

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
August 19, 2013**

Members Present:

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

Staff:

John Jacks, Assistant Director
Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Planner
Paul Wendland, City Attorney
Andrew Perez, Sign Inspector

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-13-064

Applicant – Jeff Davis
Lot 3, Block 4, NCB 16377
10500 Heritage Street
Zoned: “C-3 AHOD” General Commercial Airport Hazard Overlay District

The applicant is requesting a variance from Section 28-239(e) of the Sign Code for 1) a 90-foot setback variance from the 100-foot setback requirement from Heritage Street in order to allow a multiple-tenant expressway sign 10 feet from the right-of-way and 2) an 86-foot setback variance from the 100-foot setback requirement

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variances. She indicated 6 notices were mailed, 3 were returned in favor and none were returned in opposition.

Carter Thurman, representative, stated the sign would allow for the applicant to occupy empty spaces in the building. He also stated there is a single tenant sign on San Pedro. He further stated the existing sign San Pedro will remain and they are only asking to install one multi-tenant sign.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-13-058 closed.

MOTION

A motion was made by **Mr. Ozuna**. "Re: Appeal No. **A-13-064**, variance application for **Jeff Davis**, subject property description is **Lot 3, Block 4, NCB 16377**, the subject address is **10500 Heritage Street**, the variance request is for **1) a 90-foot setback variance from the 100-foot setback requirement from Heritage Street in order to allow a multiple-tenant expressway sign 10 feet from the right-of-way; and 2) an 86-foot setback variance from the 100-foot setback requirement from Desert Sands Drive in order to allow a multiple-tenant expressway sign 14 feet from the right-of-way**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-064**, 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. **The location and orientation of the property is unique in that it is located within 500 feet of US Highway 281, an expressway, but does not have any direct frontage on the highway or an accompanying service road. Rather, the property has frontage on Heritage Street, which is essentially indistinguishable from a service road. Additionally, there are topographical differences between the site and the expressway. Due to the site's layout, and the fact that it abuts rights-of-way on three sides, the only area of the site that could meet code is situated in the rear parking lot, approximately 300 feet away from the actual travel lanes of US Highway 281, behind mature trees. Additionally, the rear parking lot slopes down from the crest of Heritage Street, which would have the affect of reducing the visual height of the sign. Because of the unique situational, landscaping, and topographical issues, the variance is necessary for the sign to be seen by the intended viewers. After seeking one or more of the 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 similarly situated. The requested variance would not grant a special privilege not enjoyed by other businesses similarly situated, as any business that is within 500 feet of an expressway is allowed an expressway-grade sign. Granting the variance will not have a substantially adverse impact on neighboring properties. The area surrounding the site is characterized by the U.S. Highway 281 expressway and its corresponding interchange with San Pedro Avenue to the north. The area is primarily commercial, and expressway-grade signs are common in 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: Ozuna, Cruz, Quijano, Rogers, Rodriguez, Camargo, Dutmer, Britton, Gallagher
NAYS: None

THE VARIANCES WERE GRANTED.

CASE NO. A-13-066

Applicant – David Adelman

Lots 8, 10, & 12, ARB 10A & 10AB, Block 10, NCB 438

418 McCullough Avenue

Zoned: “FBZ T-6-1, IO-2, AHOD” Form-Based Zone Rover North Transect River Improvement Overlay Airport Hazard Overlay District

The applicant is requesting a 4-foot variance from the minimum 10-foot recess required in Section 35-209(c)(10)Exhibit B: River North Calibration, for stories above the 4th to allow a 6-foot recess from the property line on the 5th story.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 9 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Downtown Resident’s Association.

Nick Sirani, representative, stated there was a mandatory setback from overhead power lines. He also stated they were following the spirit of the ordinance by setting the building back 10 feet at the third story level rather than the fifth story.

No citizens appeared to speak:

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-13-066 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-13-066**, variance application for a request **a 4-foot variance from the minimum 10-foot recess required in Section 35-209©(10) Exhibit B: River North Calibration, for stories above the 4th floor to allow a 6-foot recess from the property line on the 5th story**, subject property description **Lots 8, 10, & 12, ARB 10A & 10AB, Block 10, NCB 438**, situated at **606 Avenue B**, applicant is **David Adelman**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-066**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety and welfare of the public at large. The public interest in this case is represented by the specific guidelines designed to create the urban form envisioned for River North. The architects have proposed a design which addresses the constraints of the site and the goals**

of the code. As such, the public interest would be served by granting the variance. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant claims that the overhead power lines create a property-related hardship by requiring that the top three stories of their building be set back at least 6 feet from the property line in order to maintain a safe distance. Architectural design components have been proposed which vary the façade, including the two story gallery at ground level and balconies on the 4th and 5th floors. Without the power lines along the sidewalk, the 3rd and 4th floors could have more square footage, enabling the 5th floor to be recessed as required. A literal enforcement of the ordinance would force this 5th floor to be 16 feet from the property line, an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that various zoning court cases have provided guidance as to the “spirit” of the ordinance as contrasted with the strict letter of the law. In observing the spirit, the Board is directed to weigh the competing interests of the property owner and the community. With the 10-foot width of the gallery structure on the lower two floors, the spirit of the ordinance will be observed, starting at the 3rd floor rather than the 5th floor. 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 “FBZ T-6-1, RIO-2, 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 character of this district is still in its infancy. The adoption of the River North components were just approved in 2010 and several recent development projects have requested variances where their project could not conform. This is typical in such strictly regulated zones. The addition of this high-density housing project with live/work units on the ground floor and structured parking is implementing the vision originally expressed by the adoption of the form based zoning district. In addition, the façade will be setback 10 feet, starting on the 3rd floor, rather than the 5th. 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 requested variance is due to the unique circumstance of power lines along the sidewalk close to the applicant’s property line. This proximity is reducing the developable area of the parcel. The applicant is requesting a reduction in a different setback to reduce the impact and has proposed architectural mitigation to achieve the stated purpose of the required setback.”** The motion was seconded by Ms. Dutmer.

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-068

Applicant – Diana Ortega
Lot 6, Block 9, NCB 3141
2326 Crosby Street
Zoned: “I-1 EP-1 AHOD” General Industrial, Facility Parking/Traffic Control, Airport Hazard Overlay District

The applicant is requesting 1) a 24-foot variance from the minimum 30-foot side yard setback, as required in Table 310-1 of the UDC, to allow 2 structures 6-feet from the west property line; 2) a 10-foot variance from the minimum 30-foot side yard setback, as required in Table 310-1 of the UDC, to allow a structure 20-feet from the east side property line; and 3) a 16-foot variance from the minimum 30-foot front yard setback, as required in Table 310-1 of the UDC, to allow a structure 14-feet from the front property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of denial of the requested variances. She indicated 16 notices were mailed, none were returned in favor and 3 were returned in opposition and no response from the Government Hill Alliance Neighborhood Association.

Richard Sommer, representative, stated that the overall area was developed as industrial uses. He also stated that his applicant was conducting a very low impact business. He further stated that they had selected the placement based on its furthest distance based on the neighboring house.

Robert Ortega, applicant, stated that they have been in business for about thirty years and employs some of the residences from the surrounding area. He also stated they normally do not serve customers at their location. He further stated they he has improved the character of the property and hopes to expand by purchasing the abandoned house to the east.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-13-068 closed.

MOTION

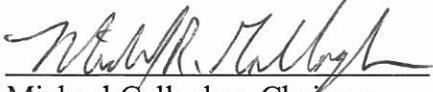
A motion was made by **Mr. Camargo**. “I would move that in Case No **A-13-068**, the applicant being **Diana Ortega**, property owners being **Robert & Diana Ortega**, on properly located on **2326 Crosby Street**, legally described as **Lot 6, Block 9, NCB 3141**, be granted the variance requested of **1) a 24-foot variance from the minimum 30-foot side yard setback, as required in Table 310-1 of the UDC, to allow 2 structures 6-feet from the west property line; 2) a 10-foot variance from the minimum 30-foot side yard setback, as required in Table 310-1 of the UDC, to allow a structure 20-feet from the east side property line; and 3) a 16-foot variance from the minimum 30-foot front yard setback, as required in Table 310-1 of the**

UDC, to allow a structure 14-feet from the front property line. While the motion does include two structures there is concern by the members of the board on the structure to be used for security if a motion were to pass it would allow it. It would inconvenient upon staff to make that determination whether that mobile home structure is allowed. Such variance will not be contrary to the public interest in that the most affective property owner to the east and to the west did not register any opposition. It was opposition for what appears on the aerial photo as a major trucking operation. In this members opinion does not appear to have a subjective opposition in that it would not affect their property. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that by the size of this lot the type of zoning that the property enjoys and the adjacent property enjoys is burden by the fact that there are nonconforming residential uses on both sides that requires the variances that are being requested on this particular property. The spirit of the ordinance is observed and substantial justice is done in that in fact in the future the surrounding area transitions to that which it is zoned, which is I-1 industrial, that this use would certainly be compatible with those other uses if not of lighter use. 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 that is not allowed on the zoning classification and it has been confirmed by staff and the applicant's representative that this type of operation is allowed within the I-1 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 was answered by the applicant and the owner that the property to the west is a residential use fronting down on Seguin is the backyard of that structure in fact is vacant that abuts the location of the modular home that has already been moved in without permits. 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 he has purchased this piece of property with some assurance from professional individuals that he had inquired of as to the use of the property. It is my opinion that it appears that Mr. Ortega felt that he was following all the proper steps but unfortunately failed that one important step of that of getting a permit and for that reason were are here after the fact." The motion was seconded by Ms. Rogers.

**AYES: Camargo, Rogers, Britton, Cruz, Dutmer, Rodriguez, Quijano, Ozuna, Gallagher
NAYS: None**

THE VARIANCE IS GRANTED.

There being no further discussion, meeting adjourned at 2:47 pm.

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

DATE: 9-16-13

ATTESTED BY:  DATE: 9-25-13
Executive Secretary