

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

Members Present:

Andrew Ozuna  
Mary Rogers  
Alan Neff  
George Britton  
Maria Cruz  
John Kuderer  
Roger Martinez  
Gene Camargo  
Jeffrey Finlay

Staff:

Catherine Hernandez, Planning Manager  
Margaret Pahl, Senior Planner  
Tony Felts, Planner  
Paul Wendland, City Attorney

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**Call to Order**

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

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

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**CASE NO. A-14-073**

Applicant – Robin Abraham  
Lot 100G, NCB 8236  
322 Southwest 34<sup>th</sup> Street  
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a special exception to relocate a residential structure from 12939 Southwest Loop 410 to 322 Southwest 34<sup>th</sup> Street.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested special exception. He indicated 15 notices were mailed, 1 was returned in favor and none were returned in opposition.

Edgar Dodson, applicant, stated the building has been recycled from the City of San Antonio and has been repaired. He also stated the front door will be facing the side of the property. The owner of the property has also had several other properties with house moves in the neighborhood. He further stated the setbacks will be met in order to have off-street parking.

**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-14-073 closed.

**MOTION**

A motion was made by **Mr. Camargo**. “Re Appeal No. **A-14-073**, applicant being **Robin Abraham**, on property located at **322 Southwest 34th Street**, legally described as **Lot 100G, NCB 8236**. **I move the approval of this relocation of this residential structure to the advertised address for the following reasons.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-073**, 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 UD 35-399.03. 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 residential use on this vacant lot is certainly appropriate for infill development.** The public welfare and convenience will be substantially served in that **the single family dwelling is a good use of undeveloped property in this portion of the city.** The neighboring property will not be substantially injured by such proposed use in that **the structure that is proposed to be placed is to meet all the required setbacks and also meet all the construction code requirements that will be imposed upon the issuance of the building permits.** 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 special exception authorizing the relocation will not alter the essential character of the area in that the area is predominantly of all single family residential.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the site plan submitted by the applicant and the size of the parcel show the proposed placement of the home will meet all the minimum setbacks requirements.**” The motion was seconded by **Ms. Rogers**.

**AYES: Camargo, Rogers, Kuderer, Neff, Martinez, Britton, Finlay, Cruz, Ozuna**  
**NAYS: None**

**THE VARIANCE WAS GRANTED.**

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**CASE NO. A-14-076**

Applicant – Marco DeLuna  
Lot 8, Block G, NCB 647  
726 S Olive Street  
Zoned: “RM-4 AHOD” General Residential Mixed Airport Hazard Overlay District

The applicant is requesting a special exception to allow the relocation of a residential building from 326 El Monte Street to a lot located at 726 S Olive Street.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variances. She indicated 42 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Denver Heights Neighborhood Association.

Marco DeLuna, applicant, stated the house will be used for a rental property. He also stated he also owns the house on the adjacent lot.

**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-14-076 closed.

**MOTION**

A motion was made by Mr. Neff. "Re Appeal No. A-14-076, application for a **special exception to allow the relocation of a residential building from 326 El Monte Street to a lot located at 726 S. Olive Street**, located at **726 S. Olive Street**, subject property description **Lot 8, Block G, NCB 647**, applicant being **Marco DeLuna**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-14-076, 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 UD 35-399.03. 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 residential use on this vacant lot is preferred, given the previous house was demolished over 20 years ago. Therefore, granting the special exception will be in harmony with the spirit and purpose of the chapter.** The public welfare and convenience will be substantially served in that **the structure will be used as a single family dwelling, making use of an undeveloped parcel within a neighborhood that could benefit from incremental revitalization.** The neighboring property will not be substantially injured by such proposed use in that **the addition of this home will add integrity to the streetscape, bring a family to the block and convert a vacant lot into a personal yard. The proposed home will not negatively impact the neighboring property.** 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 houses in this area are small, modest homes that are well maintained and contribute to the character of the district. The proposed house is similar in size. Therefore, the special exception authorizing the relocation will not alter the essential 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 special exception will not weaken the general purpose of "RM-4 AHOD" zoning district, a district designed to support a variety of residential land uses. The site plan submitted by the applicant shows the proposed placement of the home will satisfy the minimum front, side and rear yard setbacks of the district.**" The motion was seconded by Ms. Cruz.

**AYES: Neff, Cruz, Martinez, Britton, Kuderer, Finlay, Camargo, Rogers, Ozuna**

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

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**CASE NO. A-14-074**

Applicant – Mona Talukdar  
Lot 7, Block 1, NCB 18307  
8245 Old Tezel Road  
Zoned: “C-3” General Commercial District

The applicant is requesting a special exception to allow a front yard fence of 6 feet in height in a “C-3” zoned property.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 8 notices were mailed, none were returned in favor and none were returned in opposition.

Mona Talukdar, applicant, stated the fence would provide security and the protection for the Alzheimer’s patients that will be at the clinic. She also stated a 6-foot fence would be required in order to meet state codes for the license of the facility. She further stated the facility would house about thirty-two patients.

**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-14-074 closed.

**MOTION**

A motion was made by **Mr. Kuderer**. “Re Appeal No **A-14-074**, application for a **special exception to allow a front yard fence of 6-feet in height at a “C-3” zoned property**, located at **8245 Old Tezel Road**, subject property description **Lot 7, Block 1, NCB 18307**, applicant being **Mona Talukdar**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-074**, 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 special exception will be in harmony with the spirit and purpose of the chapter in that the proposed 6-foot high wrought iron front yard fence meets the requirements of the Unified Development Code and is a necessary component in the operation of the proposed use as an assisted living facility**. The public welfare and convenience will be substantially served in that **the public welfare and convenience will be served with the granting of this request as the proposed fence will serve to protect the residents of the assisted living facility and meet state requirements for the operation of assisted living facilities as we heard in testimony**. The neighboring property will not be substantially injured by such proposed use in that **neighboring properties will not be substantially injured as the proposed fence will be unobtrusive and will allow for the protection of the residents of the facility**. 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 **as the use is an allowed use and the fence is not within any required setbacks.** 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, nor will it weaken the regulations established for this district.**” The motion was seconded by Mr. Martinez.

**AYES: Kuderer, Martinez, Neff, Camargo, Finlay, Cruz, Rogers, Britton, Ozuna**

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

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**CASE NO. A-14-071**

Applicant – Harry Jewett

Lot 4, Block 40, NCB 15404

8615 US Highway 90 W

Zoned: “C-3 R AHOD” General Commercial Restrictive Alcoholic Sales Airport Hazard Overlay District

The applicant is requesting a 1) a 4-foot variance from the 4-foot maximum height limit to allow a predominantly open fence 8 feet in height in the front yard, and 2) a 2-foot variance from the 6-foot maximum fence height to allow a predominantly open fence 8 feet in height in the side and rear yards.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 17 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Rainbow Hills Neighborhood Association.

Harry Jewett, applicant, stated fence would provide protection for the property. He also stated activity on this vacant piece of property would provide some positive feedback for the neighborhood. He further stated there will only be access to the property of the access road of the Highway 90.

**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-14-071 closed.

**MOTION**

A motion was made by Mr. Camargo. “Re Appeal No. A-14-071, the Board of Adjustment grant the application for 1) a 4-foot variance from the 4-foot maximum height limit to allow a predominantly open fence 8 feet in height in the front yard and 2) a 2-foot variance from the 6-foot maximum fence height to allow a predominantly open fence 8 feet in height in the side and rear yards of the property, which is located at 8615 US Highway 90 West, legally described as Lot 4, Block 40, NCB 15404. I move that the Board of Adjustment grant the

applicant's request regarding Appeal No. **A-14-071**, 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's proposed fence will serve to protect the property from crime issues in area that have occurred in the area.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special conditions existing on the property are a function of criminal activity in the area, as such a literal enforcement of the ordinance should not be adhere to.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed as there are special conditions apparent to and warranting the granting of a variance.** 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 that are permitted within the existing 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 **the requested variance, if approved, will likely not injure the appropriate use of any adjacent conforming properties, and the fence will likely not have a harmful effect on the character of the area. It has also been pointed out that the state owned property to the north also enjoys a security fence within the front yard setback on Horal Street.** 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 **due to crime issues in the area, there are unique circumstances readily apparent and for that reason warrants the approval of this variance.**" The motion was seconded by **Mr. Martinez.**

**AYES: Camargo, Martinez, Britton, Kuderer, Neff, Cruz, Finlay, Rogers, Ozuna**

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

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**CASE NO. A-14-072**

Applicant – Robert A Armstrong, Jr.

Lot 35, Block 4, NCB 18890

15508 Trail Bluff Drive

Zoned: "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting 2.5 foot variance from the 6-foot maximum height limit to allow a solid fence 8.5 feet in height in the side yard.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 16 notices were mailed, one was returned in favor and one was returned in opposition.

Andrea Hall, representative, stated the existing fence was repaired by the previous property owner. She also stated the variance is also needed because of the change of the topography in the property as it goes into the backyard. She further stated after the sale of the property, it was realized that the previous owner had not obtained any permits to repair the existing 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-14-072 closed.

**MOTION**

A motion was made by **Ms. Cruz**. “Re Appeal No. **A-14-072**, variance application for a **2.5-foot variance from the 6-foot maximum height limit to allow a solid fence 8.5 feet in height in the side yard**, address **15508 Trail Bluff Drive**, legal description **Lot 35, Block 4, NCB 18890**, applicant being **Robert A Armstrong, Jr.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-072**, 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 **usually, fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. The applicant’s side yard fence serves to limit visibility into the rear yard which results from the topography of the lot. Because of the unusual description of the lot and the side fence, the owner is requesting this special exception.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special conditions existing on the property are a function of topography, which would limit the applicant’s desired level of privacy in his rear yard.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed as there are special conditions apparent to warrant the granting of a variance.** 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” Residential Single-Family base 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 requested variance, if approved, will likely not injure the appropriate use of any adjacent conforming properties, and the fence will likely not have a harmful effect on the character of the 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 **due to the topography in the neighborhood, there are unique circumstances readily apparent to warrant the granting of the requested variance. The variance will be for the existing fence as per the site plan.”** The motion was seconded by **Mr. Neff**.

**AYES: Cruz, Neff, Martinez, Britton, Kuderer, Finlay, Camargo, Rogers, Ozuna**  
**NAYS: None**

### **THE VARIANCE WAS GRANTED**

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#### **CASE NO. A-14-075**

Applicant – Ricart Properties LP

Lot 6, Block 1, NCB 7660

3119 Roosevelt

Zoned: “C-2 H MC-1 AHOD” Commercial Historic Roosevelt Avenue Metropolitan Corridor Overlay Airport Hazard Overlay District

The applicant is requesting a 30-foot variance from the minimum 30-foot rear yard setback to allow two in-line additions on the property line.

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

Eduardo Garcia, representative, stated the business has been there for since the 1970’s. He also stated the variance would allow for the addition of a walk-in cooler. He further stated only the only parking space that would be sacrificed would be the delivery parking. The owner previously purchased the lot across the street to accommodate parking spots for the 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-14-075 closed.

#### **MOTION**

A motion was made by **Mr. Martinez**. “Re Appeal No. **A-14-075**, variance application for a **30-foot variance from the minimum 30-foot rear yard setback to allow two in-line additions on the property line**, subject property description **Lot 6, Block 1, NCB 7660**, situated at **3119 Roosevelt Avenue**, applicant being **Ricart Properties LP**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-075**, 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 asserts that parking near this property line would be more disruptive to the peace and enjoyment of the apartments than the building. Therefore, the variance in this case would be in the public interest.** Due to special conditions, a literal

enforcement of the ordinance would result in unnecessary hardship in that **literal enforcement of the ordinance would prevent the restaurant from adding the walk-in cooler or the pantry. In their application, they assert that it is necessary for efficient service to their customers and will decrease wait time for food service.** The spirit of the ordinance is observed and substantial justice is done in that **the applicant is requesting approval to allow an expansion of two additions along the same property line the building has abutted for the last 34 years. The building is a better buffer to the neighbors than the parking lot would be therefore satisfying the spirit of the ordinance.** 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 “C-3 H MC-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 project has recently received conceptual approval by the Historic and Design Review Commission pending the outcome of the requested variance. The property is also located in a corridor overlay zoning district, requiring façade design details. Therefore, the addition will not alter the 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 are not due to or the result of general conditions in the district in which the property is located.” The motion was seconded by **Ms. Rogers.**

**AYES: Martinez, Rogers, Cruz, Kuderer, Britton, Camargo, Finlay, Neff, Ozuna**

**NAYS: None**

**THE VARIANCE WAS GRANTED**

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**Approval of the Minutes**

The June 16, 2014 minutes were approved with all members voting in the affirmative

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