

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
September 21, 2009**

Members Present:

Michael Gallagher
Andrew Ozuna
Liz Victor
Edward Hardemon
Helen Dutmer
George Britton
Rolando Briones
Mary Rogers
Mike Villyard
Maria Cruz
Pete Vallone

Staff:

Chris Looney, Planning Manager
Rudy Niño, Jr., Senior Planner
Jacob Floyd, Planner
Michael Farber, 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-09-089 has been postponed.

CASE NO. A-09-077

Applicant – JTM Transport, Inc.
Lot 79, Block 7, NCB 16612
3831 North Foster Road
Zoned: “C-2” Commercial District

The applicant is requesting for an appeal of the decision of the Planning and Development Services Director to deny an additional extension of a Temporary Certificate of Occupancy.

Michael Farber, Planner, presented background and staff’s recommendation that the board uphold the Director’s decision to not extend the Temporary CofO. He indicated 22 notices were mailed, none were returned in favor and 2 were returned in opposition and indicated no response from the Sunrise Neighborhood Coalition.

James Rosenbly, representative, stated the applicant purchased the property in 2004 and built the office and truck facility with all necessary permits. The work that is currently being done is still from 2004. He also stated that in 2008 a code compliance officer informed the applicant the

certificate of occupancy that was originally issued in 2004 was incorrect and did not include the mechanic shop and the storage of the trucks. He was then issued a temporary CofO in January of 2009 with the understanding that if the applicant was to make good progress to move the facility, he would be given the opportunity to move the facility. This temporary of CofO also included one possible extension. The applicant acquired another piece of property and has received electric but is waiting for permission to put in the sewer line. He bought this 10-acre lot in 2008 and starting preconstruction as quickly as possible. The applicant can't continue to operate his business at the current location he will have to shut down his business. He further stated the applicant is requesting for his temporary CofO be granted so he could complete the new building and move the truck facility of this property and to the new facility.

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-09-077 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-09-077 variance application to overturn the decision of the Planning and Development Services Director to deny the extension of a temporary Certificate of Occupancy**, subject property description as **Lot 79, Block 7, NCB 16612**, the applicant is **JTM Transport Inc**. I move that the Board of Adjustment move to **overturn the decision of the Planning and Development Services Director to deny the extension of the temporary of occupancy and further move that the board provide a six month extension of the temporary certificate of occupancy to allow the applicant time to relocate his facility to the property he has identified**. The motion seconded by **Mr. Hardemon**.

AYES: Ozuna, Dutmer, Briones, Cruz, Britton, Vallone, Gallagher

NAY: Victor, Villyard, Hardemon, Rogers

THE MOTION FAILS.

CASE NO. A-09-080

Applicant – SAISD – Lanier High School
Lot 2, Block 1, NCB 146778
1514 West Durango Boulevard
Zoned: "R-4" Residential Single-Family District

The applicant is requesting 1) a 12-foot variance from the requirement that on-premise free-standing signs in residential zoning districts not exceed 8 feet in height in order to erect a 20-foot tall free-standing sign, 2) a 36.5 square foot variance from the requirement that free-standing signs for nonresidential uses in residential zoning districts not exceed 36 square feet in sign area to erect a free-standing sign with an area of 72.5 square feet and 3) a complete variance from the

regulation that no sign nor part of any sign shall move, flash, rotate, or change its illumination to erect a free-standing sign with a LED electronic message center.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 120 notices were mailed, 5 were returned in favor and 4 were returned in opposition and the Avenida Guadalupe Neighborhood Association is in favor.

Paul Rohlfs, representative, stated he was issued a permit to allow an electronic message center. When reviewing the ordinance, city staff stated that Chapter 28 paragraph 240 of the ordinance stated that only apartments or condominiums are allowed 16 foot and up to 75 square foot of signage which is the allowable height in size per table 2 for nonresidential zoning district. He also this size was in keeping with the city's prior enforcement and understanding. He further stated the city has placed a hold on the permit instead of enforcing the permit.

The following citizens appeared to speak:

Don Aird, citizen, spoke in favor.

Lanny Worel, citizen, spoke in favor.

Thomas C Lopez, 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-09-080 closed.

1st MOTION

A motion was made by **Ms. Rogers**. Re Appeal No **A-09-080**, variance for a **12-foot variance from the requirement that on-premise free-standing signs in residential zoning districts not exceed 8 feet in height, in order to erect a 20-foot tall free-standing sign; a 36.5 square foot variance from the requirement that free-standing signs for nonresidential uses in residential zoning districts not exceed 36 square feet in sign area, to erect a free-standing sign with an area of 72.5 square feet; and a complete variance from the regulation that no sign nor part of any sign shall move, flash, rotate, or change its illumination, to erect a free-standing sign with a LED electronic message center**, the subject property description is **Lot 2, Block 1, NCB 146778**, located at **1514 West Durango Boulevard**, the applicant being **San Antonio Independent School District specifically Lanier High School**. I move that the Board of Adjustment grant request regarding Appeal No **A-09-080**, as explained previously, 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 UDC, as amended, would result in an unnecessary hardship. Specifically we find that the variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering and unique features of a site such as its dimensions, landscaping, or topography and **specifically the possibility of vandalism to the sign**. After seeking these findings the board finds that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially situated

in that **in that other schools in San Antonio have signs of this size and height.** Granting the variance will not have a substantially adverse impact upon neighboring properties in that **the majority of the neighborhood after having been called by the city does not object to the signage that is that is those that have been returned.** Granting the variance will not substantially conflict with the stated purposes of this articles in that **the other findings support this.** The motion seconded by **Ms. Dutmer.**

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

NAY: None

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-09-084

Applicant – Richard Acebedo
Lot 15, Block 3, NCB 10359
758 McDougal
Zoned: “R-4” Single-Family Residence District

The applicant is requesting a 2-foot 6-inch variance from the requirement that a minimum 5-foot side setback be maintained in order to keep an existing carport 2-feet, 6-inches from the east side property line.

Michael Farber, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 30 notices were mailed, 2 were returned in favor and none were returned in opposition and no response from the Highland Hills Neighborhood Association.

Richard Acebedo, representative, stated he is requesting this variance to finish the carport because it is ninety percent complete. He also stated he wanted the carport to protect his property and vehicles since his daughters live with him. He further stated de did not obtain a permit because he thought he only needed a permit for living space not for a carport.

The following citizens appeared to speak:

Ron Segovia, 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-09-084 closed.

MOTION

A motion was made by **Ms. Dutmer**. In Appeal No **A-09-084**, the variance application is for a **carport**, subject property **Lot 15, Block 3, NCB 10359**, located at **758 McDougal Street**, zoning is **"R-7" Single-Family Residential**, the subject is a **side setback variance**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-09-084**, 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 applicant did not obtain permits prior to constructing of the carport in question and upon visiting the side it appears that there were any similarly constructed carports or fences in the immediate vicinity. Because it appears that there are topographic hardships posed by the property and being that the carport is not out of character with the immediate neighborhood, staff believes that the structure is not contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it does appear that the literal enforcement of the ordinance would result in unnecessary hardship in that it is ninety percent built already.** By granting the spirit of the ordinance is observed and substantial justice is done in that **the lack of this carport would not cause a cessation of the use by the property owner. There are alternatives exists but they would not allow the applicant to make reasonable use of his property while still meeting setback requirements.** Such variance will 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 this variance would not authorize a use other than those specifically permitted in "R-4" 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 **it appears that the granting of this variance would not alter the character of the neighborhood and there appears to be other carports of similar construction near the subject property. There appears to be any unique circumstances existing on the property. The applicant cites property protection concerns as primary hardships. A 2-foot 6-inch variance from the requirement that a minimum 5-foot side setback be maintained in order to keep an existing carport 2 feet, 6 inches from the ease side property line.** The motion seconded by **Ms. Cruz**.

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

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-09-086

Applicant – Mary Ann Owen
Lot 65, Block 2, NCB 3099
346 East Craig Place
Zoned: "R-6" Residential Single-Family District

The applicant is requesting 1) a 1-foot 10-inch variance from the requirement that accessory structures be located a minimum 5 feet from the side property line, in order to keep an existing accessory structure 3 feet, 2 inches from the west side property line and 2) a 3-foot variance from the requirement that accessory structures be located a minimum 5 feet from the rear property line, to keep an existing accessory structure 2 feet from the rear property line.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 29 notices were mailed, 1 was returned in favor and none were returned in opposition and no response from Tobin Hills Neighborhood Association.

Mary Ann Owen, applicant, stated when she moved in there was an older building that in the past was a carport but was enclosed. She also stated strangers would lure in the back, people would put graffiti on the building, and trash would be thrown. She further stated her actions for not getting the permits were not out of defiance but she wanted to make the building look better.

The following appeared to speak:

Richard Moore, citizen, spoke in favor.

Guillermo Lopez, 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-09-086 closed.

MOTION

A motion was made by **Mr. Villyard**. Appeal Case No **A-09-086**, variance application for a **1-foot 10-inch variance from the requirement that accessory structures be located a minimum of 5 feet from the side property line and a 3-foot variance from the requirement that accessory structures be located a minimum of 5 feet from the rear property line, in order to keep an accessory structure 3 feet, 2 inches from the west side property line and 2 feet from the rear property line**, subject property described at **Lot 65, Block 2, NCB 3099**, located at **346 East Craig Place**, is a **"R-6" zoning Residential Single-Family District**, the applicant **Ms. Mary Ann Owen**. I move that the Board of Adjustment granted the applicant's request regarding Appeal No **A-09-086**, 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 unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **the neighborhood is characterized by a number of similarly located accessory structures**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the rear-yard has sufficient space and to tear down the structure would inappropriate**. The spirit of the ordinance would be observed and substantial justice is done in that **it would deny the applicant reasonable of the subject property**. 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 would not authorize a use other than those**

specifically permitted in "R-6" 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 **because there are numerous accessory buildings that would match the essential character of the district.** 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 not due to or the result of general conditions in the district in which the property is located in that **it would appear that the property would be utilized in a more meaningful manner by the granting of this variance.** The motion seconded by **Mr. Hardemon.**

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

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-09-087

Applicant – Josie Delgado
Lot 5, Block 25, NCB 15292
6030 Shoreview
Zoned: "R-6" Residential Single-Family District

The applicant is requesting for a 1-foot, 8-inch variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, in order to keep a 5-foot, 8-inch tall fence in the front yard.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 30 notices were mailed, 5 were returned in favor and none were returned in opposition and no response from People Active in Community Effort Neighborhood Association.

Josie Delgado, applicant, stated the reason for the fence is for her safety and security. She also stated one of her neighbors has a pit bull and she is concerned for the safety of her 5-year old great-granddaughter. She is also concerned because the neighbors across the street have alleged gang members that hang out. She further stated she did not know she needed permits to build the fence.

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-09-087 closed.

MOTION

A motion was made by **Mr. Hardemon**. Appeal No **A-09-087**, application for a **1-foot, 8-inch variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, to keep a 5-foot, 8-inch fence in the front yard**, subject property described as **Lot 5, Block 25, NCB 15292**, located at **6030 Shoreview**, applicant **Mrs. Josie Delgado**. I move that the Board of Adjustment grant the applicant's request regarding appeal **A-09-087**, 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 requirement listed in UDC 35-399.04. Specifically we find that the following conditions have been satisfied **though the applicant did not obtain the necessary permits in order to erect the fence it does appear that the granting of the variance will be contrary to the public interest**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it does not appear that the literal enforcement of the ordinance would result in unnecessary hardship**. **The property does not possess any unique characteristic that would necessitate a fence of excessive height**. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done in that **it does appear that the granting of the variance would observe the spirit of the ordinance**. **The applicant will not be denied the reasonable use of the property without the granting of this variance**. 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 this variance would not authorize a use other than those specifically permitted in "R-6" 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 **it does appear that the granting of this variance would injure the appropriate use of adjacent conforming property**. However, **the granting of this variance may alter the character of the district in that front yard fences are not a common feature of the surrounding properties**. 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 **there do not appear to be any unique circumstances existing on the property which would result in unique hardship**. Although the applicant has mentioned certain things involving the safety there a literal enforcement of the ordinance. A denial of the request would cause a residence to have to tear the fence down and that would not be appropriate. The motion seconded by **Ms. Cruz**.

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

NAY: None

THE VARIANCE WAS GRANTED.

Approval of the August 17, 2009 Minutes

The August 17, 2009 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 3:51 p.m.

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

DATE: Oct 5, 2009

ATTESTED BY: [Signature] DATE: 10/6/09
Executive Secretary