

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
May 5, 2014**

Members Present:

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

Staff:

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

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.

Mr. Zuniga made a motion to move Case No A-14-052 to the beginning of the agenda. **Mr. Rodriguez** seconded the motion with all members voting in the affirmative.

CASE NO. A-14-052

Applicant – Frances Strawbun
Lot 7, Block 4, NCB 18054
7426 Meadow Hill
Zoned: “R-6 H AHOD” Residential Single-Family Historic Airport Hazard Overlay District

The applicant is requesting a 3-foot variance from the 3-foot maximum fence height to allow a solid fence up to 6 feet in height in the front yard.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 37 notices were mailed, 7 were returned in favor and one was returned in opposition and no response from the Pipers Meadow Neighborhood Association.

Frances Strawbun, applicant, stated the fence would provide security, safety, and well being for her residence. She also stated the property next door has numerous people lingering outside all the time. She further stated she was not aware of obtaining a permit to construct the 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-14-052 closed.

MOTION

A motion was made by **Mr. Kuderer**. “Re Appeal No. **A-14-052**, variance application requesting a **3-foot variance from the 3-foot maximum fence height to allow a solid fence up to 6 feet in height in the front yard**, subject property description **Lot 7, Block 4, NCB 18054**, situated at **7426 Meadow Hill**, applicant being **Frances Strawbun**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-052**, application for a variance to the subject property as described above **with the exception of moving the fence in 5 ½ feet to comply with the city ordinances at a maximum height of 3 feet to that point the rest remaining as she has it in the picture that we see**, 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 **in this case usually fence height restrictions are put into place in order to provide orderly development of encouragement to the sense of the community. We have a situation right here where the next door neighbor obviously has caused a lot of heartache for the neighbor as such that the fence is necessary to prevent access to the property. She needs it for that reason.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **there is a special condition that we are hearing today from the applicant and as such there is a special condition.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed because we want harmony in this neighborhood. We want the applicant to feel safe in her own home and on her subject property.** 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 Residential Single-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 requested variance, if approved, may have the effect of injuring the appropriate use of other properties but in this case I don’t see that as the case.** 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 **Mr. Quijano**.

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-14-055

Applicant – Aetna Sign Group
Lot 4, Block 1, NCB 19604
11219 Potranco Road
Zoned: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting a 30-foot variance from the 150-foot separation distance for freestanding signs on a single premise to allow a separation distance of 120 feet for two freestanding signs on a single premise along a Primary Arterial Type A.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 6 notices were mailed, one was returned in favor and none were returned in opposition.

Andrew Perez, Sign Inspector Supervisor, stated they are planning to put extra signage for a new restaurant. He also stated the permits were issued correctly but because of the sign master plan they have to meet the spacing requirement because it is considered all one lot. He further stated the variance is needed because they do not meet the spacing requirement.

Larry Gottsman, representative, stated the master sign plan was proposed so that off premise businesses could have street frontage signage which required the developers to give up sign height and a substantial amount of sign square footage.

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-14-055 closed.

MOTION

A motion was made by **Mr. Rogers**. “Re Appeal No **A-14-055**, variance application for **11219 Potranco Road**, subject property **Lot 4, Block 1, NCB 19604**, applicant being **Aetna Sign Group**. I move that the Board of Adjustment grant the applicant’s request regarding appeal stated 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. A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. **Both signs are existing signs and were erected on separate parcels without the need for the 150-foot separation. The applicant is now requesting a sign master plan which requires all signs to be in compliance and treated as a single-premise in**

order to be eligible. Because no changes are proposed to the signs, a variance is necessary. After seeking one or more of the findings set forth in (1) or (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 requested variance would not grant a special privilege not enjoyed by other businesses similarly situated as a further review process is required from the Development Services Department in order for a sign master plan to be put in place.** Granting the variance will not have a substantially adverse impact upon neighboring properties. **The signs are existing, and no adverse impact from the signs is anticipated with the granting of the requested variance.** Granting the variance will not substantially conflict with the stated purposes of this article. **The requested variance does not appear to conflict with any of the stated purposes of Chapter 28.”** The motion was seconded by Ms. Cruz.

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

NAYS: None

THE VARIANCE WAS GRANTED.

Mr. Neff departed the Training Room for purpose of recusal.

CASE NO. A-14-053

Applicant – Brian Nelson

Lots 3, 4, 5, 14, 15 & 16, Block 5, NCB 11594

1509-1523 E Commerce

Zoned: “AE-1 AHOD” Arts & Entertainment Airport Hazard Overlay District

The applicant is requesting a 28% reduction in the minimum 50% requirement for windows within the first story to allow a new school with no less than 22% windows on the first floor street façade.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 19 notices were mailed, one was returned in favor and none were returned in opposition.

Brian Nelson, applicant, stated the reduction of the window requirement would provide some sort of privacy for the children of the school. He also stated the 6-foot high windows along commerce would provide security and lighting to the classrooms. The high windows would avoid the public walking along Commerce Street from knocking or looking into the windows of the classroom. He further stated this variance would prevent the children from being disturbed during school hours and provide security during the evening hours.

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-14-053 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-14-053**, variance application requesting a **28% reduction in the minimum 50% requirement for windows within the first story to allow a new school with no less than 22% windows on the first floor street façade**, subject property description the **Lots 3, 4, 5, 14, 15 & 16, Block 5, NCB 594**, situated at **1509-1523 E Commerce Street**, applicant being **Brian Nelson**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-053**, 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 in this case is the students who would be distracted by the constant pedestrian and vehicle traffic along this major arterial, as well as their safety and the security of the equipment. Therefore the variance is not contrary to public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **in this case, literal enforcement would expose the students to pedestrian and vehicle traffic and the ensuing distraction they cause, and create possible safety and security concerns, resulting in an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **if the applicant were forced to install the windows, they would also block visibility into the classrooms, defeating the purpose. The proposed design does include architectural detailing to retain visual interest and therefore will observe 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 “AE-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 proposed addition of a school on this property will transform this site, previously characterized by barbed wire security fencing and an abandoned metal warehouse. The owner hopes that this investment will trigger other investments nearby and strengthen the district. Therefore, the variance will not injure adjacent properties** 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 addition of the school furthers the goals of the target area. The school has special design needs for safety and focus of the students and these needs warrant consideration.”** The motion was seconded by **Mr. Kuderer**.

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

NAYS: None

RECUSAL: Neff

THE VARIANCE WAS GRANTED.

Mr. Neff returned to the Training Room.

CASE NO. A-14-050

Applicant – Debbie Ballengee
Lot 9, Block 1, NCB 16933
6731 Pembroke Street
Zoned: “R-20 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 in the rear yard.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 25 notices were mailed, 4 were returned in favor and none were returned in opposition.

Debbie Ballengee, applicant, stated she is constantly being harassed by her neighbor. She also stated rocks and other objects are being thrown over the six foot fence into her backyard by her neighbor. Her contractors have also been harassed by the neighbor. She further stated the fence would provide security and protection for her property.

The following citizens appeared to speak:

Denise Wazniack, citizen, spoke in favor.

Kathy Farmer, 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-14-050 closed.

MOTION

A motion was made by **Mr. Camargo**. “I would move that in the Case **A-14-050**, the request of **Debbie Ballengee**, on property legally described as **Lots 9, Block 1, NCB 16933**, also known as **6731 Pembroke Street**, that this board grant the applicant’s request for a **2-foot variance from the maximum 6-foot fence height to allow an 8-foot fence to be construction along the rear yard of this property**. Specifically, we find that such variance will not be contrary to the public interest in that **although the very first finding of fact is somewhat difficult in this case in that**

it states that it is not against the public interest but yet we do have one adjacent property owner that is opposing it. But likewise we have other notices returned from property owners not immediately abutting the property, except one to the northwest of this property that favor this request. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the literal enforcement that has been presented here to this board is the statements made by the applicant in reference to the situation that exists on this property. At the same time we have contrary comments made by the adjacent property owner to that effect so it puts us in a position of why would in fact someone go to the expense to build an 8-foot fence between property owners. The spirit of the ordinance is observed and substantial justice is done in that the fact that hopefully this variance would in effect create a livable situation between two property owners. It has been stated by the opposing adjacent property owners that they would have no objection to an 8-foot fence only if in fact the other side of the fence was painted. There was question that was posed to that property owner if they would paint their own fence and my take on that was a negative. 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 use of this property is single family and that is what it is being used for and proposed to be continued if the variance being granted on this property. 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 appropriate use again remains single family on both sides of this street, Country Field and Pembroke, so I don't feel the uses are being compromised. 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 obviously we have heard many unique circumstances in this case, both pro and con, to support this request and for those reasons I feel we should grant that request." The motion was seconded by Mr. Klein

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

NAYS: Zuniga

THE VARIANCE WAS GRANTED.

Board members recessed for five minutes.

CASE NO. A-14-054

Applicant – Reynaldo R Muniz

Lot 6, Block 6, NCB 6609

713 Waverly Avenue

Zoned: "R-4 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 an accessory structures encroaching into the west side yard setback.

Osniel Leon, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 21 notices were mailed, 7 were returned in favor and 5 were returned in opposition.

Reynaldo Muniz, applicant, stated the sheds provide some security. There is an alley behind which draws attention to the pedestrian traffic in the alley. He also stated the white shed was bought from a company and they installed the shed for him. He built the brown shed and has had both sheds for several years. He further stated when it rains, the water of the sheds drain onto his property not the neighbors property.

The following citizens appeared to speak:

Cruz Urtado, 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-14-054 closed.

MOTION

A motion was made by **Mr. Zuniga for a continuance until the May 19, 2014 Board of Adjustment meeting.** The motion was seconded by **Ms. Rogers**

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

NAYS: None

THE MOTION PASSES.

CASE NO. A-14-051

Applicant – Mike Wish
Lot 27, Block 17, NCB 17635
11215 Culebra Road

Zoned: "C-3R S" General Commercial Restrictive Alcoholic Sales District with a Specific Use Authorization for sales of alcoholic beverages for on premise consumption incidental to consumption of food.

The applicant is requesting a 7.5 foot variance from the 15-foot Type C buffer required between a property with a base zoning district of "C-3R" and a property with a base zoning district of "MF-25" to allow a buffer 7.5 feet in width along the side and rear property line.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 4 notices were mailed, none were returned in favor and none were returned in opposition.

Mike Wish, applicant, stated the 15-foot landscape buffer forces them to put the dumpster in the middle of the property.

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-14-051 closed.

MOTION

A motion was made by Mr. Rodriguez. "Re Appeal No. A-14-051, variance application requesting a **7.5-foot variance from the 15-foot Type C buffer required between a property with a base zoning district of "C-3R" and a property with a base zoning district of "MF-25" to allow a buffer 7.5 feet in width along the side and rear property line**, subject property description Lot 27, Block 17, NCB 17635, situated at 11215 Culebra Road, applicant being **Mike Walsh**. I move that the Board of Adjustment grant the applicant's request regarding this appeal, 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 eastern property line abuts a private driveway used to access a multi-family development. No residential use occurs on this portion of the property. On the northern property line, the subject property abuts a parking lot for the multi-family development, and this distance provides at least 60 feet of separation between the property line and nearest multi-family structure. As such, a reduction of the required buffer yard is appropriate.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the eastern property line abuts a private driveway used to access a multi-family development. No residential use occurs on this portion of the property. On the northern property line, the subject property abuts a parking lot for the multi-family development, and this distance provides at least 60 feet of separation between the property line and nearest multi-family structure. As such, a reduction of the required buffer yard is appropriate.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed by granting the variance as the site design of both properties will maintain adequate buffers to separate commercial and residential land uses.** 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 S" General Commercial 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 is unlikely to injure the appropriate use of the adjacent property as there will be adequate buffers and separations present.** 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 present are a function of the adjacent multi-family residential properties site design.**” The motion was seconded by **Mr. Quijano**

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

NAYS: None

THE MOTION PASSES.



Approval of the Minutes

The April 21, 2014 minutes were approved with all members voting in the affirmative



