

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
November 19, 2012**

Members Present:

Michael Gallagher  
Frank Quijano  
Edward Hardemon  
Helen Dutmer  
George Britton  
Jesse Zuniga  
Mike Villyard  
Gene Camargo  
Maria Cruz

Staff:

John Jacks, Assistant Director  
Margaret Pahl, Senior Planner  
Tony Felts, 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-12-054A**

Applicant – Hunter’s Pond, L.P.

62 vacant lots in blocks 8, 13, 14, 21, 22, 23, NCB 18098

10318-10734 Goose Way & 10702-10727 Butterfly Pass

Zoned: “UD AHOD” Urban Development Airport Hazard Overlay District

The applicant is requesting **1)** a 3-foot variance from the minimum 8-foot porch depth and **2)** a variance from the minimum porch length of 50% of the front façade to allow 5-foot deep by 8-foot long porches on 62 new homes.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 23 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Neighborhood Association.

Bobby Perez, representative, stated they are asking for approval of the variance to do a 5 by 8 porch. He also stated they would have to comply with any other city codes. He further stated 100% of the homes will have porches.

**The following citizens appeared to speak:**

Irene Hernandez, citizen, spoke in favor.

Joslyn Munoz, citizen, spoke in opposition.

Ericka Lopez, citizen, spoke in opposition.

Brenda McCal, 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-12-054A closed.

**MOTION**

A motion was made by **Mr. Camargo**. I would like to move that in Case No **A-12-054A**, the applicant being **Hunter's Pond, L.P.** for a request of variances on property which is described initially on **62 lots in Blocks 8, 13, 14, 21, 22, 23, out of NCB 18098**, the properties are located on **Goose Way and Butterfly Pass**, as was mentioned by staff and I also read in documentation, the majority of these properties before us sometime ago with a greater variance request than what is being requested today. It is this members feeling that the applicant has reconsidered that of what was originally submitted, listened to our discussion, the motions that we have made and has come back to the board with this proposal. Specifically, we find that such variance will not be contrary to the public interest in that public interest is a central theme used to justify government regulations; it refers to general welfare and common well-being of the population. I'd like to point out that while there were individuals in opposition, we had a committee report that indicated the vote was on a 3 to 2 basis in support of this case. The president of the neighborhood association appeared before this boarding favor for recommending approval of the request. While the public interest, according to the people who spoke in opposition, isn't totally served. It is felt the majority of the property owners in this subdivision will support what is being requested. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the property owner asserts that the extensive design requirements of the UD district have curtailed market interest in the remaining vacant lots. A national builder has offered to re-start housing construction in Hunter's Pond with the variance that is being requested before today. It should be pointed out that the lots in question are not at the main entrance of the subdivision which by statements that were submitted by individuals appears to be the main concern as far as he appearance of the subdivision. This apparently is at the tail end or end and after further construction will not occur to the east but at the bottom end of the subdivision and physically separated from the homes that have already been constructed in the area. The spirit of the ordinance is observed and substantial justice is done in that therefore the variance does represent that spirit and what I mean by that is that it appears that the applicant has reconsidered the original request and has come back to the board with a modified 5 by 8 porch minimum porch request. I failed to mention at the beginning, that in this particular case, the request that is before us is a 3-foot variance from the minimum 8-foot porch depth and secondly a

variance from the minimum porch length of 50% of the front façade to allow 5-foot deep by 8-foot long porches on 62 lots. Although the request before us and the information that the staff provides us says 62 lots, it was mentioned by the applicant's representative that not all lots will have the 5 by 8 porches that are being requested. That there will be a variety of porch sizes throughout the 62 lots. 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 construction that is to occur is single-family homes**. 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 is felt that the geographical separation of the site in question with reduced porch size will not negatively impact the adjacent properties**. 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 **it is felt that the applicants have identified a housing product that they determined would succeed in the Hunter's Pond market and have now altered its design in an effort to gain Board approval for the construction and hopefully generate interest in construction of more homes in this subdivision**. The motion was seconded by Ms. Dutmer.

**AYES: Camargo, Dutmer, Villyard, Hardemon, Zuniga, Quijano, Cruz, Britton, Gallagher**

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

#### **CASE NO. A-13-002**

Applicant – Phil Lane, General Manager of KSAT

Lot 24, Lot 6 and south half of Lot 7, Block 26, NCB 783 and a portion of abandoned San Antonio River channel out of NCB 783, save and except that portion conveyed to the City of San Antonio

1408 N St. Mary's Street

Zoned: "FBZ T5-1 RIO-2 AHOD" Form Based Zone Transect 5-1, River Improvement Overlay, Airport Hazard Overlay Districts

The applicant is requesting 1) a 4-foot variance from the maximum 4-foot fence height, as specified in UDC Section 35-514 to allow an 8-foot predominantly open fence in the front yard, 2) a variance from the requirement for 80% frontage build-out, 3) a variance from the maximum 12-foot front setback, 4) a variance from the maximum 12-foot side setback, 5) a variance from the prohibition against parking in the first lot layer and the requirement that parking be screened, and 6) a variance from the building disposition standards shown in UDC Tables 35-209-11 and 35-209-18 to allow demolition, renovation and construction of two-story 15,000 square foot addition attached to and in line with the original building.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval. He indicated 15 notices were mailed, none were returned in favor and none were returned in opposition.

Mark Opel, representative, stated he believes he designed a building to meet security needs. He also stated these variances would provide security for the employees of the news station. The fence would give an opportunity to design the courtyard. He further stated the north side of the property was chosen so that they would be near the existing equipment. He further stated the surrounding neighbors are in support of the variances.

#### **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-13-002 closed.

#### **MOTION**

A motion was made **Mr. Quijano**. Re Appeal No. **A-13-002**, variance application for **Post-Newsweek Stations**, subject property description **IS Lot 24, Lot 6 and south half of Lot 7, Block 26, NCB 783 and a portion of abandoned San Antonio River channel out of NCB 783, save and except that portion conveyed to the City of San Antonio**, situated at **1408 N St. Mary's Street**, the applicant is **Phil Lane, General Manager of KSAT**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-002**, the applicant is requesting six variances, **1) a 4-foot variance from the maximum 4-foot fence height, as specified in UDC Section 35-514 to allow an 8-foot predominantly open fence in the front yard, 2) a variance from the requirement for 80% frontage build-out, 3) a variance from the maximum 12-foot front setback, 4) a variance from the maximum 12-foot side setback, 5) a variance from the prohibition against parking in the first lot layer and the requirement that parking be screened, and 6) a variance from building disposition standards shown in UDC Tables 32-209-11 and 35-209-18 to allow demolition, renovation and construction of a two-story addition attached to and in line with the original building**, 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 public interest is defined as the general health, safety and welfare of the public at large. A television station has the public interest at the center of its mission and its uninterrupted broadcasting is essential to the public. The requested variances allowing the building addition just north of the existing building, preserving the heritage trees, and avoiding the river bottom soils and the utility easement, are justified by the unusual property constraints. The fencing, while admittedly tall, will be open, generously landscaped and not contrary to the public interest. The enhanced streetscape and the addition of a brick parking plaza mitigate any impacts to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that a literal enforcement of the ordinance would require that the applicant eliminate the only substantial green space on the site. While the goal of form-based code is to re-establish**

a pedestrian-oriented urban core, this block will never be consistent with that vision. The land uses on this block, a private school campus on the west side of the street and the broadcast studio on the east, are not interactive. The construction of a building along the frontage, with the type of security this business requires, is unnecessary. The applicant's proposed design approach, of a widened sidewalk with generous landscaping and the parking plaza balances the competing interests of the property related limitations and the demands of their broadcast mission. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance is represented by its equal application to all citizens. In some cases, unique property-related characteristics warrant flexibility to the regulations. Mature trees have often constituted a property-related hardship justifying ordinance modifications. Many other factors are also restricting development options on this property. The peculiar shape fashioned by its historic proximity to the river channel, combined with its unique equipment and technology constraints, has proven challenging to designers and justifies the variances. The satellite dishes and the 500-foot tall signal tower could not be moved without service disruption and were the first priority in the redesign. Its Federal Communication Commission's mandate to remain on the air with continuous broadcast was a significant factor reducing typical design and construction options. 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 FBZ T5-1, RIO-2, AHOD 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 as in any established neighborhood on a downtown fringe, there are a variety of land uses, assorted buildings styles, and several properties in transition. Neither side of the subject block face is currently improved with buildings consistent with the standards of the form-based zone. Two neglected buildings share property boundary lines with the broadcast station. Vacant land sits across Arden Grove. The Catholic School Campus and City Fire Station have a stabilizing influence on the streetscape. The applicant's investment will have a positive influence on the area and hopefully encourage investment in the immediate vicinity. Though the proposed plans require variances from the UDC, granting these variances will not alter the essential character of the surrounding area or negatively impact property values. 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 is requesting a series of variances from the form-based code to allow a building addition to the north of their existing building. They are also seeking authorization to fence their front lawn to create a secure courtyard for their staff. They assert that their 24-hour operation necessitates this extraordinary level of security. In addition, they fear that their business of broadcast makes them susceptible to a "fanatical element", which is certainly possible. The applicant is also seeking approval for a dual purpose parking plaza which requires a variance from screening. Each of these requested variances results from circumstances unique to the property or their broadcast mission. The motion was seconded by Ms. Cruz.

**AYES: Quijano, Cruz, Britton, Camargo, Hardemon, Zuniga, Dutmer, Villyard, Gallagher**

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

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**CASE NO. A-13-003**

Applicant – George M Ryan, Texas Neon Advertising Company  
Lot 8, Block 126, NCB 18300  
9160, 9240, 9290 Guilbeau Road  
Zoned: “C-3” General Commercial

The applicant is requesting 1) a 124-square foot variance from the 500-square foot maximum size allowed for a multiple tenant freestanding sign along a Type Arterial in order to allow a multiple tenant sign 624-square feet in size and 2) a 106-foot variance from the 150-foot minimum spacing distance for freestanding signs on a single lot in order to allow two freestanding signs within 44-feet of each other.

Tony Felts, Planner, presented background and staff’s recommendation of approval. He indicated 36 notices were mailed, none were returned in favor and one was returned in opposition.

George M Ryan, representative, stated they are taking down a cabinet and putting a larger one. He also stated they are adding an estimate of 50-feet. He further stated they are completely replacing an existing sign that is old.

**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-13-003 closed.

**MOTION**

A motion was made **Mr. Quijano**. Re Appeal No. **A-13-003**, variance application for the **University of Incarnate Word**, subject property description is **Lot 8, Block 126, NCB 18300**, situated at **9160, 9240, 9240 Guilbeau Road**, the applicant is **George M Ryan, Texas Neon Advertising Company**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A13-003**, the request is for variances which are 1) a **124 square-foot variance from the 500 square-foot maximum size allowed for a multiple tenant freestanding sign along a Type A Arterial in order to allow a multiple tenant sign 624 square feet in size** and 2) a **106-foot variance from the 150-foot minimum spacing distance for freestanding signs on a single lot in order to allow two freestanding signs within 44-feet of each other**, 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. 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 or a denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. **The subject sign on the property is existing, and is already out of compliance; likely due to pre-dating Chapter 28. Permits have been issued for refacings of the subject sign, and also for the freestanding sign that is within 44 feet of the subject sign. The sign structure consists of illuminated sign cabinets suspended between two 18-inch pipes and topped with a 20-foot by 4-foot illuminated shopping center identifier. There is currently approximately 2 feet of vacant space between the sign topper and the first cabinet. The applicant proposes to remove the first cabinet, and replace it with a larger one, filling all of the space between the topper and the second cabinet. This proposed action will technically enlarge the sign area, even though a viewer may not perceive that the sign has actually been enlarged. It is essential to provide the University of the Incarnate Word adequate space on the sign, as the University has a substantial presence at the shopping center and is the owner of the land. Additionally, the existing tenants of the shopping center must also be given deference in order for their businesses to survive. As such, granting this minor variance is necessary for the vitality of the shopping center.** 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. **As previously stated, the sign is already non-conforming, and the casual viewer of the sign would not discern that the area of the sign has been expanded, since the enlargement is within the confines of the existing sign structure. Because the area of the sign structure itself is not being enlarged and the fact that both of the signs are existing, granting of the variance will not provide a special privilege to the applicant. Granting the variance will not have a substantially adverse impact on neighboring properties. Again, the signs are existing, and have existed for many years. Enlargement of the subject sign, as it is within the confines of the existing sign structure, will not adversely impact neighboring properties. As stated previously, the casual viewer of the sign would likely not notice that an enlargement has taken place. Granting the variance will not substantially conflict with the stated purposes of this article. The requested variance does not conflict with the stated purposes of the sign ordinance, particularly the goals of enhancing appearance and reducing visual chaos and distraction. Rather, the addition of the new sign cabinet will remove a void in the existing sign structure, and potentially enhance the experience of a viewer from Gilbeau Road. The motion was seconded by Mr. Hardemon.**

**AYES: Quijano, Villyard, Britton, Zuniga, Dutmer, Camargo, Hardemon, Cruz,  
Gallagher**

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

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**Approval of the Minutes**

The October 29, 2012 minutes were approved with all members voting in affirmative



There being no further discussion, meeting adjourned at 2:43 pm.

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

DATE: 1-14-13

ATTESTED BY: [Signature] DATE: 1-13-18  
Executive Secretary