

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
November 4 2013**

Members Present:

Michael Gallagher  
Andrew Ozuna  
George Britton  
Brian Smith  
Mary Rogers  
Jesse Zuniga  
John Kuderer  
Gene Camargo  
Paul Klein  
Maria Cruz  
Henry Rodriguez

Staff:

Catherine Hernandez, Planning Manager  
Margaret Pahl, Senior Planner  
Tony Felts, Planner  
Osniel Leon, 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-13-073**

Applicant – Pape-Dawson Engineers, Inc.  
42.8 acres out of NCB 16828  
5731 Rittiman Road

Zoned: “I-1 AHOD” General Industrial Airport Hazard Overlay District and “C-3 AHOD” General Commercial Airport Hazard Overlay Districts

The applicant is requesting a 4-foot variance from the 6-foot maximum height limitation to allow a wall up to 10 feet in height.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 107 notices were mailed, 4 were returned in favor and 2 were returned in opposition and the East Village Neighborhood Association is in support.

Frank Cory, representative, stated they met with the neighborhood association and have received a letter that there are in agreement with the construction. He also stated they decreased the height and shortened the length of the variance request.

**The following citizens appeared to speak:**

Jimmy Robinson, 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-13-073 closed.

**MOTION**

A motion was made by **Mr. Ozuna**. “Re Appeal No. A-13-073, applicant being **Pape-Dawson Engineers, Inc.**, subject property description **42.8 acres out of NCB 16828**, situated at **5731 Rittiman Road**, variance application for a **request from Section 35-514(d) of the UDC for up to a 4-foot variance from the 6-foot maximum height limitation to allow a wall up to 10 feet in height**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-13-073, 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 and wall height restrictions are put into place in order to provide orderly development and encourage a sense of community. In this case, a large industrial truck staging area is proposed to be located adjacent to single-family residences and has the potential to create issues of noise and light pollution. In an effort to be a good neighbor, the applicant has proposed the wall as a means of mitigating some of the possible negative impacts of their operation. As such, the variance will not be contrary to the public interest. Additionally the applicant provided testimony that there will be security provided in that strip behind the fence and the neighboring single family residence. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that a literal enforcement of the ordinance would provide inadequate buffering and screening of the proposed industrial use from the single-family residential homes adjacent to it, and as such would result in an unnecessary hardship to the residents of those homes. The spirit of the ordinance is observed and substantial justice is done in that the UDC contemplates that higher fences are sometimes required to protect and segregate incompatible land uses; the applicant’s proposal is such a case. Because of this, 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 General Industrial or General Commercial 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, will not injure the appropriate use of adjacent conforming properties but rather the variance would likely have the effect of enhancing the quality of life for the residents of the adjacent single-family residences by reducing noise and light pollution.** 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 existing on the property were not caused by the applicant, but rather they will result from the development of a conforming use on the subject property adversely impacting adjacent single-family properties.**” The motion was seconded by **Mr. Klein.**

**AYES: Ozuna, Klein, Kuderer, Cruz, Camargo, Rodriguez, Rogers, Britton, Zuniga, Smith, Gallagher**

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

---

**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 1) 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; and 2) a 1-foot, 10-inch variance from the maximum 4-foot fence height to allow a predominately open fence 5 feet, 10 inches in the front yard.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variances. 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.

**MOTION**

**Mr. Gallagher asked for a board member to postpone this case. Mr. Rodriguez made a motion to postpone this case until a Spanish interpreter is present. Mr. Ozuna seconded the motion with all members voting in the affirmative.**

**AYES: Ozuna, Klein, Kuderer, Cruz, Camargo, Rodriguez, Rogers, Britton, Zuniga, Smith, Gallagher**

**NAYS: None**

**THE MOTION PASSES.**

---

**CASE NO. A-14-001**

Applicant – Domilita Mireles

Lot 18, Block 14, NCB 8988

718 SW 41<sup>st</sup> Street

Zoned: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay+ District

The applicant is requesting a 3-foot, 6-inch variance from the 5-foot south side yard setback to allow a carport 1 foot, 6 inches from the south side property line.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 36 notices were mailed, one was returned in favor and one was returned in opposition and no response from the Community Workers Council Neighborhood Association.

Domilita Mireles, applicant, stated the carport would provide protection for the vehicles from the sun. She also stated her mother was not aware of any permits associated with the construction of a carport. Her mother was under the impression that the contractor was aware of any and all regulations pertaining to the construction of the carport. She further stated the carport is not enclosed and does block the visibility of the neighbors.

**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-14-001 closed.

**MOTION**

A motion was made by **Mr. Ozuna**. “Appeal No. **A-14-001**, applicant being **Domilita Mireles**, subject property description **Lot 18, Block 14 NCB 8988**, situated at **718 SW 41st Street**, variance application for a **request from Table 310-1 for a 3-foot, 6-inch variance from the 5-foot south side yard setback to allow a carport 1 foot, 6 inches from the south side property line**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-001**, 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 preserve adequate access, access to light and air, and preserve public safety by ensuring proper separation of buildings. The structure abuts the neighbor’s yard but there is adequate setback between the carport structure and the adjoining building to provide for adequate light and air. Furthermore the applicant will be required to meet all building code and fire code requirements if the variances were to be approved today. Additionally the applicant has provided testimony that they will construct gutters along the carport to properly contain the water within the applicant’s property so as to contain all the water and none of it flowing into the neighbor’s yard.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property**

is a very short front foot lot. The applicant has provided testimony that her mother would have a very difficult time to maneuver through the carport if they were to provide parking in the back. Therefore the existing structure is necessary to provide protection of the vehicles to her mother and that is the hardship that is before us today. The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed in that additional testimony provided to us shows that there is similar carports within the area and that these short front lots are located throughout the subdivision and such that they require variances to provide for adequate protection of vehicles.** 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-4" 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 variance, if approved, will not injure the character of the district.** We have provided some testimony that there are similar garage/carports structures within the neighborhood. The applicant will be required to meet all fire codes in the construction of that carport. 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 unique circumstances herein provided testimony previously is that the distance from the front foot of the lot is not allowed for an adequate spacing for that parking garage, so the applicant is merely trying to protect both her mother and the vehicle that provide what every other house should have, the ability to protect their vehicles from the elements."** The motion was seconded by Ms. Cruz.

**AYES: Ozuna, Cruz, Rogers, Klein, Camargo, Rodriguez, Kuderer, Britton Zuniga, Smith, Gallagher**

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

---

**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 1) 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; and 2) a 1-foot, 10-inch variance from the maximum 4-foot fence height to allow a predominately open fence 5 feet, 10 inches in the front yard.

Tony Felts, Planner, presented background and staff's recommendation of denial of the requested variances. 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 the fence was existing when he purchased the property. He also stated the addition is being used for storage of his tools.

Mr. Ozuna asked Mr. Moreno if he was aware of the requirements for fireproofing the structure if the variance was approved and Mr. Moreno indicated he was not. Staff clarified for the Board that 2 staff members visited Mr. Moreno on his property and explained the requirements. Mr. Camargo stated that a continuance would allow staff to visit with Mr. Moreno to re-explain the process and Mr. Britton asked if the discussion could be presented in writing and signed by Mr. Moreno. Staff stated they would follow up with Mr. Moreno.

**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. Camargo to continue this case until a future date.** The motion was seconded by **Mr. Rodriguez.**

**AYES: Ozuna, Cruz, Rogers, Klein, Camargo, Rodriguez, Kuderer, Britton Zuniga, Smith, Gallagher**

**NAYS: None**

**THE MOTION PASSES.**

**CASE NO. A-14-003**

Applicant – Melinda Carrion  
Lot 13, NCB 8057  
165 W Dickson Street  
Zoned: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 3-foot variance from the 3-foot maximum screen fence height, as detailed in Section 35-514 (d), to allow a 6-foot privacy fence 6 feet in length in the front yard.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 35 notices were mailed, 4 were returned in favor and 2 were returned in opposition.

Melinda Carrion, applicant, stated the fence would provide privacy from the neighbors. She also stated the fence would allow for her children to play basketball outside without the ball going into the neighbor's yard.

**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-14-003 closed.

**MOTION**

Re Appeal No. **A-14-003**, applicant being **Melinda Carrion**, subject property description **Lot 13 NCB 8057**, situated at **165 W. Dickson Street**, variance application for a **request of a 3-foot variance from the 5-foot maximum screen fence height, as detailed in Section 35-514 (d), to allow a 6-foot privacy fence 6 feet in length in the front yard.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-14-003**, 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 applicant is requesting additional fence height for this 6-foot section to reduce conflict between neighbors.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in **the special condition seems to be the disagreements between the neighboring property owners. The applicant states that her family has tried to be neighborly and get along over the last fifteen years. Additionally, because the two houses have different front yard setbacks, the portion of fence built by the applicant needing a variance is longer than it would have been if the neighbor initiated the request.** The spirit of the ordinance is observed and substantial justice is done in **the ordinance has a provision for side yard fencing when there is a disparity between front setbacks, but it is a right given to the owner of the home closest to the street, rather than the one whose front yard is deeper.** 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 allow the operation of a use on the subject property other than those specifically permitted in the "R-6 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 **many property owners struggle with privacy concerns along their side property boundary between homes; this is usually the smallest minimum setback. The UDC allows 6-foot fencing in the side yard to resolve these concerns.** 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 only unique circumstance related to the property is the slight variation in the front setbacks between these two lots. The applicant's home is setback 3-feet further from the sidewalk than the neighbors. This unique circumstance provides the neighbor**

with additional privacy fencing, but not the applicant.” The motion was seconded by Ms. Rogers.

**AYES:** Rodriguez, Rogers, Kuderer, Klein, Zuniga, Smith, Ozuna, Camargo, Gallagher

**NAYS:** Cruz, Britton.

**THE VARIANCE WAS GRANTED.**

---

Board members recessed into executive session at 2:45 pm.

Board members returned to the board room at 3:20 pm from executive session.

**Mr. Gallagher:** Ladies and gentlemen if we could take our seats again. The Board of Adjustment has returned from an executive session. The primary purpose of that session, just to make sure that is on the record, was for Case A-14-002 and we had to have a discussion with the City Attorney concerning whether or not the City Board of Adjustment has standing where we can actually hear the case. So I would like to have the City Attorney come forward and explain the position concerning that matter. Go ahead and state your name and address for the record.

---

**CASE NO. A-14-002**

Applicant – San Antonio Conservation Society  
Lot A-1, Block 3, NCB 928  
411 E Cesar E Chavez  
Zoned: “D RIO-3” Downtown River Improvement Overlay

**Audrey Zamora:** My name is Audrey Zamora, I’m an Assistant City Attorney with the City Attorney’s office here in San Antonio. In review of the application, turned in by the Conservation Society, we would advise you that under your jurisdiction, which is to review administrative official orders, requirements, decisions, or determinations, that based on the application that was turned in by the Conservation Society that they are appealing the decision of the HDRC and thus it does not fall under the Board of Adjustments jurisdiction or purview to be able to make a decision on this.

**Mr. Rodriguez:** Ms. Zamora for the record, so the people in the audience can hear, was it explained to that particular party wanting to be here, was it explained explicitly what you have just stated. That this does not fall under the jurisdiction of the Board of Adjustment.

**Ms. Zamora:** I’m going to defer to the Development Services Department who processed the application.

**Ms. Hernandez:** When anyone inquires about submitting an appeal to the HDRC, we provide them with the applicable codes and what can be appealed and it was explained to

them that decisions by an administrative official can be appealed to the Board of Adjustment.

**Mr. Rodriguez:** Can you tell us what was their response was or their reaction to this?

**Ms. Hernandez:** They filed the application with the staff.

**Mr. Camargo:** I guess I understood previous comments in error and if I understand correctly Ms. Zamora, the HDRC is not an administrative official and therefore by your comments Ms. Hernandez, that the appeal of the decision of the HDRC is not appealable to the Board of Adjustment. Am I correct there?

**Ms. Zamora:** You are correct.

**Mr. Gallagher:** Being that's the case who should they appeal to?

**Ms. Zamora:** I would suggest that they contact their own attorneys and discuss their options with them but essentially there are several different ways of getting the property rezoned in regards to Historic. They are several different avenues that they can take. This is not necessarily the only avenue that is available to them.

**Mr. Gallagher:** Being that the city attorney has announced to us that we do not have standing in this case, it would be inappropriate for us to have to render a decision and waste all of your time. It would be a terrible thing to do to waste your time this afternoon, when they told us we could not make a decision. Mr. Britton do you have a motion?

#### **MOTION**

A motion was made by Mr. Britton. "I believe based on the City Attorney's presentation to the Board of Adjustment in closed session that this is an improper venue to hear this case. So I make the motion that we do not hear this case and refund the money to the applicant." The motion was seconded by Mr. Klein.

**Mr. Smith:** "I would like to amend the motion with I also think we lack jurisdiction to hear this matter as well based on the presentation from the attorney." Mr. Gallagher asked Mr. Britton if he accepts the words, we lack jurisdiction. Mr. Britton confirmed that it would fine. Mr. Gallagher asked Mr. Klein, being the one who seconded the motion, if he agrees and Mr. Klein agreed.

**Mr. Rodriguez:** First of all I would like to say, that I really appreciate the passion of this great people who are here on behalf of this application or rather this situation here. In executive session it was explained to us that this is the wrong place. I would've hoped that you actually understood what exactly was explained to you, if it was not explained properly, I would hope that you would take it to the appropriate people like City Council.

**AYES: Britton, Klein, Smith, Zuniga, Rogers, Camargo, Kuderer, Cruz, Rodriguez, Ozuna, Gallagher**

**NAYS: None**

**THE MOTION PASSES.**

---

**Approval of the Minutes**

The October 21, 2013 minutes were approved with all members voting in the affirmative.

---

There being no further discussion, meeting adjourned at 4:48 pm.

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

DATE: 11-18-13

ATTESTED BY:  DATE: 11-20-13  
Executive Secretary