

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 7, 2013**

Members Present:

Michael Gallagher
Andrew Ozuna
Frank Quijano
Helen Dutmer
George Britton
Jesse Zuniga
Mary Rogers
John Kuderer
Gene Camargo
Henry Rodriguez
Maria Cruz

Staff:

John Jacks, Assistant Director
Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Planner
Paul Wendland, City Attorney
Crystal Kastner, Plans Examiner
Sara Ludena, Planner OHP

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.

Crystal Kastner, Development Services Plans Exam Supervisor, briefed board members in regards to fire rated walls and minimum fire separation distances.

CASE NO. A-13-065

Applicant – Edmund S Beck
Lot 2, Block 8, NCB 972
124 City Street

Zoned: “RM- H HS RIO-4 AHOD” Residential Mixed King William Historic District Historic Significant River Improvement Overlay Airport Hazard Overlay District

The applicant is requesting a variance Table 310-1 of the UDC, Lot and Building Dimensions Table, for 1) a 10-foot variance from the 10-foot required front setback to allow a carport at the front property line and 2) a 4-foot variance from the 5-foot required by Section 35-370(b)(1) on the north side property line to allow a carport 1 foot from the north side property line.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variances. He indicated 18 notices were mailed, one was returned in favor and 8 were returned in opposition and no response from the King William Neighborhood Association.

Dwayne Bohuslav, representative, stated the design was presented to Development Services as it was approved by the HDRC. He also stated this is the only residence on the block that has rear access to the river and no side access to either side of the house. He further stated around the corner of the property is a similar wood carport that exist.

Ed Beck, citizen, stated he has not spoken to the neighbors due the complexity of this work schedule throughout the day. He also stated the adjacent neighbor does is in support. He has been living in the house since the 1990's. He further stated he wanted the construction of the carport when he realized his cars were deteriorating due to the hot sun.

The following citizens appeared to speak:

Max Martinez, 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-13-065 closed.

MOTION

A motion was made by **Mr. Ozuna**. "Re Appeal No. A-13-065, variance application for 124 City Street, subject property description is Lot 2, Block 8, NCB 972, situated again at 124 City Street, the applicant being **Mr. Edmund S. Beck**, the variance is for a request from Table 310-1 of the UDC, Lot and Building Dimensions Table, for 1) a 10-foot variance from the 10-foot required front setback to allow a carport at the front property line, and 2) a 4-foot variance from the 5-foot required by Section 35-370(b)(1) on the north side property line to allow a carport 1 foot from the north side property line. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-13-065, 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 **building setbacks lines are designed to maintain orderly and safe development, and ensure access to air and light. The applicant has provided testimony that should this variance be granted that their structure will comply with development services condition and would look favorably for a code modification request in such that the building will meet all fire code requirements as mandated by the code and as provided by any such variances. So that would address the safety development and fire code issues regarding the structure.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has provided testimony and we have seen testimony before us today about the inability to get a driveway on either side of the structure because of the dimension of the lot and also because of the river behind the property makes the structure, the only feasible and only way, to provide protection for the applicant's cars and structures against weather and weather related hail, heat, and such, which is a necessity to protect the applicant's vehicles and such.** The spirit of the ordinance is observed and substantial justice is done in that **the variance will not afford the applicant with any conditions that are not necessarily provided by other single family owners in such**

that everyone has a right to protection of their property including their cars. This is a unique circumstance in such that the lot is not conducive to provide any other way of providing protection of the car and in such that the spirit will provide justice in that instance. 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 variance will not authorize the operation of a use on the subject property other than those specifically permitted in the RM-4 (Residential Mixed) base 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 applicant provided testimony in regards to the historic review being initially supporting the project. They were not in support but yet didn't disagree with what the applicant is proposing. Further the applicant is proposing to build the structure in a unique fashion which would be architecturally complying with the design of the house and within the overall design criteria of the King William Historic district and will provide unique features to blend the structure into the design of the house. 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 condition in the district in which the property is located in that the unique circumstances existing on the property are a function of the site's age and location. We have been provided testimony that the design does not allow for a garage structure on neither side nor access from the back of the property. The applicant has invested his time and money rehabilitating this house and it's a beautiful house in the King William. It provides some kind of investment in the neighborhood that is one of the purposes of the historic district is to provide that continuing investment of the property which the applicant has done. He is merely seeking the variance to provide protection for his vehicles which is provided by any other single family owner the right to protect their property." The motion was seconded by Ms. Dutmer.

AYES: Ozuna, Dutmer, Kuderer, Rogers, Britton

NAYS: Quijano, Camargo, Rodriguez, Zuniga, Cruz, Gallagher

THE VARIANCES WERE NOT GRANTED.

CASE NO. A-13-031

Applicant – Charles Huizar

Lot 30, Block 2, NCB 12260

2415 Greencrest Drive

Zoned: "R-5AHOD" Single-Family Residential Airport Hazard Overlay District

The applicant is requesting 1) a 3-foot variance from the minimum 5-foot side yard setback; 2) a 2-foot variance from the minimum 3-foot eave overhang setback and 3) a 1-foot variance from the 3-foot minimum rear yard setback, as detailed in Section 35-370 (b) 1, to allow an accessory structure 2-feet from the side and rear property lines with a 1-foot eave overhang on the side.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 32 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Dellview Area Neighborhood Association.

Charles Huizar, applicant, stated the existing structure was torn down and wanted to replace with a new structure. He also stated the structure would store his lawn equipment.

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-13-031 closed.

MOTION

A motion was made by **Mr. Ozuna**. "Re Appeal No. A-13-031, variance application for 1) a 3-foot variance from the minimum 5-foot side yard setback; 2) a 2-foot variance from the minimum 3-foot eave overhang setback and 3) a 1-foot variance from the 3-foot minimum rear yard setback, as detailed in Section 35-370 (b) 1, to allow an accessory structure 2-feet from the side and rear property lines with a 1-foot eave overhang on the side, subject property description Lot 30, Block 2, NCB 12260, situated at 2415 Greencrest Drive, and the applicant is **Charles Huizar**. I move that the Board of Adjustment grant the applicant's request regarding the request above, 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. In this case, the public's interest is based on the air flow, light and fire safety protected by the minimum setbacks. The applicant states that the previous sheds were built on the property line, so the current setbacks are an improvement. According to the applicant, fire separation requirements have also been satisfied.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance would force the applicant to dismantle the shed and reconstruct it inside the two required setbacks approximately one foot over in each direction. The Board of Adjustment must evaluate if that hardship is unnecessary; the applicant has space available to provide the minimum setback distance.** The spirit of the ordinance is observed and substantial justice is done in that **the "spirit" of the ordinance is understood by reviewing the impact of the "strict letter" of the law. In observing the spirit, the Board is directed to evaluate the intent of the ordinance and determine if the requested variance is honoring the intent.** 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 variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-5 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 applicant states that the property is not located in a**

historic district, nor influenced by an HOA. It was this additional measure of freedom that helped in his decision to purchase this particular home. 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 condition in the district in which the property is located in that **the unique circumstance on the subject parcel was the existence of a previous shed in the same proximate location. As a new home-owner, reconstruction of the dilapidated shed was an important priority to the applicant. He provided what he thought were adequate setbacks to allow routine maintenance. Other than the existing concrete slab, the parcel has no unique characteristics that differentiate it from others in the neighborhood.**” The motion was seconded by Ms. Cruz.

AYES: Rodriguez, Quijano, Camargo, Dutmer, Kuderer, Britton, Rogers, Cruz, Zuniga, Ozuna, Gallagher

NAYS: None

THE VARIANCES WERE GRANTED.

[REDACTED]
Board members recessed for 10 minutes.

[REDACTED]
CASE NO. A-13-071

Applicant – Kathryn Ruckman
The East of 69.23 feet of Lot 2, Block 2, NCB 717
203 Camargo Street
Zoned: “RM-4 H AHOD” Residential Mixed, Historic, Airport Hazard Overlay District

The applicant is requesting a 1.5 foot variance from the 6-foot maximum fence height, as detailed in Section 35-514 (d), to allow a 7-foot fence in the rear and side yards.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 34 notices were mailed, 2 were returned in favor and none were returned in opposition and no response from the Lavaca Neighborhood Association.

Kathryn Ruckman, applicant, stated she obtained a approval from building permits and HDRC for a six-foot fence but realized after the fence was constructed there was very little privacy.

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-13-071 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-13-071**, variance application for a **request for a 1.5-foot variance from the 6-foot maximum fence height, as detailed in Section 35-514 (d), to allow a 7-foot 6-inch fence in the rear and side yards**, subject property description is **the East 69.23 feet of Lot 2, Block 2, NCB 717**, situated at **203 Camargo Street**, and the applicant is **Kathryn Ruckman**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-071**, 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. The applicant is requesting additional fence height primarily because the neighboring homes have reduced setbacks. The added privacy will benefit both sides of the fence and therefore is in the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant argues that both the shape of the subject property and that of the surrounding lots create a special condition that reduces privacy between owners. The 6-foot limitation results in less privacy than other property owners with larger setbacks enjoy. Therefore, the literal enforcement of the ordinance results in an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the Board must determine the “spirit” of the ordinance as contrasted with the “strict letter” of the law for each unique case. In this case, the applicant asserts the spirit of the ordinance is the anticipated privacy provided by side and rear yard fencing.** 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 variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “RM-4 H 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 historic district is very eclectic in character, with a wide variety of home and lot sizes. The applicant has selected a short picket fence for the front yard, and has eliminated the additional height on the north elevation where mature trees add to the screening. The fencing will not likely alter the character of the district or injure the adjacent 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 condition in the district in which the property is located in that **the unique circumstance existing on the property is the narrow lot depth characteristic of some of the lots on this block. The applicant is requesting approval for the additional height only where neighboring windows intrude on an expected and typical minimal amount of privacy afforded other properties in surrounding residential zoning districts.”** The motion was seconded by **Mr. Rodriguez**.

AYES: Rodriguez, Quijano, Camargo, Dutmer, Kuderer, Britton, Rogers, Cruz, Zuniga, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-077

Applicant – Wesley A Oliver

Lots 9, 10, 11, NCB 3078

1429 South Presa Street

Zoned: “C-3NA NCD-1 AHOD” General Commercial South Presa/South St. Mary’s Streets Neighborhood Conservation Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 6 feet in height in the front yard.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 32 notices were mailed, one was returned in favor and one was returned in opposition and no response from the Lavaca Neighborhood Association.

Wesley Oliver, applicant, stated the existing 5-foot fence is falling down and needs to be replaced. He also stated the property surrounded with heavy vehicular and pedestrian traffic. He further stated the fence would provide security and some privacy.

The following citizens appeared to speak:

Robert Rivard, 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-13-077 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-077** variance application for **1429 South Presa Street** subject property description **Lots 9, 10, & 11, NCB 3078**, situated again at **1429 South Presa Street**, at applicant being **Wesley A. Oliver**, variance request is for a **2-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 6 feet in height in the front yard**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-077**, 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 **fence height restrictions are put into place in order to provide orderly development and encourage a sense of community**. In this case, an existing predominantly open fence of non-conforming

height already exists on the property and is dilapidated. Portions of the fence are topped with barbed wire. The existing fence is unsightly and potentially dangerous. The applicant wishes to simultaneously beautify and protect the property by reconstructing the fence with a new material. The openness of the fence material will present less of a visual distraction for passersby and will preserve airflow. The fence will also be sufficiently high to protect the structure from vandalism and crime issues. As such, the variance is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that a review of the City of San Antonio's online crime tracking tool does reveal that there have been instances of burglary, theft, and vandalism in the immediate area of the subject property. Though the applicant did not submit copies of any police reports for the property, not allowing the extra fence height could be considered an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that the UDC contemplates that higher fences are sometimes required to protect properties. The city's online crime tracking tool reveals that there have been crime issues in the immediate vicinity. Additionally, an existing dilapidated chain-link fence of five feet is already in place, and the applicant is proposing to construct the new fence with a more open material. Because of this, the spirit of the ordinance will be observed and substantial justice done. 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 variance will not authorize the operation of a use on the subject property other than those specifically permitted in the General Commercial base zoning districts. 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, if approved, will not injure the appropriate use of adjacent conforming properties but rather the variance would likely have the effect of enhancing the quality of life along the South Presa Corridor by reducing an unsightly, dilapidated fence and removing barbed wire. 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 condition in the district in which the property is located in that the unique circumstances existing on the property were not caused by the applicant, but rather the circumstances result from crime in the area and the desire to replace a dilapidated non-conforming fence." The motion was seconded by Mr. Kuderer.

AYES: Rodriguez, Quijano, Camargo, Dutmer, Kuderer, Britton, Rogers, Cruz, Zuniga, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.



CASE NO. A-13-080

Applicant – Robert Rivard

Lot 17, Block 5, NCB 971

310 E Arsenal

Zoned: “RM- RIO-4 AHOD” Residential Mixed, River Improvement Overlay Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the maximum 2-foot allowed projection for an eave overhang as detailed in Section 35-516 (j) to allow a 4-foot eave to project into the side setback 1-foot from the property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 22 notices were mailed, 1 was returned in favor and 5 were returned in opposition and King William Neighborhood Association is in opposition.

Frank Burney, representative, stated all the plans were approved by the City of San Antonio. He also stated there was an oversight with a small eave that is no more than six inches wide. He further stated all the other roof lines are the same of this and if you cut down half of the leave the house would look lopsided.

No citizens appeared to speak.

Robert Rivard, citizen, spoke in favor.

Chris Gannon, citizen, spoke in favor.

Fernando Munoz, 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-13-080 closed.

MOTION

A motion was made by **Mr. Rodriguez**. “Re Appeal No. **A-13-080**, applicant **Robert Rivard**, location **310 E. Arsenal, Lot 17, Block 5, NCB 971, “RM-4 RIO-4 AHOD” Residential Mixed, River Improvement Overlay, Airport Hazard Overlay Districts, a request for a 2-foot variance from the maximum 2-foot allowed projection for an eave overhang as detailed in Section 35-516 (j) to allow a 4-foot eave to project into the side setback 1-foot from the property line.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-080**, 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. The public interest**

is this case is based on the air flow, light and fire safety protected by the minimum setbacks. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant argues that the encroachment is the result of an inadvertent error on the parts of the architect and the plan reviewer.** A literal enforcement would require that **the eave overhang be modified to provide a minimum 3-foot setback from the property line.** The spirit of the ordinance is observed and substantial justice is done in that **the Board must evaluate the “spirit” of the ordinance as contrasted with the “strict letter” of the law for each unique case.** Accordingly, **the Board is asked to consider the intent of the requirement.** 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 variance will not authorize the operation of a use on the subject property other than those specifically permitted in this particular 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 eave projection into the setback is not immediately obvious; the home is setback from the street 37 feet. The house design is unique; it is two fairly separate buildings, connected by a courtyard, with a large outdoor living space.** The variance will not substantially injure the nonconforming property. It seems from what we’ve seen and read that that’s the major concern of the fairly large number of people in opposition. The staff in re-reviewing the plans, which have already been approved, take extra precaution in review to ensure that the fire rating that staff has spoken of, be complied with. But primarily the gutter system, which is a great concern being twelve inches from the property, be abruptly addressed to ensure that there is no runoff on the gutter system. The gutter system should be reviewed as thoroughly as possible to address the neighbors concern. 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 condition in the district in which the property is located in that **according to the applicant, the unique circumstance existing on the property is the inadvertent error that occurred during the plan review process.”** The motion was seconded by Mr. Quijano.

AYES: Rodriguez, Quijano, Camargo, Dutmer, Kuderer, Britton, Rogers, Cruz, Zuniga, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The September 16, 2013 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 4:12 pm.

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

DATE: 10 - 21 - 13

ATTESTED BY:  DATE: 10 - 23 - 13
Executive Secretary