

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
June 17, 2013**

Members Present:

Michael Gallagher
Frank Quijano
Edward Hardemon
Helen Dutmer
George Britton
Jesse Zuniga
Mary Rogers
John Kuderer
Gene Camargo
Maria Cruz

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Planner
Andrew Perez, Senior Sign Inspector
Jacob Floyd, 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-13-045

Applicant – George M. Ryan, Texas Neon Advertising Co.
Lot 23, Block 10, NCB 10506
408 Buschick Street
Zoned: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting 1) a variance to allow two freestanding signs on a platted lot with one street frontage where only one freestanding sign is permitted; 2) a 15-foot, 6-inch variance from the 24-foot maximum sign height to allow a freestanding sign 39 feet, 6 inches high along a commercial collector; and 3) an 88 square-foot variance from the 150 square-foot maximum sign size to allow a 238 square-foot freestanding sign along a commercial collector.

Catherine Hernandez, Planning Manager, stated that staff had conferred and per IB 188 had determined that Bushick Street is classified as a commercial collector. She further stated that the variance request has been restated to reflect this change.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variances. He indicated 26 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Highland Hills Neighborhood Association.

Andrew Perez, Senior Sign Inspector, spoke in reference to the case and concurred with staff's recommendation.

Lou Fox, representative, stated they are extending their campuses and would to have some signage to identify the campus. He also stated he has spoken to the neighbors and there is no opposition.

George Ryan, applicant, stated he visited the site with sign flagging. He presented evidence of the proposed signs visibility from several locations, including the residential neighborhood nearby

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-13-045 closed.

MOTION

A motion was made by **Mr. Camargo**. "I would like to move that in Case No. **A-13-045**, a request for **1) a variance to allow two freestanding signs on a platted lot with one street frontage where only one freestanding sign is permitted; 2) a 15-foot, 6-inch variance from the 24-foot maximum sign height to allow a freestanding sign 39 feet, 6 inches high along a commercial collector; and 3) an 88 square-foot variance from the 150 square-foot maximum sign size to allow a 238 square-foot freestanding sign along a commercial collector**, applicant being **George M. Ryan, Texas Neon Advertising Co., Lot 23, Block 10, NCB 10506, 408 Bushick Street**. Specifically, we find that {the Board must find that, at minimum, #1 or #2 is applicable (or both) in order to approve a sign variance. The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography or 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 a large lot, with limited frontage. There was no opposition from the adjacent neighbors.** 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. The applicant wishes to have signage more appropriate for a lot without frontage along those lots.** Granting the variance will not have a substantially adverse impact on neighboring properties. **The site abuts a residential subdivision to the north. Granting a sign variance for such a large sign on a property situated on a small street which primarily serves a residential neighborhood may not adversely affect neighboring residential properties.** Granting of the requested variance will not substantially conflict with the stated purposes of the article, specifically Section 28-236(c) and Section 28-3(a)(3). Section 28-236(c). **To promote harmony and order in the on-premises signs along the city's streets by recognizing the relationship between the scale and function of a particular street and its on-premises signs, and ensuring that this relationship is sensitive to the surrounding neighborhood.**" The motion was seconded by **Mr. Zuniga**.

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

NAYS: None

THE VARIANCES WERE GRANTED.

CASE NO. A-13-047

Applicant – Wulfe Development, Ltd.

Lot 31 and the South 50 feet of Lot 14-1. Block 8, NCB 8084

2538 SW 36th Street

Zoned: “C-3R AHOD” General Commercial Restrictive Alcoholic Sales Airport Hazard Overlay District; “C-3NA AHOD” General Commercial Non-Alcoholic Sales Airport Hazard Overlay District; “I-1 AHOD” General Industrial Airport Hazard Overlay District

The applicant is requesting a 25-foot side yard setback variance from the 30-foot side yard setback requirement to allow a side yard building setback of 5 feet.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 10 notices were mailed, none were returned in favor and one was returned in opposition.

Kenneth Gindy, representative, stated they bought the property to expand the business. He also stated the addition would be more convenient for the packing of merchandise. He further stated currently merchandise is packaged in a building across the street and is concerned about the danger of employees crossing the busy arterial without a crosswalk. The addition would eliminate these safety concerns.

The following citizens appeared to speak:

David McBeth, CIMS, spoke regarding the infrastructure and development improvements that have occurred as a result of Port San Antonio.

Mary Rogers read a letter of opposition, submitted by the adjacent property owner to the north, into the record.

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-13-047 closed.

MOTION

A motion was made by **Ms. Rogers**. “Appeal No. **A-13-047** variance application for **25-foot side yard setback variance from the 30-foot side yard setback requirement to allow a side yard building setback of 5 feet**, subject property description **2538 SW 36th Street, 31 and the South 50 feet of Lot 14-I, Block 8, NCB 8084**, applicant being **Wulfe Development, Ltd.** I

move that the Board of Adjustment grant the applicant's request as stated above, 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 **building setbacks are designed to maintain orderly and safe development, and ensure access to air and light. Additionally, setbacks are also used, in part, as buffers between different intensity land uses. In this case, imposition of a 30-foot side setback on the lot will create disorganized property development and unusable space. Additionally, because the residential use is non-conforming with the zoning and the future land use plan, it is likely that at some point the structure will transition away from a residential use, which appears to be occurring right now, thus ending the requirement for the setback. Lastly, the applicant proposes to maintain a fire-separation distance of 5 feet from the property line.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **actually imposition of a setback due to a non-conforming use could be considered an unnecessary hardship, as non-conforming uses are designed to terminate over time and become a conforming use.** The spirit of the ordinance is observed and substantial justice is done in that **the ordinance is designed to protect conforming uses, as non-conforming uses are intended to terminate over time. As this area is, and has been, in transition, it is reasonable that the current use of 2611 El Jardin as a residence will end. If that were to occur, the requirement for a setback would no longer be applicable. As such, the spirit of the ordinance will be observed and substantial justice will be done.** 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-3R" zoning district. On the contrary, not granting the variance would provide protection for a non-conforming use and may serve to extend the non-conforming use's lifespan.** 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 **in this regards, the variance, as presented, would not substantially injure the appropriate use of adjacent conforming properties. While there may be an argument that the 5-foot setback may substantially injure the current residential use of 2611 El Jardin, this residential use is inappropriate in this district, and is non-conforming. As such, this requirement is met.** 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 circumstances existing on the property are unique and were not created by the owner. This area is in transition, and the owner of the subject property has a reasonable expectation to be able to develop the property in accordance with the current zoning, as well as the adopted future land use plan.**" The motion was seconded by Mr. Zuniga.

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-048

Applicant – Rogelio Rodriguez
Lot 18, Block 12, NCB 9111
2601 W Woodlawn Avenue
Zoned: “R-6 NCD-7 AHOD” Residential Jefferson Neighborhood Conservation District,
Airport Hazard Overlay District

The applicant is requesting 1) a 6-foot variance from the requirement that the front setback be within 20% of the mean setback on a block face to allow a carport with a 14-foot setback; 2) a 3-foot variance from the required 5-foot minimum side yard setback to allow a carport with a 2-foot side yard setback, 3) a 4-foot variance from the maximum height of 10 feet to allow a carport 14 feet in height, 4) a variance from the requirement that the carport roof line match that of the primary structure to allow a gable roof on the carport.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variances. She indicated 22 notices were mailed, one was returned in favor and none were returned in opposition.

Rogelio Rodriguez, applicant, stated the carport would accommodate the two vehicles he owns. He also stated the existing carport was old and needed to be repaired. He further stated he started the construction on his own to improve the appearance of his home. If necessary, he stated he would change the pitch of the roof. He is also planning to enclose the sides of the carport.

Jacob Floyd, Planning & Community Development Department, spoke in reference to this case and the design requirements of the NCD.

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-13-048 closed.

MOTION

A motion was made by **Mr. Camargo**. “Appeal No. A-13-048, variance application for 1) a 6-foot variance from the requirement that the front setback be within 20% of the mean setback on a block face to allow a carport with a 14-foot setback; 2) a 3-foot variance from the required 5-foot minimum side yard setback to allow a carport with a 2-foot side yard setback, 3) a 4-foot variance from the maximum height of 10 feet to allow a carport 14 feet

in height, 4) a variance from the requirement that the carport roof line match that of the primary structure to allow a gable roof on the carport, applicant Rogelio Rodriguez, subject property description 2601 W. Woodlawn Avenue, Lot 18, Block 12, NCB 9111. I move that the Board of Adjustment grant the applicant's request as stated above. Specifically, we find that such variance will not be contrary to the public interest in that **there was no opposition from surrounding property owners. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance would require the applicant to remove the carport entirely. Meeting the required front setback would not allow enough depth to park a car.** The spirit of the ordinance is observed and substantial justice is done in that **it seems that the height variance would create a more dominating impact and therefore would not be in the spirit of the ordinance. The setbacks however are easier to justify as consistent with the spirit; the carport existed at those setbacks for more than 25 years.** 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-6 NCD-7 AHOD" 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 side and front setback variances would allow the reconstruction of a carport in the same location as it has existed for over 25 years and thus its continuation 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 in that **he owner of the property is seeking approval to replace a carport that had become dangerous. Repairs could have been allowed and variances would not have been necessary.**" The motion was seconded by Mr. Hardemon**

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

NAYS: None

THE VARIANCES WERE GRANTED.

Board members recessed for five minutes.

CASE NO. A-13-049

Applicant – Comet 10 & 14, LP

Lot 28, Block 16, NCB 16614

2206 Fawn Glen Street

Zoned: "RM-4 AHOD" Residential Mixed Airport Hazard Overlay District

The applicant is requesting a 2-foot fence height variance from the 6-foot maximum fence height restriction to allow a fence 8 feet in height.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance because the property abuts Jones Maltsberger, a busy arterial. He indicated 15 notices were mailed, 3 were returned in favor and none were returned in opposition.

Richard Thum, representative, stated they bought he recently purchased he property and is behind a cleaners. He also stated he is trying to improve and clean the property. He further stated the existing fence was falling down and he decided to repair it.

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-13-049 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Case A-13-049, variance application for **Comet 10 & 14, LP** subject description **Lot 18, Block 16, NCB 16614**, situated at **2206 Fawn Glen Street**. I move to pass the **request for 2-foot fence height variance from the 6-foot maximum fence height restriction to allow an 8 foot in height fence**. Such variance will not be contrary to the public interest in that **fence and wall height restrictions are put into place in order to provide orderly development and encourage a sense of community, that is exactly what the applicant has done it appears to me in looking at the photos**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant is requesting the additional height in order to mitigate the negative aspects of the heavily traveled road adjacent to their property**. A literal enforcement of the ordinance may not adequately protect the applicant's right of full enjoyment of their property. As such, a literal enforcement of the ordinance would result in an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that **the UDC would allow an 8-foot fence if the fence were across the entire edge of the subdivision along Jones-Maltsberger, the spirit of the ordinance will be observed and substantial justice done**. 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. 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. **I've been on this street many times. I know exactly where your business is and it looks like what you are trying to do is improved that neighborhood substantially. I move that the board look at this favorably and accordingly.**" The motion was seconded by **Mr. Zuniga**.

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-050

Applicant – Facility Solutions
Lot 14, Block 1, NCB 311
5800 Culebra
Zoned: “C-3NA AHOD” Commercial Non-Alcohol Airport Hazard Overlay District

The applicant is requesting a 90-foot variance from the minimum 100-foot setback for a free-standing sign within 500 feet of a freeway, to allow a free-standing sign with a 10-foot setback.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 14 notices were mailed, none were returned in favor and 2 were returned in opposition.

Andrew Perez, Senior Sign Inspector, spoke in reference to the case and concurred with staff’s recommendation.

Nicolas Harris, representative, stated the hotel has had name changes in the past few years which they have had issues with the reface. He also stated they are not requesting additional space or height. He further stated this is just an elevated portion with no access or exit areas but did want to request what is normally an expressway standard. They believed they had adjacent grade but was informed by staff they had a street separation

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-13-050 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No **A-13-050**, variance application for a **90-foot variance from the minimum 100-foot setback for signs on properties without freeway frontage located within 500 feet of a freeway to allow a free-standing sign with a 10-foot setback**, subject property description is **Lot 14, Block 1, NCB 311**, the applicant is the **Facility Solutions Group**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-050**, 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. The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography or a denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. After seeking one or more of the findings set forth in subparagraphs (1) and (2), 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. Granting the variance will not have a substantially

adverse impact on neighboring properties. The hotel was originally constructed in 2000 and has 65 rooms. It has two wall signs currently installed on a dormer feature of the roof, one of which is visible from the freeway. It is small and unassuming. When the operator negotiated an agreement with Holiday Inn, the franchise owner requested a free-standing pole sign with orientation toward the freeway. It is typical for hotel companies to place strict requirements on operators in exchange for the privilege of using their name. Hotels gain a portion of their business from the weary traveler passing by and the Cesar Chavez exit lane is already beginning as this hotel comes into view. Without the variance, the applicant could install a 24-foot tall free-standing sign with a 10-foot setback on Laredo Street, which is classified as an Arterial Type B. Currently, a monument sign is located on this corner as the business's primary signage. This is inadequate according to the Holiday Inn Express branding team. After seeking one or more of the findings set forth in subparagraphs (1) and (2), 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 applicant states that other businesses with frontage on the freeway, or those that are within 500 feet of the freeway, enjoy the same opportunity for freeway signage. It is certainly rare for a property within a downtown area to have frontage on three streets; most blocks are larger and include more than one parcel per block. That being said, most other similarly situated properties could find a location on their parcel to satisfy the setback requirement. Granting the variance will not have a substantially adverse impact on neighboring properties. All of the neighboring properties are zoned for commercial uses and located in the heart of downtown San Antonio. Owners of property nearby anticipate a variety of commercial activities, including signage. A free-standing pole sign is usually elevated high enough that surrounding owners do not focus on the pole in their view shed. Although the sign should not have an adverse impact on neighboring properties, a few of the other property owners have responded in opposition to the requested variance. Granting the variance will not substantially conflict with the stated purposes of this article. The legislative purposes of the adopted sign regulations are to provide minimum standards to protect the general public by regulating the design, construction, location, use and maintenance of out-door advertising signs. The property is almost located along the freeway, separated by a short dead end section of San Saba Street. The next time San Saba appears as a street is 2,000 feet to the north where it begins again at Nueva. For this reason, the variance to allow the freeway sign without the setback required of properties without freeway frontage will not substantially conflict with the purposes of this article." The motion was seconded by Mrs. Cruz.

AYES: Quijano, Cruz, Dutmer, Camargo, Hardemon, Kuderer Britton, Zuniga, Rogers, Gallagher.

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-051

Applicant – Sandra M Martinez
Lots 6, 7, 8, & 9, Block 2, NCB 11442
5026 Meadowview Lane
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 15.1-foot variance from the 20-foot rear yard setback requirement to allow an addition to a structure 4.9 feet from the rear property line.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 20 notices were mailed, 5 were returned in favor and none were returned in opposition and no response from the Thunderbird Hills Neighborhood Association.

Rozanna Mendoza, citizen, spoke on behalf of her sister.

Sandra Martinez, applicant, stated she has lived there with her son for over thirty years and is adding an addition so her son can live on the property. She also stated because of the drop-off on the left side, she has to build on the right side.

Raul Gonzales, representative, stated the house was designed back in 1950 with the close building setbacks. He also stated he is aware of the back wall the addition that needs to be constructed as a fire rated wall. He has designed to cover the wall with hardy board. He further stated there are no structures behind the addition, just a privacy 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-13-051 closed.

MOTION

A motion was made by **Ms. Cruz**. “Re Appeal No. **A-13-051**, variance application for **Sandra M. Martinez**, request for a **15.1-foot variance from the 20-foot rear yard setback requirement to allow an addition to a structure 4.9 feet from the rear property line** subject property description **Lots 6, 7, 8, & 9, Block 2, NCB 11442 at 5026 Meadowview Lane**, applicant **Sandra M Martinez**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-051**, 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 **building setbacks are designed to maintain orderly and safe development, and ensure access to air and light. In this case, the proposed construction is in-line with an existing nonconforming structure, and the addition would be no closer to the property than the**

existing structure already is. Additionally, the new construction would have to meet all building and fire safety codes in order to be granted a building permit. As such, the variance is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the non-conforming structure on the lot is the special condition that exists. Again, the proposed addition is in line with the existing structure, and requiring the addition to meet the required setback could be considered an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that the UDC does contemplate that non-conforming structures can continue to be occupied, as well as be added on to. In fact, the UDC allows, under certain conditions, for the side yard setback to be modified so long as a minimum side yard of 3 feet is maintained. The UDC, however, does not contemplate additions when the rear yard setback is out of compliance. Given the nature of the request, and the fact that non-conformity will not be increased, 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 a use on the subject property other than those specifically permitted in the "R-5 AHOD" (Residential) 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 substantially injure adjacent conforming properties, as the degree of non-conformity will not be increased, and neighboring structures will be required to comply with the full 20-foot required rear yard setback. 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 special condition on the lot is a function of the existing non-conforming structure and was not created by the owner and is not merely financial. The property owner merely wishes to construct an in-line addition to a non-conforming structure." The motion was seconded by Ms. Rogers.

AYES: Quijano, Dutmer, Rogers, Hardemon, Camargo, Britton, Kuderer, Smith, Zuniga, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The June 3, 2013 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 3:36 pm.

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

DATE: 7-1-13

ATTESTED BY: [Signature] DATE: 7-2-13
Executive Secretary