BOARD OF ADJUSTMENT
OFFICIAL MINUTES
September 20, 2010

Members Present:

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

Staff:

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.

Mr. Hardemon, arrived at 1:10 p.m.

Ms. Cruz, arrived at 1:16 p.m.

CASE NO. A-10-054

Applicant – Martin DeLeon, Sendero Electric Sign Company
The North Irregular 304.26 Feet of Lot 2, Block 16, NCB 16068
4800 North West Loop 410
Zoned: "C-3 AHOD" General Commercial Airport Hazard Overlay District

The applicant is requesting a 93 foot variance from the requirement to provide 150 feet of linear spacing between freestanding signs, in order to allow two freestanding signs separated by a distance of 57 linear feet.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 16 notices were mailed, none were returned in favor and none were returned in opposition.

Martin DeLeon, representative, stated there are two existing signs and are proposing to remove both them to replace the closest to the Native American with one of lesser square footage and same height. He also stated there are two smaller signs on the frontage and are proposing at later date to reface them with different services the dealership provides. He further stated these Native American icons have been around for many years and they are considered signs by the city of San Antonio.

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-10-054 closed.

MOTION

A motion was made by **Mr. Ozuna.** Re Appeal No **A-10-054,** variance application for **Martin DeLeon, Sendero Electric Sign Company,** variance application for **4800 North West Loop 410,** subject property description is **the north irregular 304.26 feet of Lot 2, Block 16, NCB 16068,** again situated at **4800 North West Loop 410,** the applicant being **McCombs Pontiac GMC Truck, Inc.,** the variance request is a **93 foot variance from the requirement to provide 150 feet of linear spacing between freestanding signs, in order to allow two freestanding signs separated by a distance of 57 linear feet.** I move that the Board of Adjustment grant the applicants request regarding appeal number **A-10-054**, 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 according to Section 28-247 of Chapter 28: Signs and Billboards, in order for a variance to be granted, the applicant must demonstrate: 1. 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. **It does appear that the strict enforcement of the sign regulations prohibits the reasonable provision of adequate signs on the site. Testimony has been provided to us today about the spacing of the existing native American sign, the dimensions between the existing sign that the applicant wants to replace, and the location there of if they had to meet the 150 foot setback would place the new signage in an existing driveway or else other wise impede the use of the property for new sales of cars. Therefore the subject property does not possess adequate frontage length to install the proposed sign. Alternately the existing sign that is going to be replaced would provide for less square footage of sign faceage than what is out there today which is an additional.** 2. 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 use of the subject property as a car dealership. Again testimony provided to us today shows that the Native American icon on the property has been long used as a location identifier for the property and enforcement of the 150 foot setback would impede that long standing icon or trademark of the property if it had to come down.** 3. A after seeking one or more of the findings set forth in 1 or 2, the board finds **that granting of the variance would not provide the applicant with a special privilege enjoyed by others**

similarly situated or potentially similarly situated. Granting the variance will not have a substantially adverse impact upon neighboring properties in that **again testimony provided before the board show that there was no opposition to the proposed variance given there was no adverse cards that people were opposing the 150 foot setback or spacing requirement.** The motion was seconded by **Ms. Dutmer.**

AYES: Ozuna, Dutmer, Villayrd, Victor, Rodriguez, Britton, Camargo, Hardemon, Rogers, Cruz, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-10-062

Applicant – Alamo Sign Solutions, LLC
Lot 1, Block 2, NCB 14952 (Landmark Subdivision)
11550 IH 35 North
Zoned: "I-1 S IH-1 AHOD" General Industrial Northeast Gateway Corridor Airport Hazard Overlay District with a Specific Use Authorization for a University

The applicant is requesting **1)** a 20-foot variance from the 30-foot maximum height requirement for on-premises signs in the "IH-1" overlay district, to keep an existing on-premises sign at a height of 50 feet, **2)** a 52 square-foot variance from the 150 square-foot maximum sign face area requirement for single tenant on-premises signs in the "IH-1" overlay district, to allow a single tenant on-premises sign with an area of 202 square feet, and **3)** a 23 percent (34.5 square foot) variance from the requirement that digital displays make up not more than 25 percent (37.5 square feet) of the allowable sign area, to allow a digital display to make up 48 percent (72 square feet(of the allowable sign area.

Jacob Floyd, Planner, presented background and staff's recommendation of approval of the requested variances. He indicated 3 notices were mailed, one was returned in favor and none were returned in opposition.

James Alfaro, representative, stated the reason for this variance is replace the existing sign with a greener friendlier efficient LED sign. He also stated they are reducing the square footage of the existing sign from 220 square feet to 202 square feet. He further stated by reducing the size of that sign and replacing an incandescent with an LED they would be saving potential energy costs for the university.

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-10-062 closed.

MOTION

A motion was made by **Mr. Ozuna.** Re Appeal No **A-10-062,** variance application for **Alamo Sign Solutions, LLC,** subject property address is **11550 IH 35 North, Lot 1 Block 2 NCB 14952 (Landmark Subdivision),** again situated at **11550 IH 35 North,** the applicant is **Alamo Sign Solutions, LLC,** the variance request is for **1) a 20-foot variance from the 30-foot maximum height requirement for on-premises signs in the "IH-1" overlay district, to keep an existing on-premises sign at a height of 50 feet, 2)a 52-foot variance from the 150 square foot maximum sign face area requirement for single tenant on-premises signs in the "IH-1" overlay district, to allow a single tenant on-premises sign with an area of 202 square feet, and 3)a 23 percent (34.5 square foot) variance from the requirement that digital displays make up not more than 25 percent (37.5 square feet) of he allowable sign area, to allow a digital display to make up 48 percent (72 square feet) of the allowable sign area.** I move that the Board of Adjustment grant the applicants request regarding appeal number **A-10-062,** 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 1) 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 in that **the strict enforcement of the sign regulations would prohibit the reasonable opportunity to provide adequate signs on the site, due to the unique topography of the site. The subject property sits approximately 15 feet higher than the level of the interstate and is screened from motorists view by the highway retaining wall. Additionally, the landscaping of the subject property further screens the sign and buildings from view of motorists. A sign of lesser height and size would be inadequate to identify the location of the university to the driving public.** A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property and **a denial of the variances would not cause a cessation of the longstanding use of the subject property as a private university.** After seeking one or more of the findings set forth in subparagraphs (1) and (2), the board finds that: a. Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated of potentially similarly situated. **The granting of the variances would not provide the applicant with a special privilege not enjoyed by others similarly situated. The applicant proposes to decrease the size of a nonconforming sign and maintain the original height of the sign. Additionally, the granting of the variances would provide adequate signage for the subject property where it otherwise would not be able to.** b. Granting the variance will not have a substantially adverse impact on neighboring properties. **It does not appear that the granting of the variances will have a substantially adverse impact on neighboring properties, as the modifications proposed will not affect the ability to install on-premises signage on the lots.** c. Granting the variance will not substantially conflict with the stated purposes of this article. **The granting of the variances will not substantially conflict with the stated purposes of this article. The modifications proposed to the sign will lessen its nonconformity in terms of its area and will the opportunity to provide adequate signage to the subject property.** The motion was seconded by **Mr. Rodriguez.**

AYES: Ozuna, Rodriguez, Dutmer, Camargo, Victor, Villyard, Hardemon, Rogers, Cruz, Britton, Gallagher
NAY: None

THE VARIANCES WERE GRANTED.

CASE NO. A-10-063

Applicant – Manuela L. Rodriguez
Lot 6, Block 4, NCB 10195
322 Lemur Drive
Zoned: "R-4 AHOD" Residential Single Family Airport Hazard Overlay District

The applicant is requesting a Special Exception to allow a one operator beauty/barber shop.

Jacob Floyd, Planner, presented background and staff's recommendation of approval of the requested Special Exception. He indicated 38 notices were mailed, 2 were returned in favor and none were returned in opposition and the Dellview Area Neighborhood Association is in favor.

Manuela Rodriguez, applicant, stated she has operated for over ten years and has her state licenses from the state board and the city. She also stated she has not had any violations. She further stated she will only have two customers at a time to minimize parking problems.

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-10-063 closed.

Motion

A motion was made by **Ms. Rogers.** Re Appeal **A-10-063,** application for **one-operator beauty/barber shop,** subject property description **Lot 6, Block 14, NCB 10195**, located at **322 Lemur Drive.** I move that the Board of Adjustment grant the applicant's request regarding this Appeal No **A-10-063**, application for a Special Exception for the subject property as described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UDC 35-399.01. Specifically we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter **because it is the purpose of the chapter in that the existing one operator beauty/barber shop follows this specific criteria established in Sec. 35-399.01 of the Unified Development Code.** The public welfare and convenience will be substantially served in that **the requested special exception will serve the public welfare in that the beauty/barber shop has continuously operated in this location with no problems within the parameters set forth in Sec. 35-399.01 and has served as public convenience for the residents in that area.** The neighboring property will not be substantially injured by such proposed use **because it will not alter the use of the property for which the special exception is sought. The primary use of the property will remain single-family residence.** 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 **in the does not appear that the granting of this special exception will in any way alter the essential character of the district in which the subject property is located in that the beauty/barber shop will remain confined to 25% or less of the gross floor area of the primary residence.** The specific exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the purpose of the district is to promote public health, safety, morals or general welfare and the granting of this special exception will not in any way weaken this purpose nor does it weaken the regulations established for the district. The period of operation will be for four years and the hours of operation will be from 8 am to 2 pm Wednesday, Thursday, and Friday for a total of 18 hours per week.** The motion was seconded by **Ms. Cruz.**

AYES: Rogers, Cruz, Camargo, Victor, Rodriguez, Britton, Villyard, Hardemon, Ozuna, Dutmer, Gallagher
NAY: None

THE SPECIAL EXCEPTION IS GRANTED.

CASE NO. A-10-064

Applicant – Wulfe Development, Ltd.
The South 50 feet of Lot 14, Block 8, NCB 8084
2538 Southwest 36th Street
Zoned: "C-3 R AHOD" Restrictive Commercial Airport Hazard Overlay District

The applicant is requesting a 25-foot variance from the 30-foot side setback requirement of the "C-3" zoning district when abutting a residential use or zoning districts, in order to allow a structure 5 feet from the north property line.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 15 notices were mailed, 4 were returned in favor and one was returned in opposition and no response from the Thompson Community Organization

Kenneth Gindy, representative, stated they are requesting this variance for storage purposes. He also stated the variance would also help with the safety of the employees since they have to store some of their equipment across the street in other warehouses. These employees would not have to cross the street that is being expanded which is going to have median landscaping and the points of crossing are going to be taken away. These improvements would make it difficult to expand their property across 36th Street. He further stated their desire is to expand a business that has been in this area for a long time.

The following citizens appeared to speak:

Ramiro Asebedo, citizen, spoke in opposition.

Dora Asebedo, citizen, spoke in opposition.

Demetrio Jimenez, 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-10-064 closed.

MOTION

A motion was made by **Mr. Camargo.** I would move that in Case No **A-10-064,** applicant being **Wulfe Development, LTD.,** on property located at **2538 Southwest 36th Street,** also legally described as the **South 50 feet of Lot 14 I, Block 8, NCB 8084,** be approved for a **25-foot variance from the 30-foot side setback requirement in the "C-3" zoning district which abuts a residential use in a commercial zone in order to allow a structure to be built 5 feet from north property line.** Specifically we find that such variance will not be contrary to the public interest in that **the fact that although there was a notice returned from the property owners' representative objecting to the variance request, it should be pointed out that the use that is proposed is not in compatible this particular strip of land between El Jardin and 36th and as much as that the entire property has been shown on our maps and on the aerials is zoned for commercial use.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the width of this property is of sufficient width to allow the construction of the addition of this particular size as proposed by the applicants.** The spirit of the ordinance is observed and substantial justice is done in that **in compliance with an overall master plan of the city for development of this area along 36th Street south of 90 as in a commercial and industrial use area.** 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 purpose of use of warehousing is a use permitted within the "C-3" 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 **I would point it out that it would not injure the adjacent property, in that although it is a conforming use as it has been pointed out. It is located legally within an area or a corridor that has been specifically outlined by the City of San Antonio as commercial industrial 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 **it abuts a nonconforming use which temporarily according to statements made by opposition present will be used as residential and sold off as commercial property in the future.** The motion was seconded by **Ms. Rogers.**

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

THE VARIANCE WAS NOT GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-10-065

Applicant – Robert Stanley
3.1404 Acres out of Lots P-3 & P-20A, NCB 17642
10100 Block of State Highway 151 (10106 State Highway 151)
Zoned: "C-3 GC-2 AHOD" General Commercial Highway 151 Gateway Corridor Overlay Airport Hazard Overlay District

The applicant is requesting for **1)** a 2-foot variance from the requirement that side-yard fences not exceed a height of 6 feet, in order to allow an 8-foot tall fence in the side yard along the east property line; **2)** a 5-foot variance from the requirement that solid fences in the front yard not exceed a height of 3 feet, in order to allow an 8-foot tall solid fence in the front yard on the east property line, and **3)** a 2-foot variance from the requirement that predominantly open front-yard fences not exceed a height of 4 feet, in order to allow a 6-foot tall predominantly open fence in the front yard.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variances. He indicated 14 notices were mailed, one was returned in favor and none were returned in opposition.

Charles Winder, owner, stated he chose this location because of the growing population around this area. He also stated they are putting up a soccer wall in the play area near a drainage easement and the height of the fence would help keep the ball from going into the easement. He further stated this location would be great for a family type restaurant since development has been growing in this area.

Larry Clark, representative, stated their requirements are more stringent than those City of San Antonio so that every property owner can be assured that what applies to their property also applies to their neighbor's property. He also stated this construction has met or exceeded all of the requirements of the architectural committee conditions except for the height of the soccer backstop and the perimeter enclosure of the children's play area.

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-10-065 closed.

MOTION

A motion was made by **Mr. Camargo.** I would move that in Case No **A-10-065,** the applicant being **Robert Stanley,** on property located at **10100 Block of State Highway 151,** also legally described at **3.1404 acres out of Lots P-3 & P-20A, NCB 17642,** that this particular property and applicant be granted **a 2-foot variance from the requirement that side-yard fences not exceed a height of 6 feet, in order to allow an 8-foot tall fence in the side yard along the east property line and I might mention in respect to the statement given to us by staff that it is not right on the property but rather setback a considerable distance. Secondly, that a 5-foot variance from the requirement that solid fences in the front yard not exceed a height of 3 feet, in order to allow an 8-foot tall, here it says solid fence in the front yard along the east property line and 3) a 2-foot variance from the requirement that predominantly open front-yard fences not exceed a height of 4 feet in order to allow a 6-foot predominantly open fence in the front yard for the following findings of fact.** Specifically we find that such variance will not be contrary to the public interest in that **from the number of notices sent out to the adjacent property owners none were returned in opposition.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **if this development plan were reversed and the building that the applicant has proposed were erected along the front portion of the property the variance for 6-foot fencing in the rear yard would not have been a requirement, It has been stated by the applicant representative's or the representative that it was felt by the developers of the property that this development would be more attractive if that situation were reversed and the structure located towards the rear and that the landscaping and fencing would be placed in the front of the property.** The spirit of the ordinance is observed and substantial justice is done in that **it has felt that the granting of this variance would be in keeping with the spirit of the ordinance to allow a better appearing development than that which would be required by adhering strictly to the requirements of the regulations.** Such variance will not authorize the operation of a use other than those uses specifically allowed in the zoning classification in that **the proposed use is indicated by the applicant is one that is permitted in the "C-3" 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 **it has been shown that the property abuts a drainage easement, in addition to that a miniature golf course development to the east, vacant property to the west, single-family residential to the south that is set back a substantial distance from the proposed development as indicated by the applicant's site plan.** 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 some or contrary to that specific finding of fact that is required, the applicant did in fact choose to propose a development such as this, proposing the 6-foot predominantly open fence with what is referred to as the front yard by our regulations in order to provide a more attractive atmosphere to the proposed development. The 8-foot wall is stated in the notice that was sent to the property owners is in fact not located on the subject property.** The motion was seconded by **Mr. Hardemon.**

AYES: Camargo, Hardemon, Rogers, Cruz, Rodriguez, victor, Villyard, Dutmer, Ozuna, Britton, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-10-066

Applicant – Maria Gonzalez
Lot 82, Block 7, NCB 16612
6203 Binz-Engleman Road
Zoned: "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting for a Special Exception to allow a one operator beauty/barber shop.

Jacob Floyd, Planner, presented background and staff's recommendation of approval of a two-year period. He indicated 22 notices were mailed, none were returned in favor and none were returned in opposition and no response from Sunrise Neighborhood Association.

Maria Gonzalez, representative, stated she is requesting this special exception to allow her to work at home and care for her five children. She also stated she would be care for her child who has cancer.

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-10-066 closed.

MOTION

A motion was made by **Ms. Victor.** Re Appeal **A-10-066,** located at **6203 Binz-Engleman Road, Lot 82, Block 7, NCB 16612**, located at **6203 Binz-Engleman Road.** I move that the Board of Adjustment grant the applicant's request regarding this Appeal No **A-10-066**, application for a Special Exception for the subject property as described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UDC 35-399.01. Specifically we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter **the applicant has indicated that she will operate according to the criteria established in Section 35-399.01 of the Unified Development Code.** The public welfare and convenience will be substantially served in that **the requested special exception will further serve the public welfare in that the proposed beauty and barbershop will serve as a public convenience within a residential area. People within the area in that neighborhood will be able to get their hair done and it will be very convenient.** The neighboring property will not be substantially injured by such proposed use **the granting of this special exception will not alter the use of the property for which the special exception is sought. The primary use of the subject property will remain a single-family residence.**

There is ample area within the driveway for cars to be parked so it will not look like a business and it will be able to be run out of the house in a very discreet manner. 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 **it does not appear that the granting of the special exception will alter the essential character of the district in which the subject property is located in that the beauty/barbershop will remain confined to 25% or less of the gross floor area of the primary residence. Ample parking is provided so there will be cars on the street and the hours of 48 hours a week will guarantee that there is not constant people coming in and out of the house.** The specific exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the purpose of the district is to promote the health, safety, morals, or general welfare. The granting of this special exception will not weaken this purpose, nor will it weaken the regulations established for this district within the Unified Development Code and it will be granted for a two-year period and then the applicant will have to come up, reapply and at that point for a further special exception.** The motion was seconded by **Mr. Camargo.**

AYES: Victor, Camargo, Hardemon, Rogers, Britton, Villyard, Dutmer, Rodriguez, Cruz, Ozuna, Gallagher
NAY: None

THE SPECIAL EXCEPTION WAS GRANTED.

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 for **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 both the Special Exception and variance request. He indicated 33 notices were mailed, none were returned in favor and 3 were returned in opposition and no response from the Five Points Neighborhood Association.

William Huber, applicant, stated the Conservation Society published a flier requesting citizens to come forward who had property to move this structure to and his property was chosen. He plans to renovate this structure at his own expense and use it for commercial office space profession. He also owns the property on 1731 Comal which is a building he renovated and is used for psychological social services and it is not a profit counseling center. The structure on

McCullough is currently blocking a large development project and the current owner has not shown any interest in renovating this building and is willing to provide some funds to whoever moves the structure. He also stated the lots near the 1723 Comal Street property have two-story structures and moving this structure to this location would be back the character to the neighborhood.

The following citizens appeared to speak:

Frederica Kushner, citizen, spoke in favor.

Jody Williams, citizen, spoke in favor.

Adam Greenup, citizen, spoke in favor.

Julia Baker Hubner, citizen, spoke neither in opposition or in favor.

Maria E Flores, 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

Ms. Dutmer, made a motion to continue this case until the next regularly scheduled meeting on October 4, 2010. **Mr. Hardemon**, seconded the motion with all board members voting in the affirmative.

THE VARIANCE WAS CONTINUED.

Board members recessed for 5 minutes.

CASE NO. A-10-068

Applicant – Brown and Ortiz, P.C.
Lot 40, Block 1, NCB 15911
11123 North IH-35
Zoned: "C-3 IH-1 AHOD" General Commercial Northeast Gateway Corridor Airport Hazard Overlay District

The applicant is requesting a 556.32 square foot variance from the requirement of the "IH-1" overlay that 50 percent (760 square feet) of the first floor street frontage consist of window/public entry façade area of 203.68 square feet on the first floor street frontage (12.4 percent of the first floor street frontage).

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 4 notices were mailed, one was returned in favor and none were returned in opposition.

James Griffin, representative, stated the board granted a 29.6% variance from the glass requirement on May 17, 2010 from the 50% glass requirement. He also stated the construction was continued after the variance was approved and during this phase it was discovered that there was a miscalculation on the percentage. The overlay requirements apply to the first 10 feet of the building and this glass entry way goes 12 feet. The entire 12 feet was included in the variance by mistake which an extra 2 feet of glass was included which was brought to their attention by staff and was under what was granted under variance which caused them to ask for an additional 7% variance.

Patrick Christensen, representative, stated basically a mistake was made by the architect in not excluding the extra 2 feet. He also stated the plans were not caught by city. He further stated they are trying to follow procedures and just asking for a 7% variance to finish the almost complete construction of the building.

The following citizens appeared to speak:

Chip Haas, 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-10-068 closed.

MOTION

A motion was made by **Mr. Ozuna.** Re Appeal No **A-10-068,** variance application for **11123 North IH-35,** subject property description is **Lot 40, Block 1, NCB 15911,** situated at **11123 North IH-35,** the variance the applicant is seeking is a **556.32 square foot variance from the requirement of the "IH-1" overlay that 50 percent (760 square feet) of the fist floor street frontage consist of window/public entry façade for buildings with a gross floor area of less than 25,000 square feet, in order to allow a window/public entry façade area of 203.68 square feet on the first floor street frontage which is 13.4 percent of the first floor street frontage.** I move that the Board of Adjustment grant the applicant's request Re Appeal No **A-10-067**, 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 purpose of the Northeast Gateway Corridor design standards are to create a more attractive, cohesive, and safe environment for visitors, freight traffic and area residents, and to enhance the appearance and economic viability of areas along IH-35. The granting of the variance would not be contrary to the public interest, as the reduction of the window/public entry façade area would not reduce the ability of the corridor standards to preserve and enhance the aesthetic value of the area adjacent to the interstate.** Due to special conditions, a literal

enforcement of the ordinance would result in unnecessary hardship in that **the subject property appears to possess special conditions that create an unnecessary hardship through the literal enforcement of the ordinance. Specifically, the applicant has made testimony today about the additional crime element in which the additional glass would create just an invitation for crime and in unnecessary hardship in having to maintain, replace glass that may be broken on a continuing basis.** The spirit of the ordinance is observed and substantial justice is done in that **the granting of the variance will observe the spirit of the ordinance and provide substantial justice. The granting of the variance would not be in direct conflict with the stated purpose of the ordinance to enhance the appearance and economic viability of areas along the interstate and create a more attractive and cohesive environment.** 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 granting of the variance will not authorize the operation of a use other than those specifically authorized in the "C-3 IH-1 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 nor will it alter the essential character of the immediate 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 property owner is due to unique circumstances existing on the property, as testimony was provided by the applicant due to the crime situation being resolved and the amount of glass which be an invitation to crime and criminal element.** The motion was seconded by **Mr. Rodriguez.**

AYES: Ozuna, Rodriguez, Dutmer, Camargo, Hardemon, Rogers, Britton, Villyard, Victor, Cruz, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

Approval of the August 16, 2010 Minutes

The August 16, 2010 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 5:08 p.m.

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

DATE: 10 - 4 - 10

ATTESTED BY: _____ DATE: 10 - 5 - 10
Executive Secretary