

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
April 7, 2014**

Members Present:

Andrew Ozuna
Mary Rogers
Frank Quijano
Alan Neff
Gabriel Velasquez
Maria Cruz
Jesse Zuniga
Roger Martinez
John Kuderer
Gene Camargo
Henry Rodriguez

Staff:

John Jacks, Assistant Director
Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Planner
Osniel Leon, Planner
Paul Wendland, City Attorney

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Ozuna, Vice-Chair, called the meeting to order and called roll of the applicants for each case.

CASE NO. A-14-042

Applicant – Wes Putman

Lot 10, NCB 12168 and the East 389.91 feet of the irregular portion of Lot 11, NCB 12168
2938 Northeast Loop 410

Zoned: “I-1 AHOD” General Industrial Airport Hazard Overlay District

The applicant is requesting a 3-foot setback variance from the 10-foot setback requirement for a freestanding sign along an expressway to allow a freestanding sign along an expressway 7 feet from the front property line.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 5 notices were mailed, 1 was returned in favor and none were returned in opposition and no response from the Village North One Neighborhood Association.

Andrew Perez, Sign Inspector, stated he agrees with the proposal of the sign. He also stated they are way below the allowed 375 sq ft of expressway sign size. He further stated because of the right of way dedication, their property line was pushed back a few feet.

Wes Putman, applicant, stated this variance is so that the owner could refurbish the current sign. He also stated the structure will be improved and more visible for traffic coming on Loop 410.

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-14-042 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-14-042**, variance application for **3-foot setback variance from the 10-foot setback requirement for a freestanding sign along an expressway to allow a freestanding sign along an expressway 7 feet from the front property line**, subject property description **Lot 10, NCB 12168 and the East 389.91 feet of the irregular portion of Lot 11, NCB 12168**, situated at **2938 Northeast Loop 410**, applicant being **Wes Putman**. “I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-042**, 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 a denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. **This is an existing sign. According to the applicant, a portion of the property was acquired by the State of Texas for right-of-way for the Loop 410 expansion, thus leading to the current non-conformity. The sign is placed on a portion of the property which is not utilized for required parking, and relocating the sign would mean placing the sign in the required parking area.** After seeking one or more of the findings set forth in (1) or (2), and 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. **The requested variance would not grant a special privilege not enjoyed by other businesses similarly situated, as any business with expressway frontage is allowed an expressway sign.** Granting the variance will not have a substantially adverse impact upon neighboring properties. **The area is heavily developed in a commercial manner, with many expressway signs present. Additionally, because of the width of the Loop 410 (and associated frontage roads) right-of-way, a 3-foot setback variance would likely be indistinguishable from other expressway signs within the area. As such, a substantially adverse impact on neighboring properties is not anticipated.** Granting the variance will not substantially conflict with the stated purposes of this article. **The requested variances do not appear to conflict with any of the stated purposes of Chapter 28.”** The motion was seconded by **Ms. Cruz**.

AYES: Quijano, Cruz, Martinez, Neff, Camargo, Velasquez, Kuderer, Rodriguez, Zuniga, Rogers, Ozuna

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-14-044

Applicant – Idalia N Guzman
Lot 6, Block 11, NCB 14343
2118 Hunter Boulevard
Zoned: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay Districts

The applicant is requesting a special exception for a one-operator beauty shop in a single-family home.

Osniel Leon, Planner, presented background and staff’s recommendation of approval of the requested special exception. He indicated 38 notices were mailed, 4 were returned in favor and 6 were returned in opposition.

Idalia Guzman, applicant, stated she is requesting this variance so that she can work at home and be more accessible to her young children who are in school. She also stated she is not operating at the current moment and currently works at a downtown restaurant. She further stated she will only operate by appointment and have one customer at a time with adequate parking for her customers.

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-14-044 closed.

MOTION

A motion was made by **Mr. Rodriguez**. “Re Appeal No. **A-14-044**, special exception for a **one-operator beauty shop in a single-family home**, subject property description **Lot 6, Block 11, NCB 14343**, located at **2118 Hunter Boulevard**, applicant being **Idalia N Guzman**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-14-044**, 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 in that **the requested special exception will be in harmony with the spirit and purpose of the chapter in that the proposed one-operator beauty salon will follow the specified criteria established in Section 35-399.01 of the Unified Development Code**. The public welfare and convenience will be substantially served in that **public welfare and convenience will be served with the granting of this request as it will provide a valuable and needed public service to the residents of the neighborhood and it will not negatively impact surrounding properties**. The neighboring property will not be substantially injured by such proposed use in that **the beauty shop will occupy only a small part of the structure, and the fact that a beauty shop is being operated from the home will likely be indiscernible to passersby**. 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 requested special exception will not alter the essential character of the district as the use will likely be indiscernible to passersby. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that the granting of this special exception will not weaken these purposes. This will be for a period of twenty-four months with hours of operation not to exceed thirty-five hours per week from 10:00 a.m. to 5:00 p.m., closed on Mondays and Sundays.” The motion was seconded by Ms. Cruz.

AYES: Rodriguez, Cruz, Martinez, Quijano, Zuniga, Neff, Kuderer, Velasquez, Camargo, Rogers, Ozuna

NAYS: None

THE SPECIAL EXCEPTION WAS GRANTED.

CASE NO. A-14-017

Applicant – Robert D. Lawrence
Lot 1, Block 3, NCB 18666
7939 Viking Trail
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 5-foot variance from the required 5-foot side yard setback to allow several accessory structures encroaching into the east side yard setback.

Osniel Leon, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 31 notices were mailed, 2 were returned in favor and 2 were returned in opposition.

Robert Lawrence, applicant, stated he will follow regulations in regards to fire rated walls. He also stated the encroaching sheds will be completely demolished. He further stated he is considering taking off three and half feet of the roofing right up to the post and removing it all the way to the bottom. He is willing to cover the posts with hardy plank to come into code in regards to fire proofing.

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-14-017 closed.

MOTION

A motion was made by **Mr. Camargo**. “I would move that in case **A-14-017**, the applicant being **Robert D Lawrence**, on property legally described as **Lot 1, Block 3, NCB 18666**, also known as **7939 Viking Trail**, be granted a **1 ½ foot variance to the open carport that is at the front of the property**. Specifically, we find that such variance will not be contrary to the public interest for the following reasons **I do not find that there is any objections from the public to**

the requested 5-foot variance which we are not granting a 5-foot variance but a 1 ½ foot variance. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of this ordinance would not be possible due to the distance between the house and the property line and the space that is left in order for this gentleman to park his vehicle.** The spirit of the ordinance is observed and substantial justice is done in that **there have been various compromises between the applicant and in discussion with city staff as far as what safety measures need to be taken in order to protect the adjacent property.** Such variance will not authorize the operation of a use other than that **which is permitted by the zoning classification which is that of a single family and the variance that is being granted is for an open carport which is a permitted use in that residential zone.** 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 **Mr. Lawrence is fully aware of what is going to be required as far as the fire protection of that structure which in turn protects the adjacent property to the east of him.** 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 only circumstance I find is the narrowness of the area of the carport. It allows him full utilization. The variance does not address the patio, the two-story patio at rear of the lot, because it appears it has sufficient setback to meet the requirements in as much as Mr. Lawrence has indicated that he plans to construct some sort of portable or relocate the stairway that we have seen on the slide, which would then eliminate the need for a variance.** The motion was seconded by **Mr. Martinez.**

AYES: Camargo, Martinez, Quijano, Kuderer, Cruz, Zuniga, Neff, Velasquez, Rodriguez, Rogers, Ozuna

NAYS: None

THE WAS GRANTED.

CASE NO. A-14-035

Applicant – Javier C. Solis
Lot 6, Block 7, NCB 6774
758 Kirk Place

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

The applicant is requesting a 3-foot variance from the 5-foot required side yard setback to allow a carport 2 feet from the side property line.

Osniel Leon, Planner, presented background and staff’s recommendation of denial the requested variance. He indicated 20 notices were mailed, none were returned in favor and none were returned in opposition.

Javier Solis, applicant, state the carport would provide protection for his vehicles. He also stated the carport would provide safety for his children while they play outside. He further stated he is willing to remove the overhand and place gutters.

The following citizens appeared to speak:

Javier Solis Jr, 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-14-035 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-14-035**, variance application for a **3-foot variance from the 5-foot required side yard setback to allow a carport 2-feet from the side property line**, subject property description **Lot 6, Block 7, NCB 6774**, situated at **758 Kirk Place**, applicant being **Javier C Solis**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-035**, 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 **on the side of the requested variance there is a common condition between the neighboring properties**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the project is far enough down the line that I think having it removed and the work that has been accomplished that it will create a situation that would cause the property owner to incur costs that if the variance were to be allowed, it would not impact the owner**. The spirit of the ordinance is observed and substantial justice is done in that **he is going to put gutters, cut the back the roof, and had already been planning to do that. He does have some examples of respecting the property land as much as they can**. 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 gentleman described to us that the cover will be used for his children to have a safe place to play outside in the rain**. 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 **they have past practices that it is an accepted roof between the neighbor and this property**. 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 **this is an area that probably has a 3-foot setbacks. The gentleman has an air conditioning unit that has been placed on the side of the house that most definitely limits the use of his driveway and I think this approval of what this applicant is requesting helps to facilitate the maximum use of his property**.” The motion was seconded by **Mr. Camargo**.

AYES: Velasquez, Camargo, Quijano, Martinez, Neff, Kuderer, Rodriguez, Zuniga, Cruz, Rogers, Ozuna

NAYS: None

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-14-040

Applicant – Edgewood Independent School District
Lot 6, NCB 9025
3300 & 3306 Ruiz (a privately owned driveway)
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the maximum 6-foot fence height to allow an 8-foot fence along the north property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval the requested variance. She indicated 56 notices were mailed, 3 were returned in favor and one was returned in opposition and no response from the Loma Vista and Prospect Hill Neighborhood Associations.

Don Wallhine, representative, stated the fence would provide security and protection for the students of the district. He also stated they are under a contract with the head start program that requires a shutdown of the entire facility and the variance would provide safety. He further stated

James White, stated the school district obtained the permit and the fence contractor built the fence. He also stated the barbed wire existed on the previous fence. He further stated the portion of the fence with barbed wire belongs to the apartment complex and will not include the barbed wire on their fence.

The following citizens appeared to speak:

Guadalupe Perez Mireles, citizen, spoke in opposition.

Rob Leonhard, 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-14-040 closed.

MOTION

A motion was made by **Ms. Rogers**. Re Appeal No. **A-14-040**, variance application for a **2-foot variance from the maximum 6-foot fence height to allow an 8-foot fence along the north**

property line, subject property description Lot 6, NCB 9025, situated at 3300 & 3306 Ruiz (a privately owned driveway), applicant being Edgewood Independent School District. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-14-040, 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's interest is defined as the general health, safety and welfare of the public at large. In the case of a school campus, many area families entrust their children to the school for care throughout the day. School Districts take this responsibility very seriously and they generally do everything they can in their power to protect children. Fencing is an important component of this protection plan. Therefore, this variance could not in any possibly way be contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has explained that the allowed fence height of 6-feet is not an adequate deterrent. Portions of that property line have been fenced with 6-foot high fencing and there have been incidents of criminal trespass and we all saw the criminal report on this screen.** The spirit of the ordinance is observed and substantial justice is done in that **the UDC contemplates that there are uses and situations where additional fencing is warranted to protect properties. Schools are recognized as needing additional fencing and as such are allowed 6 feet in height around the entire perimeter. The applicant is replacing some of the fencing in the coming year to comply with the 6-foot limitation, but feels that this boundary warrants the additional protection of extra height.** 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 neighboring site is non-conforming in relation to buffering, landscaping and parking lot landscaping. Under today's requirements, the shared property boundary should include a 15-foot landscaped buffer on the commercial side and shade trees over 25% of the parking lot surface. Were this buffer in place, the visual impact of the fencing would be completely eliminated. The fencing is predominately open as we have seen and the additional 2-feet in height may not alter the character of the district. The applicant will be required to remove a portion of the fence that protrudes into the required sight triangle.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **the applicant has unusual security concerns, again I say look at the crime in this area, in protecting over 300 toddlers. This is a complicated task including confirming the identity of parents during drop-off and pick-up times and we all have read reports in the paper on that. The area also experiences a high volume of police calls, averaging 60 per month over the last year. Increasing control of vehicular circulation on the campus is essential to ensuring safety.** The motion was seconded by Mr. Quijano.

AYES: Rogers, Kuderer, Quijano, Camargo, Martinez, Neff, Zuniga, Rodriguez, Ozuna
NAYS: Cruz, Velasquez

THE VARIANCE WAS GRANTED.

CASE NO. A-14-041

Applicant – Cinthya Flores
Lot 25, Block 1, NCB 14545
1535 Beverly Ann Street
Zoned: “R-4 AHOD” Residential Airport Hazard Overlay District

The applicant is requesting a special exception to erect a 5-foot, 8-inch high ornamental-iron front yard fence.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variances. He indicated 28 notices were mailed, 3 were returned in favor and none were returned in opposition and no response from Gillette Area Neighborhood Association.

Cinthya Flores, applicant, stated the fence would provide protection for their property. She also stated they were not aware that permits were to be obtained for the fence posts since they were informed that a permit was not needed for the construction of the fence in the back yard.

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-14-041 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-14-041**, application for a **special exception to erect a 5-foot, 8-inch high ornamental-iron front yard fence**, subject property description **Lot 25, Block 1, NCB 14545**, located at **1535 Beverly Ann Street**, applicant being **Cinthya Flores**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-041**, 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 35-399.04. 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 in that **the requested plan, meeting all of the design requirements established in Section 35-399.04 of the UDC, is in harmony with the spirit and purpose of the chapter**. The public welfare and convenience will be substantially served in that **the public welfare and convenience will be substantially served by allowing the applicant to securely protect the property**. The neighboring property will not be substantially injured by such proposed use in that **the design of the fence will not encroach on the neighboring properties or cause any undue hardship**. 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 **there were several examples of ornamental-iron front yard fences, of varying heights, within the surrounding neighborhood. By granting the applicant’s request for a special exception, the proposed fence will maintain the harmony and character of the district.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the requested special exception will not weaken the general purpose of the “R-4” Residential Single-Family base zoning district.”** The motion was seconded by Ms. Cruz.

AYES: Quijano, Cruz, Camargo, Velasquez, Martinez, Neff, Kuderer, Rodriguez, Zuniga, Rogers, Ozuna

NAYS: None

THE SPECIAL EXCEPTION WAS GRANTED



CASE NO. A-14-043

Applicant – Veronica Valdez

Block 1, Lots 28-37; Block 2, Lots 1-12 and Lots 14-24; Block 3, Lots 1-11 and Lots 17-27; Block 4, Lots 1-12 and Lots 17-27; Block 5, Lot 16; Block 6, Lots 1-4 and Lots 13-15; Block 8, Lots 1, 8, & 9; NCB 12509

Generally located at 9819 Walhalla Avenue

Zoned: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting to waive the 12-month time limitation of Section 35-482(f) of the UDC regarding a subsequent variance application on the property located at 9819 Walhalla Avenue.

Erica Blife, representative, stated the previous representative presented a presentation for variances of one hundred percent of the lots. The presentation should have been for only forty five lots. She also stated they are asking for the board to consider waiving the twelve month limitation due to inaccurate presentation of the previous representative. She further stated without the variance there will be a total of seven lots that would remain vacant due to the lots not being undevelopable.

MOTION

A motion was made by Mr. Camargo. **“I would move that in the issue of waiving the time limitation on Case No A-14-043 that we approve the request. Aside from the all the discussion that we have had, we will hear the new evidence for the request of forty-five lots.”** The motion was seconded by Mr. Rodriguez.

AYES: Camargo, Rodriguez, Martinez, Quijano, Kuderer, Neff, Zuniga, Velasquez, Cruz, Rogers, Ozuna

NAYS: None

THE MOTION PASSES.

CASE NO. A-14-043

Applicant – Veronica Valdez

Block 1, Lots 28-37; Block 2, Lots 1-12 and Lots 14-24; Block 3, Lots 1-11 and Lots 17-27; Block 4, Lots 1-12 and Lots 17-27; Block 5, Lot 16; Block 6, Lots 1-4 and Lots 13-15; Block 8, Lots 1, 8, & 9; NCB 12509

Generally located at 9819 Walhalla Avenue

Zoned: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 7-foot variance from the minimum 20-foot setback to allow a 13-foot rear yard setback on up to 45 of the 166 lots within the Pleasanton Farms Subdivision.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval the requested variance. She indicated 52 notices were mailed, one was returned in favor and none were returned in opposition.

Erica Blife, representative, stated without the variances there would be a total of seven lots that would remain vacant due to the lots not being undevelopable. She also stated they have had several homeowners requesting to have one-story homes and are willing to reduce the size of their rear yard.

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-14-043 closed.

MOTION

A motion was made by **Mr. Camargo**. “I move that in Case No. **A-14-043**, the applicant being **Veronica Valdez**, owner of the property being **KB Home**, a request for a **7-foot variance from the minimum 20-foot setback to allow a 13-foot rear yard setback on up to 45 of the 166 lots within the Pleasanton Farms Subdivision as per the exhibit that was submitted by the applicant’s representative as far as which those lots are**. Specifically, we find that such variance will not be contrary to the public interest in that **from the information that has been presented it seems that upgrading of the overall property that has been done by the current proposed builder certainly is in the best interest of the surrounding property owners**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **I understand the predicament that the applicant’s representative mentioned, the fact that we have a tract builder that had certain plans that are already calculated and figured out to fit certain lots. But the unfortunate part is that this particular builder purchased an already platted piece of property and is not able to do what should always be done, to design the house to fit the house not the lot to fit the house**. The spirit of the ordinance is observed and substantial justice is done in that **it appears that the builder is in fact attempting to reduce the amount of the variance that is necessary by coming up with various plans that are part of the file to fit this particular lots**. 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 variance will not authorize the operation of a use other than that which is permitted by the zoning district. This is a single-family zoning classification and single family homes are 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 **according to the plat submitted the lots on which the variance is located are interior to the overall subdivision while the lots abutting other property that is improved are complying with these setback requirements.** 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 only unique circumstance that I have found presented is this was a piece of property that was platted previously by a developer for another builder and thus were fitting the builders designs on to a predesigned subdivision plat.”** The motion was seconded by Mr. Martinez.

AYES: Camargo, Martinez, Quijano, Kuderer, Rodriguez, Zuniga, Rogers, Ozuna

NAYS: Neff, Velasquez, Cruz

THE VARIANCE WAS DENIED.

Board members recessed for five minutes.

CASE NO. A-14-046

Applicant – Phil Bakke

Lots 14 & 15, Block 10, NCB 11851

3819 Harry Wurzbach

Zoned: “O-2 MC-3 AHOD” Office Austin Highway/Harry Wurzbach Metropolitan Corridor Overlay Airport Hazard Overlay Districts

The applicant is requesting a 4-foot 9-inch variance from the maximum 40-foot building height to allow 44-foot 9-inch tall buildings

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval the requested variances. She indicated 35 notices were mailed, 27 were returned in favor and 10 were returned in opposition and the board of the Oak Park/Northwood Neighborhood Association is in opposition

Phil Hardberger, representative, stated the buildings have been set 75 feet back and will be saving a great amount of heritage trees by moving them on the property away from the construction. He also stated the new complex will have more parking spaces. He further stated the current project would provide more housing for the soldiers of Fort Sam Houston.

Melanie Fry, representative, briefed the board members on additional project details in regards to the measures taken by the owner to minimize the impact on the surrounding single family homes.

The following citizens appeared to speak:

James Martin, citizen, spoke in opposition.

Walter Thurman, citizen, spoke in opposition on behalf of the Oak Park/Northwood Neighborhood Association.

Jan Cohen, citizen, spoke in favor.

Jennifer Porter Delmer, citizen, spoke in favor.

William Carrington, citizen, spoke in favor.

William Schiller, citizen, spoke in opposition.

Shannon Stephens, citizen, spoke in favor.

Don Hardy, citizen, spoke in favor.

Mary Ellen Rose, citizen, spoke in opposition.

Paty Rhodes, citizen, spoke in opposition.

Rev John Lowry, citizen, spoke in favor.

Michelle Friesenhahn, citizen, spoke in opposition.

Nancy Roell, citizen, spoke in opposition.

Thomas Ball, citizen, spoke in favor.

Virginia Gibson, citizen, spoke in favor.

John Jensen, citizen, spoke in favor.

Nancy Halvorson, citizen, spoke in opposition.

Drake London, citizen, spoke in favor.

Dan Meyer, citizen, spoke in opposition.

Michael Westheimer, citizen, spoke in favor.

Drew Meyer, citizen, spoke in opposition.

Blair Stouffer, citizen, spoke in favor.

Art Silva, citizen, spoke in favor.

John Ciccarello, citizen, spoke in opposition

Ben Schoenbaum, citizen, spoke in favor.

Andrew Osbourn, citizen, spoke in opposition.

Janet Carlson, citizen, spoke in opposition.

John Clamp, citizen, spoke in opposition.

Shirley Walker, citizen, spoke in opposition.

William Richard, citizen, spoke in opposition.

Craig Hardy, citizen, spoke in favor.

Nancy Heinke, citizen, spoke in opposition.

Steve S, citizen, spoke in favor.

Seth Bell, citizen, spoke in favor.

Bernadette O'Connor, citizen, spoke in favor.

Eddie Alderete, citizen, spoke in favor.

Jerry Lamars, citizen, spoke in favor.

Charles Eden, 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-14-046 closed.

MOTION

A motion was made by **Mr. Kuderer**. “Regarding Appeal No. **A-14-046**, variance application for a **4 foot, 9 inch, variance from maximum 40-foot building to allow 44-foot, 9-inch tall buildings**, subject property described as **Lot 14 & 15, Block 10, New City Block 11851**, situated at **3819 Harry Wurzbach**, applicant being **Phil Bakke**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-046**, 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 a general health, safety, welfare of the public at large. In this case, the Applicant is requesting a variance of a 4 foot, 9 inch to a maximum allowed height of 40 feet. Solar study was conducted by the applicant during summer and fall, and determined that shadows would not impact neighboring property. At 4 p.m. in each season, the shadow did not leave the property boundary. This is likely because the buildings are set back 70 feet from each of the property boundaries. The minimum setback in the zoning district is 30 feet. The additional height will likely not be discernable to the casual observer. Therefore, the variance would not be contrary to public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has stated that the timing of the City's interpretation that the project was subject to the recent adopted Corridor Overlay Zone, creates an unnecessary hardship. The applicant purchased the land in 2007, and applied for Development Preservation Rights the following year. The demolition permit for the previous apartment complex was issued in 2009 and the demolition of the complex was completed in 2010. The planning for the replacement project began in earnest and the applicant confirmed that the statutory rights of the project, with the effective date of March the 8th 2012. Prior to the adoption of the Corridor Overlay, the applicant submitted plans to the permit review staff for the project on June 28th, 2013. The City recognized the Development Preservation Rights, and the rights vested prior to the adoption of the Corridor, in communication with the applicant on July 25th, 2013. A few weeks later, the city determined that vesting is pertinent to density and landscaping but not height. A partial permit was issued in September, pending resolution of the height issue. We also heard from Councilman Clamp who put in the Overlay District. He made the comment that there was never intent to stop this project. The Overlay District was not part of that. The spirit of the ordinance is observed and substantial justice is done in that the applicant states that the project was complying with the requirements of the Corridor Overlay provisions, despite not being required to do so by virtue of vested rights. The Overlay District requires interior parking lot landscaping at a ratio of 16.2 square feet per stall, for a total of 5,200 square feet. The applicant is installing over three times that amount, for a total of 17,300 square feet. The neighbors express concern about adequate parking, and we have heard that over and over again. Connecting with the request for additional height, to the increase in number of units, the site plan shows that a total of 322 parking stalls, that's 90 stalls above the minimum number required. Therefore, the spirit of the ordinance will be observed. 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 the use of the subject property, other than those specifically permitted in the Development Preservation Rights, or the list of reserved uses defined by the ordinance.** 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 development of the site will contribute to the essential character of the district. The old apartment complex had fallen into disrepair and it was an eyesore. And many of you out there expressed that that's exactly what**

happened. The meandering sidewalk within the 35-foot wide landscaped area long Harry Wurzbach will establish a beautiful addition to the streetscape. With the building setback of a minimum of 70 feet from the property line, the additional height of 4 foot, 9 inches, will not be noticeable to the average pedestrian. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that the applicant has elected to construct the complex with 232 housing units in two, four-story building, for a total of 44 feet, 9 inches. The decision was one that many of the established of the design of the 5.85 acre site. With the addition of 12,000 square feet of interior parking lot, landscaping, and the additional 90 parking stalls above the minimum, these items combine equal space for a third building, without the need of the variance. The applicant, however, is proposing to lessen the impact to adjacent property owners, by setting the building back further instead of the building to be minimum setback of 30 feet.”
The motion was seconded by Mr. Rodriguez.

AYES: Kuderer, Rodriguez, Camargo, Neff, Zuniga, Velasquez, Martinez, Cruz, Rogers Quijano, Ozuna

NAYS: None

THE VARIANCE WAS GRANTED

Approval of the Minutes

The March 17, 2014 minutes were approved with all members voting in the affirmative.
