

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 3, 2011**

Members Present:

Michael Gallagher
Andrew Ozuna
Liz Victor
Edward Hardemon
Helen Dutmer
George Britton
Mary Rogers
David Villyard
Gene Camargo
Harold Atkinson

Staff:

John Jacks, Interim Assistant Director
Andrew Spurgin, Planning Manager
Jacob Floyd, Senior Planner
Andreina Dávila-Quintero, Planner
Ernest Brown, 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.

A motion was made by **Ms. Rogers** to combine cases A-11-062, A-11-063, A-11-064, A-11-065, and A-11-066. The motion was seconded by **Ms. Dutmer** with all members voting in the affirmative.

CASE NO. A-11-058

Applicant – Southwest Signs Inc.
Lot 16, NCB 9725
2119 Southwest Military Drive
Zoned: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting **1)** a 90-foot variance from the 100-foot minimum right-of-way setback requirement for expressway signs to be erected on a property within five hundred (500) feet of an expressway, in order to allow the expressway sign ten (10) feet from the Southwest Military Drive right-of-way, **2)** a 90-foot variance from the 100-foot minimum right-of-way setback requirement for expressway signs to be erected on a property within five hundred (500) feet of an expressway, in order to allow the expressway sign ten (10) feet from the Hilton Avenue right-of-way, and **3)** a 10-foot variance from the 50-foot maximum expressway sign height standard, in order to allow a 60-foot tall sign.

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation of denial of the requested. She indicated 25 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Tierra Linda Neighborhood Association.

Greg Berquitte, representative, stated the legally built building at the corner creates a hardship for the owner. He also stated there was open visibility when there was a gas station at the corner. He further stated they do not meet the 200-foot spacing on residential to erect a highway standard sign.

The following citizens appeared to speak:

Barclay Anthony, 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-11-058 closed.

MOTION

A motion was made by **Mr. Camargo**. I would to move that the Board of Adjustment in Case A-11-058, on property located at **2119 Southwest Military Drive**, also known as **Lot 16, NCB 9725**, be granted a variance 1) **a 90-foot variance from the 100-foot minimum right-of-way setback requirement for expressway signs to be erected on a property within five hundred feet of an expressway, in order to allow the expressway sign ten feet from the Southwest Military Drive right-of-way**, 2) **a 90-foot variance from the 100-foot minimum right-of-way setback requirement for expressway signs to be erected on a property within five hundred feet of an expressway, in order to allow the expressway sign ten (10) feet from the Hilton Avenue right-of-way**, and 3) **a variance to allow the erection of a sign to a height of 50-foot and height at the proposed location be granted**. The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signage on this property and **based on the information submitted by the applicant the erection of a structure to the east of this property since the seafood place was originally built prohibits the exposure that they once enjoyed**. Secondly it was mentioned that **an ever-growing tree canopy in the area is also blocking the visibility of this sign**. It is felt that the granting of the variance, **the subject property rather is located on an corner lot on a Primary Arterial Military Drive and properties along this street enjoy height limitations that allow proper signage for those particular businesses**. The granting of the variances will not have a substantially adverse impact on neighborhood properties in that **Military Drive is a heavily commercially developer property**. It is felt that the standards that are being applied to this particular property which is within 500 feet of Military Drive do not serve the purpose of providing adequate signage for a place of business on this major arterial. I need to add, even though it's not in one of the findings of fact, that while the maker of this motion feels that the 60-foot request that is being made by the applicant, in my opinion, is reasonable considering this location to the freeway and the erection of the commercial building to the east, it is felt that since the board does not have the authority to grant the 60-foot variance but only gives that authority to the City Council that this board member would recommend and hopefully the City Council would be advised that we would have granted the variance

to the 60-foot height had we had the authority to do so. The motion was seconded by Mr. Hardemon.

AYES: Camargo, Hardemon, Villyard, Victor, Atkinson, Dutmer, Rogers, Britton, Ozuna, Gallagher

NAY: None

THE VARIANCES WERE GRANTED.

CASE NO. A-11-060

Applicant – Fred R Williams
Lot 13, Block 42, NCB 18425
6519 Kings Crown West
Zoned: “R-6 AHOD” Residential Single Family Airport Hazard Overlay District

The applicant is requesting a special exception to allow an ornamental iron front yard fence not to exceed 6 feet in height.

Victor Caesar, Planning Intern, presented background and staff’s recommendation of approval of the requested. He indicated 17 notices were mailed, one was returned in favor and 2 were returned in opposition and no response from the Randolph Hills Civic Center.

Frank Williams, representative, stated there have been numerous burglaries in the neighborhood. Burglaries bars on the windows would detract from the neighborhood and the home. The house across the street has been broken into three times within the last year. He further stated due to a slope on the land and a large house, a 4-foot fence in the front would look out of place. He further stated there are numerous deer in the area and would like to prevent the deer from eating the landscape plants and trees.

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-11-060 closed.

MOTION

A motion was made by **Ms. Rogers**. Re Appeal No. A-11-060, application for a **special exception to allow an ornamental iron front yard fence not to exceed 6 feet in height**, subject property description is **Lot 13, Block 42, NCB 18425**, located at **6519 Kings Crown West**, applicant being **Fred R Williams**. I move that the Board of Adjustment grant the applicant’s request regarding this appeal described above. Specifically, we find that the following conditions have been satisfied. The granting of the special exception will be in harmony with the spirit and purpose of the chapter in that **the fence design submitted follows the design conditions of Section 35-399.04(a) of the UDC**. **It is noted that a majority of neighbors approve this fence**. The public welfare and convenience will be substantially served

in that **the granting of the request as the fence will permit the applicant to secure the subject property to the extent desired as indicated in his application that he has had a security problem and additionally with large numbers of deer in the area with destroying his plants.** The neighboring property will not be substantially injured by the proposed fence, **as the use will remain single-family residential.** The special exception will not alter the essential character of the district in which it is sought **because the fence will not encroach upon neighboring properties. These being estate type lots. The proposed fence will not detract from the suburban residential character of the neighborhood.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district **the requested special exception will not weaken the general purpose of the "R-6" zoning district nor the corresponding fence height regulations. The additional height of the fence in question is not so great as to conflict with the scale of the neighborhood and from the pictures shown it fits in very well.** The motion was seconded by Ms. Dutmer.

AYES: Rogers, Dutmer, Villyard, Britton, Camargo, Victor, Atkinson, Hardemon, Ozuna, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-11-061

Applicant – Kenneth Pruitt, GFR Development Services
Lot 8, Block 1, NCB 10934
2119 Southeast Military Drive
Zoned: "C-3 AHOD" General Commercial Airport Hazard Overlay District

The applicant is requesting a 15-foot variance from the 150-foot minimum spacing requirement, in order to allow a freestanding sign to be erected one hundred thirty-five (135) feet from another freestanding sign.

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 7 notices were mailed, 4 were returned in favor and none were returned in opposition and no response from the Hot Wells Neighborhood Association.

Ann Ballard, representative, stated the master sign agreement that was approved last July recognized the different lots. She also stated the significant reduction that the developer was taking in overall allowed height as well as footage but couldn't determine what easements they were going to have to deal with on the property as far as spacing. She further stated the hardship on the sign that is in question is only for 15 foot.

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-11-061 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-11-061**, variance application for **2519 Southeast Military Drive**, subject property description is **Lot 8, Block 1, NCB 10934**, the applicant is requesting a **15-foot variance from the 150-foot minimum spacing requirement, in order to allow a freestanding sign to be erected one hundred thirty-five (135) feet from another freestanding sign**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-11-061**, application for a sign variance request to the subject property as described above, because the testimony presented to us, and the facts that we have determined. 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; and **a strict enforcement of the 150-foot separation requirement will result in the elimination of the single tenant sign (sign "C") approved by the City Base West SMP agreement in 2010. According to this SMP, two freestanding signs (signs "B" and "C") are allowed on the subject property. However, due to a 28-foot wide easement that was not taken into consideration when the SMP was approved, several signs along the Southeast Military Drive frontage had to be relocated to avoid erecting a sign within this easement and comply with the 150-foot distance separation requirement. This also resulted in the two signs approved for the subject property being 135-feet from each other to maintain the number of signs approved per lot in the SMP. Denial of the variance will result in the future gas station not having adequate signage to advertise the services provided. 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. Granting of this variance will not provide the applicant special privileges not enjoyed by others. The City Base West SMP approved two freestanding signs on the subject property, one of which is a single tenant sign for the future gas station (sign "C"). In addition, the subject property has approximately 172-feet of street frontage that allows the property a maximum of two (2) signs per Section 28-239(c)(2) of the Sign Ordinance. The variance, if approved, will allow the applicant to erect and maintain the single tenant secondary freestanding sign approved by the SMP, and allowed by the Sign Ordinance if the SMP did not exist. Granting the variance will not have a substantially adverse impact on neighboring properties. Granting of the variance will not have a substantial adverse impact on neighboring properties. The proposed single tenant sign will be placed on the subject property as approved by the City Base West SMP. Granting the variance will not substantially conflict with the stated purposes of this article. One of the objectives of the Sign Ordinance is to assure that on-premises signs in terms of size, height, scale and location are properly related to the overall adjacent land use character and development. In 2010, the City and GFR Development Services signed the City Base West SMP agreement for the entire City Base West development located at the intersection of Southeast Military Drive and South New Braunfels Avenue. This SMP approved a number of signs within the development that are of less height and area than what is normally allowed by the Sign Ordinance, resulting in an overall reduction of over 70% in both sign height and area. Granting of the variance will allow the**

applicant to erect the two approved freestanding signs on the subject property one 135-feet from each other. The resulting distance between the signs, and the proposed height and area of the signs, still comply with this objective of the Sign Ordinance. The motion was seconded by Mr. Hardemon.

AYES: Ozuna, Hardemon, Camargo, Victor, Villyard, Dutmer, Atkinson, Britton, Rogers, Gallagher

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-11-062, A-11-063, A-11-064, A-11-065, A-11-066

Applicant – Kaufman & Killen, Inc.

Blocks 35, 41, 42, 43, and 45, NCB 16334

Multiple Addresses

Zoned: “PUD R-6 ERZD AHOD MLOD-1” Residential Single-Family Planned Unit Development Edwards Recharge Zone Airport Hazard Overlay District Military Lighting Overlay District

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

Jacob T. Floyd, Senior Planner, presented background and staff’s recommendation of approval of the requested variances. He indicated 218 notices were mailed, 38 were returned in favor and 3 were returned in opposition.

Bill Kaufman, representative, stated they have been working on this case since October of last year. He also stated it was a challenge explaining to residents with existing pools and ivy on the fences that they would have to remove their fence. It took them several months to speak to the residents. He further stated all the fences were approved with 8-foot fences due to the topography. The homes were bought with the assumption that they were going to get this 8-foot fence. Most of the fences are wrought iron to the rear and side.

The following 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-11-062, A-11-063, A-11-064, A-11-065, and A-11-066 closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that the Board of Adjustment in Cases No. **A-11-062, A-11-063, A-11-064, A-11-065, and A-11-066**, on property which encompasses all of **blocks 35, 41, 42, 43, and 45, NCB 16334**, be granted a **2-foot variance from the maximum 6-foot side and rear yard fence height standard, in order to allow 8-foot**

fencing as shown on the site plan submitted by the applicant. The variance is not contrary to the public interest in that **of the hundred some notices that were mailed, three were returned with questions, one specifically in opposition, another in fact the statement revealed that it was in favor, and another one in opposition showing that generally the property owners in this area are in favor.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the significant elevation changes across the subdivision has resulted in unnecessary hardship through the literal enforcement of the code as currently written. The varied topography certainly lessens the security and privacy that should be afforded to the homeowners.** The spirit of the ordinance will be observed and substantial justice will be done in that **the variance will observe the spirit of the ordinance to promote the health, safety, morals, and the general welfare of the community by ensuring consistency in the landscaping and design of the fencing in this subdivision.** 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 **the requested variance will not authorize a use other than that which is currently zoned, which is a “PUD R-6” single-family zoning classification.** 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 requested variance will allow the existing 8-foot tall fence to remain and the construction planned for the remaining vacant lots will not change the residential character of the area.** 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 plight of the owners is due to the unique topography of the subdivision and the fact also, the code rather, was initially interpreted to allow this 8-foot fencing because of the topography in this case and therefore was permitted properly at the time of submittal.** The motion was seconded by Ms. Dutmer.

AYES: Camargo, Dutmer, Villyard, Victor, Rogers, Hardemon, Atkinson, Britton, Ozuna, Gallagher

NAY: None

THE VARIANCES WERE GRANTED.

Board members recessed for 5 minutes.

CASE NO. A-11-067

Applicant – Nick Harris

Lot 4, NCB 14939

10000 IH 10 West

Zoned: “C-2 S UC-1” Commercial District with a Specific Use Authorization for a Private University or College IH-10/FM 1604 Urban Corridor

The applicant is requesting a 42-foot variance from the 200-foot spacing requirement of the "UC-1" IH-10/FM 1604 Urban Corridor, in order to allow a sign to be erected 158 feet from an existing sign.

Ernest Brown, Planner, presented background and staff's recommendation of denial of the requested. He indicated 17 notices were mailed, 3 were returned in favor and none were returned in opposition and no response from the Laurel Hills Neighborhood Association.

Nick Harris, applicant, stated there is an existing sign that was placed in 2010. Currently that existing sign is still there with approximately 350 feet of frontage that would allow the placement of two signs on the property. He further stated the placement of the existing sign prohibits from erecting a second because of spacing. The reason for the second sign is for the use of other tenants.

The following citizens appeared to speak:

Teresa Miller, 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-11-067 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that in Case **A-11-067**, for request for a variance on property located at **10000 IH 10 West**, legal description is **Lot 4, NCB 14939**, be granted a **42-foot variance from the 200-foot spacing requirement of the "UC-1" IH-10/FM 1604 Urban Corridor, in order to allow a sign to be erected 158 feet from an already existing sign**. It is felt that the applicant's proposal to erect a **14-foot high sign and not remove any existing landscaping of the location**. That proposal has been admitted to and stated for the record by the applicant's representative. It is felt the variance is necessary in order to allow sufficient time for traffic traveling south on IH-10 to exit in a kindly manner to gain accessibility to this property and lessen the traffic congestion in the area. It is felt that the frontage on this particular property which is sufficient to allow that 200-foot spacing does exist but also due to the fact that there are existing sewer easements and easement setbacks from the high power lines that exist along the frontage of this property dictates the need for this variance. It is felt that granting the variance will provide the applicant the opportunity to provide sufficient signage for properties and new tenants that are to be located at this location. The variance will not have an adverse impact on adjacent properties. It is the intent on the purpose of the urban corridor to avoid and eliminate sign clutter. It is felt that by the applicant's own proposal to limit the proposed sign to 14-feet in height and a lesser sign face area than normally be required where we in fact are meeting that intent of lessening the sign clutter in this particular corridor. The motion was seconded by **Mr. Villyard**.

AYES: Camargo, Villyard, Victor, Hardemon, Rogers, Britton, Dutmer, Ozuna, Gallagher

NAY: Atkinson

THE VARIANCES WERE GRANTED.

CASE NO. A-11-068

Applicant – Martha G. Valdez
Lots 29 and 30, Block 6, NCB 6541
719 West Hildebrand Avenue
Zoned: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting a 25-foot variance from the 30-foot minimum rear setback requirement of the “C-2” Commercial District when abutting a residential zoning district, in order to allow a 5-foot rear setback.

Andreina Dávila-Quintero, Planner, presented background and staff’s recommendation of denial of the requested. She indicated 36 notices were mailed, none were returned in favor and one was returned in opposition and no response from the Neighborhood Associations.

Alejandro Gomez, representative, stated they were instructed to turn in plans and pay double fees. The setbacks were addressed at the plan review stage. He also stated there are three auto sales in the same block and most of these buildings are lined up with I-1. He further stated the structure does not have any windows facing the residents. The structure serves as a buffer to keep the cars and customers in the front of the property which allows the residents to not be disturbed.

Victor Rodriguez, owner, stated the property was bought in 2007 and they own the business that is next door. He also stated he did not know he had to pull permits. He further stated he met the contactor at the restaurant and he built the office within a matter of days. The contractor hooked up the electricity from the restaurant. He did not know that was not allowed.

The following citizens appeared to speak:

Cassie Malcovin, 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-11-068 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-11-068**, variance application for **719 West Hildebrand Avenue**, subject property description is **Lots 29 and 30, Block 6, NCB 6541**, situated at **719 West Hildebrand Avenue**, the applicant is **Martha G. Valdez**. The variance

request is for a **25-foot variance from the 30-foot minimum rear setback requirement of the “C-2” Commercial District when abutting a residential zoning district, in order to allow a 5-foot rear setback.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-11-068**, 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 requested variance is not contrary to the public interest as, if approved, because the testimony presented for us today show the land use pattern within that stretch of Hildebrand shows that existing structures that are within 5-feet of the residential boundary lines, so the subject’s request is in line with the public interest in that there are other buildings within the area which have a 5-foot setback in a 30-foot setback district.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **again the applicant has shown us evidence of the building that has been constructed within a 5-foot of the rear setback line which moving the building would be an unnecessary hardship to the applicant.** By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done in that **the variance is keeping with the spirit of the ordinance in that the buffer that exists today which is a 5-foot would provide adequate bufferage to the residential district behind the subject.** 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 **the variance requested will not authorize the operation of a use on the subject property other than those specifically permitted in the “C-2” Commercial base zoning district. The proposed motor vehicle sales will require rezoning of the property to “C-1 CD” Light Commercial with a conditional use.** 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 property to the north of the subject property is a single-family residential in a single family residential zoning district. The proposed variance will not change that zoning classification.** 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 paid for a building which he thought was being built in conformance of the city variance and various requirements. He learned later that was not the case. The applicant will come and apply for all the required building permits and will have the building comply with the city permits and zoning requirements as a condition to this variance if it were granted today.** The motion was seconded by Ms. Dutmer.

AYES: None

NAY: Ozuna, Camargo, Victor, Atkinson, Hardemon, Rogers, Britton, Villyard, Dutmer, Gallagher

THE VARIANCE WAS NOT GRANTED.

[REDACTED]

Sign Master Plan No. 11-010

Gay Geringer, applicant, briefed Board Members on Sign Master Plan for Countryside Plaza, located at US Highway 281 North and Bitters Road.

Mr. Camargo made a motion to approve **Sign Master Plan No. 11-010** and was seconded by **Ms. Rogers** and all members voted in the affirmative.

THE SIGN MASTER PLAN WAS APPROVED.

[REDACTED]

Approval of the August 22, 2011 Minutes

The August 22, 2011 minutes were approved with all members voting in the affirmative

[REDACTED]

There being no further discussion, meeting adjourned at 3:42 p.m.

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

DATE: 10 - 24 - 11

ATTESTED BY: J.P.J. DATE: 10-25-11
Executive Secretary