

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
January 13, 2014**

Members Present:

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

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Planner
Matthew Taylor, Senior 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-13-094

Applicant – Jose Moreno
0.097 acres out of Lot 22, Block 14, NCB 2147
1111 North Sabinas Street
Zoned: “MF-33 AHOD” Multi-Family Airport Hazard Overlay District

The applicant is requesting a 16-foot, 7-inch variance from the 20-foot required rear yard setback to allow a structure 3 feet, 5 inches from the rear property line.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 24 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Gardendale Neighborhood Association.

Jose Moreno, applicant, stated he is requesting the addition will be used for storage of his work tools. He also stated he was not aware of any city codes and will bring the addition up to code. He further stated he has spoken to the adjacent neighbor who is in favor of the addition.

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-13-094 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-094**, variance application for a **16-foot, 7-inch variance from the 20-foot required rear yard setback to allow a structure 3 feet, 5 inches from the rear property line**, subject property description is **0.097 acres out of Lot 22, Block 14, NCB 2147**, situated at **1111 North Sabinas Street**, applicant being **Jose Moreno**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-094**, 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 building setbacks are designed to preserve antique access, light, and air and preserve public safety by ensuring proper separation of buildings. The applicant has provided testimony to us today that if the variance were to be approved that he would bring the property up to city code including fire, electrical, and all the other city building permits necessary for antique safety of the building.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the project is only 4,221 square feet of property area which the applicant is trying to utilize for the protection of his tools that he uses in the construction industry in which he is doing. If the variance were not to pass and the applicant were to remove the structure it would impact his ability to store the tools for his use as a carpenter and such.** The spirit of the ordinance is observed and substantial justice is done in that **the staff provided testimony that of those notifications that were sent out there was zero sent out in opposition against the proposed variance. Additionally the applicant provided testimony to us that he ask the adjoining neighbor that was most affected by the building and the neighbor was acquiescence as to what the applicant was seeking the variance for.** 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 “MF-33” Multi-Family base zoning districts.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **the applicant purchased the parcel from the master property so the adjoining property most affected is the one who actually sold the property to the applicant in front of us today. Additionally the neighboring property that will be affected by it provided information to our applicant that they were not in opposition of the proposed variance.** 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 unique circumstances are the size of the property and its functionality of what the applicant is trying to use to maintain the single family residence but also provide for the storage that he needs for the security of his tools.”** The motion was seconded by **Mr. Camargo**.

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

NAYS: None

THE VARIANCE WAS GRANTED.

Board members departed the board room for executive session at 1:30 p.m.

Board members returned to the board from executive session at 1:50 p.m.

CASE NO. A-13-078

Applicant – Michael Hayes
Lot 5, Block A, NCB 11649
151 Algerita Drive
Zoned: “R-5” Residential Single-Family District

The applicant is requesting an appeal of the following Director’s decisions of 1.) Railing is not a fence as defined in the Unified Development Code or a sport court fence subject to the minimum 20-foot setback requirement of Section 35-514(b)(1) of the Unified Development Code [see permit AP #1908870]; and, 2.) A non-permanent netting barrier system is not a fence as defined in the Unified Development Code or a sport court fence subject to the minimum twenty (20) foot setback requirement of Section 35-514(b)(1) of the Unified Development Code [see permit AP #1876879].

Matthew Taylor, Senior Planner, presented the rationale for the Director’s decision that a guard rail system is not a sport court fence requiring a 20 foot setback and granted the owner a permit for its installation. He also stated that the Director decided that temporary netting is also not a sport court fence and did not require a setback. He indicated 16 notices were mailed, none were returned in favor of the appeal and 7 were returned in opposition of the appeal. No response was received from the Vance Jackson Neighborhood Association.

David Earl, representative, stated that the board’s powers in these types of appeals are to reverse, modify, or uphold the director’s decision. We ask that the Board reverse the Director’s decision to issue a permit for the railing and that no permit was necessary for the temporary netting that was going to be mounted on permanent support system installed on this illegal slab. In the alternative we ask that if the permits are upheld, the fencing be required to be set back twenty feet from the property line as required for sports court fencing. The appellant also explained that he had asked for staff members to be available for questions, and his requests were ignored. He stated that the appeal is regarding the construction of a stadium quality sports court by an unlicensed contractor with 16 commercial lights with 1000 watt light bulbs 2-3 feet from my client’s property line. He showed a power point presentation, with definitions, photos and other evidence.

The following citizens appeared to speak:

Rob Killen, Attorney for the Sport Court owners, spoke in opposition to the appeal, and handed out copies of letters of support for the family from neighbors around the area. He showed a map exhibit with nine other examples of tennis courts and swimming pools in the neighborhood which do not meet the suggested 20 foot setback. He stated that it would be inconsistent for a railing to be considered a fence, or that temporary netting is a fence.

Michael Hayes, appellant, spoke in favor of his appeal and spoke about his discussions with the owners about their plans.

Mr. Earl requested that Mr. Chamberlain be available for questioning.

Mr. Chamberlain responded to questions from the board. He stated the department's position states that netting does not constitute a fence and guard under fall protection in the IRC is not a fence either. He further stated that guardrails are installed all the time all around the city and do not require fence permits.

Mr. Earl asked Mr. Chamberlain if he was a licensed engineer and Mr. Chamberlain responded he was.

Mr. Earl asked questions regarding the staff's interpretation of the temporary netting system and its functionality and operation and Mr. Chamberlain stated that the Board of Building and Fire Board of Appeals rescinded the department's decision until more information was provided.

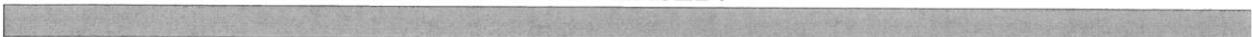
Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-13-078 closed.

MOTION

A motion was made by **Mr. Ozuna**. **Re Case A-13-078, the motion I make is in favor of reversing the director's decision for 1) Railing is not a fence as defined in the Unified Development Code or a sport court fence subject to the minimum 20-foot setback requirement of Section 35-514(b)(1) of the Unified Development and, 2.) A non-permanent netting barrier system is not a fence as defined in the Unified Development Code or a sport court fence subject to the minimum twenty (20) foot setback requirement of Section 35-514(b)(1) of the Unified Development Code. The testimony that has been presented today is the evidence supporting the decisions that we are making today. The motion was seconded by Mr. Zuniga**

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

THE DIRECTOR'S DECISION WAS REVERSED.



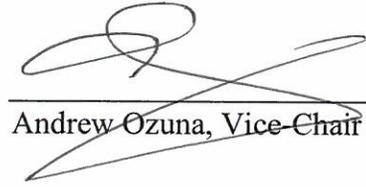
Approval of the Minutes

The January 13, 2014 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 5:31 pm.

APPROVED BY: _____
Michael Gallagher, Chairman

OR



Andrew Ozuna, Vice Chair

DATE: 2/5/14

ATTESTED BY: 

Executive Secretary

DATE: 2-6-14