

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 15, 2007**

Members Present:

Michael Villyard
Michael Gallagher
Gene Camargo
Helen Dutmer
Ed Hardemon
George L. Alejos
Mary Rogers
Gerald Yarbrough
Andrew Ozuna
Maria D. Cruz
Mimi Moffat

Staff:

Fernando De Leon, Assistant Director
Ted Murphree, Asst. City Attorney
Chris Looney, Planner Manager
David Arciniega, Planner

Call to Order

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

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

David Arciniega, Planner, stated Case No. A-07-102 has been postponed as per the applicant's request.

CASE NO. A-07-101

Applicant – Ricardo & Rosalinda Flores
Lot 52, Block 23, NCB 3686
903 Barclay Street
Zoned: "R-4" Residential Single Family District

The applicant is requesting for 1) a 17-foot, 4 inch variance from the minimum 20-foot front setback required for front entry carports, in order to keep an existing carport 2 feet, 8 inches from the front property line, and 2) a 4-foot, 6-inch variance from the minimum 5-foot setback required in "R-4" Zoning districts, in order to keep the same carport 6 inches from the side property line.

David Arciniega, Planner, presented background and staff's recommendation of approval on this case. He indicated 15 notices were mailed, 1 notice was returned in favor and 0 notices were returned in opposition.

Rosalinda Flores, owner, stated the purpose of this request is to keep their carport 6 inches from the property line. She stated the reason for this was to keep their new vehicle safe and protect it from the weather.

Ricardo Flores, owner, stated he chose to put the carport in the front because of the trees in the backyard and the siding he put was to block out the sun. He also stated the chosen location for the carport was so he could add an addition to his bedroom. He further stated he letters from two neighbors in support the carport.

The following citizen(s) appeared to speak:

Christine Gutierrez, council aide for Ms. Lourdes Galvan, stated Ms. Lourdes Galvan Councilwoman from District 5 wrote a letter stating she was in favor of the carport.

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-07-101 closed.

MOTION

A motion was made by Mr. Camargo, to move Case No. 07-101, the applicant being Ricardo Flores on property whose legal description is Lot 52, Block 23, NCB 3686, also known as 903 Barclay Street, grant a variance in this case for 17-foot 4-inch variance from the minimum 20-foot front yard setback that is required for a frontage of carports and secondly to grant a 4-foot 6-inch variance from the minimum 5-foot side yard setback in the "R-4" Zoning district in which this property is located for the following reasons. The variance will not be contrary to the public interest, in that of the notices mailed to adjacent property owners none were returned in opposition and secondly due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. It appears that with the limitations on the distance between existing residents and side property line a shelter such as the one that has been constructed would not be permitted without a variance from this board. So that the spirit of the ordinance is observed and substantial, justice is done in that based on the photos as you might say that we have shown this particular structure would not be out of character with development that has occurred. All that this member recognizes is that the development that has been shown to us is not necessarily in accordance with regulations. It might have existed at the time. This is in existence and you cannot avoid the fact that that is a development that exists in this particular neighborhood. The variance will not authorize the operation of a use other than those uses specifically authorized for the zoning classification that it is in and that this is a single family residential use and it is zoned accordingly. The variance will not substantially or permanently injure the district in which that variance is sought in specifically for the reasons stated previously that this is in line with a good number of similar structures that exist in this neighborhood. The variance will not alter the essential character of the districts in which the variance is sought then again because it is in keeping with the surrounding area. Such variance will be in harmony with the spirit and purpose of this chapter in that it gives the board the authority to grant variances such as one that is needed in this particular case. 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 that existed. **It is this nervous feeling that the applicant in this case acted in good faith having seen what the surrounding development is and location in carports similar to what he was desires of. That he proceeded to construct of in a manner which is consistence with the surrounding area.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **the variance request will not be contrary to development that is existence in the surrounding area.** The variance will not adversely affect the public health, safety or welfare of the public in that **permits will be taken to legalize the existence of this structure if this variance is granted and all other appropriate codes that come into play will be adhered to.** The motion was seconded by Mrs. Dutmer.

AYES: Camargo, Dutmer, Alejos, Ozuna, Rogers, Cruz
NAYS: Gallagher, Moffat, Yarborough, Hardemon, Villyard

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-07-103

Applicant – Amos Jones
Lot 3, Block 6, NCB 18576
7743 Montego Road
Zoned: “C-3” General Commercial District

The applicant is requesting for a 13-foot variance from the requirement that single tenant, free-standing, on-premise signs shall not exceed an overall height of 24 feet, in order to erect a 37-foot tall single tenant, free-standing, on-premise sign.

David Arciniega, Planner II, presented background and staff's recommendation of denial of the variance request. He indicated that there were 11 notices mailed, 3 notices were returned in favor and 0 notices were returned in opposition.

David Simpson, Chief Sign Inspector, stated the sign permit has not been approved for the height.

Amos Jones, representative, stated he put the sign so the public could see it without causing traffic. He further stated that the sign company told him it was okay to put the sign up.

The following citizen(s) 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-07-103 closed.

MOTION

A motion was made by Mr. Ozuna, regarding Appeal Case No. A-07-103, variance application for 7743 Montego Road, subject property description Lot 3, Block 6, NCB 18576, located again at 7743 Montego Road, the applicant is Amos Jones. I move that the Board of Adjustment grant the applicants request regarding appeal No. A-07-103 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 proposed height of 37 feet would not interfere with residential or other land uses in the area.** Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship **in that the applicant has paid for the funds for the sign.** So that the spirit of the ordinance is observed and substantial, justice is done in that **the existing height of 37 feet and that we find the 37 feet would still allow the applicant to have signage and visibility on Mainland Dr. to support his business as he is requesting.** 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 **the zoning and proposed use of the property will not change with the requested variance.** Such variance will not substantially or permanently injure the district in which that variance is sought in that **the property if no other changes in land uses are being requested today.** Such variance will not alter the essential character of the districts in which the variance is sought in that **the surrounding land uses are commercial in nature and the height in impact to neighboring areas will not be harmed.** Such variance will be in harmony with the spirit and purpose of this chapter in that **the proposed signage does not alter the usage of signage is merely looking at increasing the height over what has already been approved.** 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 existing sign height limitation of 24 feet the applicant will not have the visibility on Mainland and Montego that he is seeking to continue the operation of his business.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **the sign ordinance as it exists allows some leeway within the signage inspector's provision in which the borrower has sought some leeway.** The variance will not adversely affect the public health, safety or welfare of the public in that **the construction of the sign will be according to will be submitting a permit for the proposed construction.** The intent of the Code requirements regarding signs is to establish consistency and conformity in signage over time through business change, attrition and entropy that the variance is necessary because strict enforcement would prohibit any reasonable opportunity to provide adequate signs on the site, considering the unique features of the site (dimensions, landscaping or topography). Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated and granting the variance will not have a substantially adverse impact upon neighboring properties and granting the variance will not substantially conflict with the stated purposes of this article. The motion was seconded by Mr. Yarborough.

AYES: Yarborough,

NAYS: Ozuna, Cruz, Hardemon, Rogers, Moffat, Camargo, Alejos, Gallagher, Dutmer, Villyard

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-07-106

Applicant – Hotel Properties of Texas, LP
Lot 7, NCB 13422
628 South Santa Rosa
Zoned: “D” Downtown District

The applicant is requesting to appeal the decision of the Director of the Development Services Department to follow the board of Adjustment’s recommendation in Case-07-094 to uphold the Chief Sign Inspector’s decision to issue a stop work order for the removal of an on-premise free-standing pole sign, and the interpretation of Chapter 28 section 245 of the City Code that the removal of an on-premise freestanding sign cabinet from a non conforming sign, without first obtaining the proper approvals, resulted in the termination of nonconforming rights or the opportunity to rebuild, reface and continue the use of the sign.

David Arciniega, Planner, presented background and staff’s recommendation of denial of request. He indicated that 22 notices were mailed, 1 notice was returned in favor and 1 notice was returned in opposition.

Stan Hannibal, representative, stated he is requesting for the Board of Adjustment to appeal the director’s decision. He further stated their intent was to reface the sign and reinstall the sign at its original location.

The following citizen(s) appeared to speak:

Daniel Gomez, 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-07-106 closed.

MOTION

A motion was made by Mr. Gallagher, Re Appeal No. A-07-106, the legal description being Lot 7, NCB 13422, the address being 628 South Santa Rosa, zoning being “D” Downtown District. I move that the Board of Adjustment **overturn the decision of the Director of Development Services to follow the Board of Adjustment recommendation in Case A-07-106 to uphold the Chief Sign Inspector’s decision to issue a stop work order for the removal of on-premise free-standing pole sign and the interpretation of Chapter 28 Section 245 of the City Code that the removal of an on-premise, free-standing sign cabinet from a nonconforming sign, without first obtaining the proper approvals, resulted in the termination of**

nonconforming rights or the opportunity to rebuild, reface and continue the use of the sign. This is necessary because strict enforcement of this code prohibits any reasonable opportunity to provide adequate signs for this site **and as evidence we have listened to the representatives discuss the fact that the guests are having problems locating the hotel.** This action does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated **in that we have seen that there is a sign right next to that that's already in existence and so therefore we should at least try to repair the damage that's been done by having that sign taken down.** Taking this action will not have substantially adverse impact upon neighboring properties **because the other properties are in essence already having the advantage of that larger sign.** This action will not substantially conflict with the stated purposes of the code in this matter. **We must also consider that fact that business has been hurt by this and that the Marriott organization may in fact pull the plug here and cease business at this location which would have a damaging effect on development in the City of San Antonio.** The motion was seconded by Mr. Hardemon.

AYES: Gallagher, Hardemon, Dutmer, Cruz, Alejos, Rogers, Ozuna
NAYS: Moffat, Yarbrough, Camargo, Villyard

THE MOTION FAILED.

Sign Master Plan No. 07-011

David Simpson, Chief Sign Inspector, brief Board Members on Sign Master Plan for Goliad-Dorado, located at Goliad and IH-37 South.

Sign Master Plan No. 07-011 was voted on and approved with all members voted in affirmative.

Sign Master Plan No. 07-012

David Simpson, Chief Sign Inspector, brief Board Members on Sign Master Plan for Summit Christian Center, located at Marshall Road and U.S. Highway 281 N.

Sign Master Plan No. 07-012 was voted on and approved with all members voted in affirmative.

Approval of the Minutes

Mr. Gallagher moved to approve the minutes of August 21, 2006 and was seconded by Mr. Camargo and all members voted in the affirmative.

Mr. Villyard moved to reconsider the minutes of September 18, 2006 at a later date and all members voted in the affirmative.

Mr. Camargo moved to approve the minutes of October 1, 2007 and was seconded by Mrs. Dutmer and all members voted in the affirmative.



Staff Report

Chris Looney, Planner, stated City staff is still working on Board Member information on denied cases and what the status is on those cases. He further stated we would be contacting Ms. Lizcano and Mr. Balderas to receive their plaques.



