

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 4, 2010**

Members Present:

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

Staff:

Christopher Looney, Interim Asst. Director
Andrew Spurgin, AICP, Planning Manager
Rudy Niño, Senior Planner
Jacob Floyd, 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.

CASE NO. A-10-067

Applicant – William L. Huber
Lot 2, Block 3, NCB 1925
1723 North Comal Street
Zoned: “C-3 NA AHOD” General Commercial Nonalcoholic Sales Airport Hazard Overlay District

The applicant is requesting 1) a Special Exception to relocate a structure from 2011 McCullough Avenue to 1723 North Comal Street and 2) a 20-foot variance from the 30-foot side setback requirement of the “C-3” zoning district when abutting a residential use or zoning district, in order to allow the relocated structure to be located 10 feet from the south side property line.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the requested Special Exception and variance. He indicated 33 notices were mailed, none were returned in favor and 4 were returned in opposition and response from Five Points Neighborhood Association.

William Huber, applicant, stated he has spoken to the neighbor and has agreed to construct a fence between the properties. He also stated he will support to put up several no parking signs in front of the neighbors property that are near his property. He further stated the option to put the house further back on the lot is not recommended by city staff because of conflict with the neighborhood plan and the historic nature. Replatting the property was a second option which would not be economically feasible to him because his real estate costs would double.

The following citizens appeared to speak:

Rollette Schreckenghost, citizen, spoke in favor.

Carolyn Kelley, citizen, spoke in favor.

Maria Flores, citizen, spoke in opposition.

Julia Huber, citizen, spoke in opposition

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-10-067 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that the Board of Adjustment in Case No A-10-067, on property located at **1723 North Comal Street**, also legally described at **lot 2, Block 3, NCB 1925**, be granted an exception with a condition that **an 8-foot solid screen fence be erected along the South property line prior to any construction activity beginning on the property**. The special exception will be in harmony with the spirit and purpose of the chapter of the UDC in that **the applicant is proposing to relocate a structure to a vacant and intends to repair the structure to meet city code**. The public welfare and convenience will be substantially served in that **the structure proposed to be relocated is to be used as office space and make use of an undeveloped parcel within an area of residential and nonresidential land uses**. The neighboring property will not be substantially injured by such proposed use in that **as the nonconforming single-family residential use of the abutting property will not be discontinued and the neighborhood in general will be better served**. The condition of the **8-foot fencing being erected along the south property line, it is felt it will give the adjacent neighbor protection that she is indicating that she desires**. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought in that **the special exception will not weaken the general purpose of the zoning district in which it's located**. In addition to the special exception the second item being requested in this case is that of a variance. The variance is not contrary to the public interest as **a proposed setback will not compromise the health, safety and general welfare of the area and further with a condition that is imposed on the previous exception will offer protection to the adjacent residential property owner**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the width of the subject property is such that a literal enforcement of the setback requirement limits the usable width to 20 feet**. This is an unnecessary hardship upon the reasonable use of the

subject property considering the predominantly commercial character of the block. The spirit of the ordinance is observed and substantial justice is done in that the granting of the variance would observe the spirit of the ordinance and do substantial justice in allowing the reasonable use of a vacant property that without the variance would not be practical to develop. 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 granting of the variance will not authorize the operation of a use other than those uses that are specifically permitted in the zoning district in which the proposed move is proposed. 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 granting of the variance will not substantially injure the appropriate use of the adjacent conforming property nor will the essential character of the district be altered, as the block is predominantly commercial in character and features other residential structures in the general 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 owner is due to unique circumstances existing on the property, as the single-family residential use of the abutting property is the only such condition on the entire block face. Basically saying that even though is it zoned commercial, when the property to the south is redeveloped they likewise would enjoy the benefit of a zero setback if it were to be developed into a non residential use. The motion was seconded by Mr. Hardemon.

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

NAY: None

THE SPECIAL EXCEPTION AND VARIANCE WAS GRANTED.

CASE NO. A-10-069

Applicant – Joseph E Gonzales

Lot 3G and the North East Irregular 178.34 Feet of Lot 5, Block 23, NCB 13627

8131 Pinebrook Drive

Zoned: “C-3 AHOD” General Commercial Airport Hazard Overlay District

The applicant is requesting 1) a 3-foot variance from the requirement that predominantly open fences in front yards not exceed 4 feet in height, in order to erect a 7-foot tall predominantly open front-yard fence and 2) a 1-foot variance from the requirement that fence sin side and rear yards not exceed 6 feet in height, in order to erect a 7-foot tall fence in the side and rear yards.

Jacob Floyd, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 14 notices were mailed, none were returned in favor and none were returned in opposition and no response from Vance Jackson Neighborhood Association.

Joseph Gonzales, representative, stated this location was previously granted a variance in which the architect that was in charge of this project was removed from their contract. This project sat on the project manager's desk and he did not fulfill the construction of the fence within the six months. He also stated they are requesting this variance for security reasons since there is a lot of personal data from patients stored at this location. They have recently had two break-ins in the past month and they have also had vandalism to their water system which the backflow preventers were removed. He further stated there is a bar next door where several of its patrons park on their property late at night on weekends.

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-10-069 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-10-069**, variance application for **8131 Pinebrook Drive**, subject property description is **Lot 3G and the North East Irregular 178.34 feet of Lot 5, Block 23, NCB 13627**, situated at **8131 Pinebrook Drive**, the applicant is **University Health System**, the variance request is for **1) a 3-foot variance from the requirement that predominantly open fences in front yards not exceed 4 feet in height, in order to erect a 7-foot tall predominantly open front-yard fence and 2) a 1-foot variance from the requirement that fences in side and rear yards not exceed 6 feet in height, in order to erect a 7-foot tall fence in the side and rear yards**. I move that the Board of Adjustment grant the applicants request regarding appeal number **A-10-069**, 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 the variance is not contrary to the public interest in that **the granting of the variance is not contrary to the public interest as the fence would secure the property and deter the trespassing and vandalism currently experienced**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **exceptional conditions exist on the property that would impose unnecessary hardship on the use of the property through the literal enforcement of the fence height standards**. The applicant has provided testimony to us today about break-ins that have occurred on the property within the 18 month ownership of the property by the applicant and addition to trespassing and injuries that could result. The applicant has tried to protect a substantial investment in the property via the computer system, information and network, and the people working inside the facility and has requested a variance to protect these substantial investments of the property. The spirit of the ordinance is observed and substantial justice is done in that **the granting of the variance would observe the spirit of the ordinance and not do substantial justice to the purpose of the fencing provisions as exceptional conditions exist to justify fencing of the height that is proposed**. 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 granting of the variance will not authorize the operation of a use other than those specifically authorized in the "C-3**

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 **the granting of the variance will not injure the appropriate use of adjacent conforming property.** Again the applicant has provided testimony that there is no opposition to the variance, notification was sent to the homeowners association and surrounding property owners and no descending votes were provided back to the city. The plight of the owner of the property for which the variance is south 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 property owner is due to unique circumstances existing on the property and the security inadequacies of the subject property and the close proximity of the bar that exist today.** The motion was seconded by Ms. Dutmer.

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

NAY: Moffat

THE VARIANCE WAS GRANTED.

CASE NO. A-10-071

Applicant – Delta Properties
Lot 81, NCB 16840
6565 Babcock Road
Zoned: “C-3” General Commercial District

The applicant is requesting a 5-foot variance from the requirement that freestanding signs on property with frontage on streets classified Arterial Type B be setback be a minimum of 10 feet from street rights of way, in order to allow a sign 5 feet from the street right of way of Babcock Road.

Jacob Floyd, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 36 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Tanglewood Residence Neighborhood Association.

Glen Crawford, representative, stated he is just requesting a five foot variance from the setback and they are not changing the height of the sign or any square footage. He also stated if the size were to be located the whole parking lot scheme would have to be redesigned.

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-10-071 closed.

Motion

A motion was made by **Mr. Ozuna**. Re Appeal **A-10-071**, variance application for **Delta Properties**, located at **6565 Babcock Road**, subject property description is **Lot 81, NCB 16840**, located again at **6565 Babcock Road**, applicant again is **Delta Properties**. The variance request is for a **5-foot variance from the requirement that freestanding signs on property with frontage on streets classified as Arterial Type B be setback a minimum of 10 feet from street rights of way, in order to allow a sign 5 feet from the street right of way of Babcock Road**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-10-071**, 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 according to Section 28-247 of the Chapter 28: Signs and Billboards, in order for a variance to be granted, the applicant must demonstrate 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 **the strict enforcement of the sign regulations would prohibit the reasonable opportunity to provide adequate signs on the site. The applicant has provided testimony to us today regarding the location of the sign if it was to be moved back into the parking lot then it would create a safety issue in regards to vehicle traffic in the parking being interfered with the location of the sign. Additionally it would be located in the fire exit pathway through the parking lot which would create other safety issues in regards to relocating the sign. A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. A denial of the variance would cause a cessation of longstanding commercial uses of the property. Moving the sign to comply with the 10-foot setback would significantly alter the visibility of the sign to motorists traveling along Babcock Road or De Zavala Road. We have seen again testimony before us that as existing tenants have had signage on that property for the past fifteen to twenty years, it was only within the last eight months or so that those cabinets faces have come down and those tenants have been operating without adequate signage to direct the consumer to their properties. They have sustained that no signage to this date but without signage period in my opinion create a cessation or ability of cessation of those tenants without having adequate signing for the retail consumer to find those tenants within the shopping center space. After seeking one or more of the findings set forth in paragraph 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 in that granting the variance would not provide the applicant with a special privilege not enjoyed by others similarly situated, as similarly situated signs would be setback 10 feet from the right-of-way. We have seen again testimony that this sign has been in existence for twenty plus years and other legitimate businesses all along De Zavala and Babcock share the same sign. The motion was seconded by Mr. Camargo.**

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

THE VARIANCE WAS NOT GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-10-073

Applicant – Roger R Trevino
Lots 23 & 24, Block 5, NCB 6528
515 Parland Place
Zoned: “R-4 NCD-6” Residential Single-Family Mahncke Park Neighborhood Conservation District

The applicant is requesting a 4-foot variance from the 5-foot setback requirement of the “R-4” zoning district, in order to allow a carport 1-foot from the east side property line.

Jacob Floyd, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 16 notices were mailed, 3 were returned in favor and none were returned in opposition and the Mahncke Park Neighborhood is in opposition.

Roger R Trevino, applicant, stated he is willing to move the carport to the back to comply. He also stated he has a narrow driveway.

No 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-10-073 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that in Case No **A-10-073**, the request of **Roger Trevino**, on property located at **515 Parland Place**, on property legally described as **Lots 23 & 24, Block 5, NCB 6528**, be granted a **4-foot variance from the zoning setback requirement of 5-foot in this “R-4” zoning district, in order to allow a carport 1-foot from the east side property line**. Specifically we find that such variance will be contrary to the public interest in that as a **1-foot setback proposed would place undue burden on the abutting property were it to be developed. I feel the variance should be granted because there is no exceptional condition that exists on the property that would prohibit compliance with the required 5-foot setback.** The granting of the variance would observe the requirements of the zoning district in allowing light and air to circulate on this property. Such variance will not authorize the operation of a use other than those permitted in that carports are permitted in this residential zone. The motion was seconded by **Ms. Rogers**.

AYES: Britton, Ozuna, Gallagher

NAY: Camargo, Rogers, Hardemon, Cruz, Villyard, Dutmer, Victor, Moffat

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-10-074

Applicant – Joe W Brown

Lot 23, Block 21, NCB 17639

9610 Kashmir Drive

Zoned: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 4-foot variance from the 20-foot rear setback requirement of the "R-6" zoning district, in order to allow a structure 16 feet from the rear property line.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 42 notices were mailed, none was returned in favor and none were returned in opposition.

Joe Brown applicant, stated the addition will need cause any problems with the neighbor and the homeowners association has approved the construction with the understanding that he meets all city requirements. He also stated he is using the same material as the house, the color will be the same, and so will the shingles. If any one were to see the addition they would not know it was added after the construction of the house. He further stated the contractor overlooked the process of pulling permits for the foundation.

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-10-074 closed.

MOTION

A motion was made by **Ms. Rogers**. Re Appeal No **A-10-074**, application for a **4-foot variance from the 20-foot rear setback requirement of the "R-6" zoning district, in order to allow a structure 16 feet from the rear property line**, subject property description **Lot 23, Block 21, NCB 17639**, located at **9610 Kashmir Drive**, the applicant being **Joe W. Brown**. I move that the Board of Adjustment grant the applicants request regarding appeal number **A-10-074**, 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 the variance is not contrary to the public interest in that **the rear setback would not infringe on any of the surrounding property and the neighbor's have indicated that they have no objection to this addition**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **exceptional conditions do exist on this and that the lot size is very small not providing adequate space for the additional room which is needed to accommodate the applicant**. The spirit of the ordinance is observed and substantial justice is done in that **the granting of the variance would observe the spirit of the ordinance and it does not do any substantial injustice to the purpose of the minimum setback provision**. 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 **it is an "R-6", residential, that is what the property is used for, and the additional room would be used for that purpose.** 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 does not substantially injure the appropriate use of adjacent conforming property nor will the essential character of the "R-6" district be altered.** As it is all single family residence and the adding of the room does not change that. The plight of the owner of the property for which the variance is south 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 property owner is due to unusual circumstances existing in that it is very small lot. It has a zero lot line in the "R-6" zoning district and the house on the left side will continue to be a zero lot line.** The motion was seconded by Ms. Cruz.

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

THE VARIANCE WAS NOT GRANTED.

Approval of the September 20, 2010 Minutes

The September 20, 2010 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 3:38 p.m.

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

DATE: 10-18-10

ATTESTED BY: Christina DATE: 10-18-10
Executive Secretary