subdivision “IH 10 W/Dominion” Annexation)

24135 West IH-10 West

Zoned: “C-3 GC-1” General Commercial Hill Country Gateway Corridor Overlay District

The applicant is requesting 1) a Special Exception fro the relocation of a building from 23361 IH-10 West to 24135 IH-10 West and 2) a variance from the Hill Country Gateway Corridor District Plan requirement that the exterior surfaces of primary and accessory buildings that are located within the corridor district boundaries, and that are visible from IH-10, consist of one of the permitted materials specified by the Hill Country Gateway Corridor Overlay District (*Building Materials – Permitted*), in order to relocate a structure with wood siding exterior surfaces.

Christopher Erck, applicant, stated he was able to discuss this issues with Mr. Barker and has decided to go on with case. He also stated the Mr. Barker primary concerns did not pertain to the wood side being applicable and that they would meet later to discuss this, traffic impact, parking, and any other concerns. He further stated he fees the wood structure is appropriate for the neighborhood, matches the existing business and houses, and is an appropriate structure for Old Leon Springs.

The following citizens appeared to speak:

Mike Barker, citizen, stated he spoke to Mr. Erck.

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-09-005 closed.

MOTION

A motion was made by **Ms. Victor**. Re Appeal Case **A-09-004**, located at **24135 West IH-10, north irregular 242.27 feet of Lot 10, Block 1, NCB 34732E (Leon Springs Development Subdivision “IH-10 W/Dominion” Annexation)**. I move that the Board of Adjustment grant

the applicants request regarding Appeal No **A-09-004**, 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 **it has taken into account flooding and parking conflicts**. Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it will deprive a new business of opening and continue a wasted space from being utilized**. So that the spirit of the ordinance is observed and substantial justice is done in that **the building materials will be used that are original to the area**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **it is a restaurant and it is surrounded by other restaurants**. Such variance will not substantially or permanently injure the district in which that variance is sought in that **the building is made of materials that are like the buildings that are surrounding it**. Such variance will not alter the essential character of the districts in which the variance is sought in that **again the building is made out of original vintage materials of the area**. Such variance will be in harmony with the spirit and purpose of this chapter in that **it will allow an existing historic type of building to be moved and utilized instead of being torn down**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **it will utilize an existing building and that building will be saved rather than a new building be built**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **it will work with the original look of the neighborhood**. The variance will not adversely affect the public health, safety or welfare of the public in that **it is not visible from IH 10 and other buildings are surrounding it that are made of the same material and it will be required to be brought to correct code regarding fire safety**. The motion seconded by Mr. Villyard.

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

NAY: None

THE VARIANCE WAS GRANTED.

Approval of the 2009 Board of Adjustment public hearing calendar

Mr. Villyard made a motion to approve the 2009 Board of Adjustment public hearing calendar and Ms. Dutmer seconded.

AYES: Villyard, Dutmer, Moffat, Hardemon, Victor, Alejos, Gallagher

NAY: Cruz, Rogers, Camargo

The 2009 Board of Adjustment public hearing calendar was approved.



Approval of the Minutes

Mr. Camargo made a motion to approve November 3, 2008 minutes and all members voted in the affirmative and **Ms. Cruz** abstained.



There being no further discussion, meeting adjourned at 7:13 p.m.

APPROVED BY: Michael R. Gallagher OR _____
Michael Gallagher, Chairman Paul Klein, Vice-Chair

DATE: 12-1-08

ATTESTED BY: [Signature] DATE: 12/02/08
Executive Secretary