

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
September 16, 2013**

Members Present:

Michael Gallagher
Andrew Ozuna
Frank Quijano
Helen Dutmer
George Britton
Brian Smith
Jesse Zuniga
Mary Rogers
John Kuderer
Gene Camargo
Paul Klein

Staff:

John Jacks, Assistant Director
Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Planner
Paul Wendland, City Attorney
Andrew Perez, Sign Inspector

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-13-065

Applicant – Edmund S Beck
Lot 2, Block 8, NCB 972
124 City Street

Zoned: “RM- H HS RIO-4 AHOD” Residential Mixed King William Historic District Historic Significant River Improvement Overlay Airport Hazard Overlay District

The applicant is requesting a variance Table 310-1 of the UDC, Lot and Building Dimensions Table, for 1) a 10-foot variance from the 10-foot required front setback to allow a carport at the front property line and 2) a 4-foot variance from the 5-foot required by Section 35-370(b)(1) on the north side property line to allow a carport 1 foot from the north side property line.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variances. He indicated 18 notices were mailed, 1 was returned in favor and 2 were returned in opposition and no response from the King William Neighborhood Association.

Sara Luduena, OHP, stated this proposal was approved by HDRC with one stipulation that they plant vines. She also stated the design and location was approved.

Dwayne Bohuslav, representative, stated the front yard is designed with rose gardens and does not have a side yard to accommodate a carport. He also stated they do not have rear access. He further stated the design is to be light weight and within the characteristic of the house.

Edmund Beck, applicant, stated

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-13-065 closed.

MOTION

A motion was made by **Ms. Rogers to continue this case until the next regularly scheduled meeting on October 7, 2013.** The motion was seconded by **Mr. Quijano.**

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

NAYS: None

THE MOTION PASSES.

CASE NO. A-13-069

Applicant – Guadalupe De La Torre
Lot 2, Block 70, NCB 2765
1342 West Hollywood Avenue
Zoned: “R-4AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a special exception per Section 35.99.04 of the UDC to allow an ornamental-iron front yard fence 6 feet in height.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 38 notices were mailed, 2 were returned in favor and 3 were returned in opposition and no response from the Keystone Neighborhood Association.

Guadalupe De La Torre, applicant, stated the there have been numerous break-ins in the neighborhood. He also stated the house is a rental house and would like to provide security for the tenants. He further stated the fence would enhance the characteristic of the house.

The following citizens appeared to speak:

Jesse Ramos, 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-13-069 closed.

MOTION

A motion was made by **Mr. Ozuna**. “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 UDC allows ornamental-iron front yard fences up to a maximum of 6 feet in height as a special exception, so long as certain design criteria are met. The applicant has a fence plan that satisfies the established criteria and as such would be in harmony with the spirit and purpose of the ordinance if the exception were granted. The staff provided pictures of existing fences in the neighborhood and the subject will be in harmony with those existing fence situations.** The public welfare and convenience will be substantially served in that **the applicant did not provide information concerning the need for the fence; however, the fence meets the requirements for a special exception to be granted, and, as such, the fence would serve the public welfare and convenience. The applicant did provide testimony but not supported by police reports of thefts from the property which they are trying to deter by having erected this fence.** The neighboring property will not be substantially injured by such proposed use in that **the neighboring property is unlikely to be substantially injured by the proposed fence; additionally, ornamental-iron front yard fencing is commonplace in this area.** 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 **staff noted that ornamental-iron front yard fencing is prevalent in the area, as such, the essential character of the neighborhood is unlikely to be altered.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the existing “R-4 AHOD” Residential Single Family Airport Hazard Overlay District will remain. There is no proposed changing to the district or uses thereof.”** The motion was seconded by **Ms. Dutmer**.

AYES: Ozuna, Dutmer, Britton, Smith, Gallagher

NAYS: Camargo, Quijano, Kuderer, Klein, Rogers, Zuniga

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-13-070

Applicant – Daniel Rodriguez

Lo 17, Block 1, NCB 3054

165 Halliday Ave

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

The applicant is requesting a 5-foot variance from the minimum 5-foot side yard setback, as required in Section 35-370 (b) 1 of the UDC, to allow a new carport constructed on the west property line.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of denial of the requested variance. She indicated 27 notices were mailed, 2 were returned in favor and none were returned in opposition.

Daniel Rodriguez, applicant, stated the carport will be one foot away from the property line. He also stated the carport would provide some sort of barrier to the sun. He further stated the carport would provide security.

Richard Chamberlain, staff, briefed board members on fire rated walls. He also stated

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-13-070 closed.

MOTION

A motion was made by **Mr. Camargo**. "Re Appeal No. **A-13-070**, variance application for **165 Halliday Ave**, subject property description **Lot 17, Block 1, NCB 3054**, situated at **165 Halliday Ave**, applicant being **Daniel Rodriguez**, the request is for **1) a 5-foot variance from the minimum 5-foot side yard setback, as required in Section 35-370 (b) 1 of the UDC, to allow a new carport constructed on the west property line**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-070**, 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 public is represented by minimum setbacks established to ensure activities on individual properties do not impact the rights of a neighboring property owner. The adjoining property as far as I can tell, the structure is a distance off from the property line which provides in my opinion a safe buffer from the proposed structure that the applicant is building thus not being contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant is proposing to build this carport. He would have to comply with all the building codes including fire codes which might necessitate a fire wall along the west property line as a buffer against the neighbor's property therefore the ordinance as granted would not result in a hardship on the applicant.** The spirit of the ordinance is observed and substantial justice is done in that **the applicant is intending to build the carport to provide shade and protection for his vehicles, for himself and his family, and as he works in the yard or protects the property from the elements. If the variance is granted then the applicant would be able to carry out his intent of protection.** 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 existing "R-4 AHOD" zoning will remain. There are no proposed variances to the existing zoning.** 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 **if the applicant was to be granted this variance, he would have to comply with all applicable code requirements for building the carports including the fire code whichever that necessitates construction. The applicant would be required to comply with.** 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 applicant asserts that the existing 14-foot setback for a driveway is too narrow and the lot width itself is rectangular and does not provide for an adequate spacing for the garage from that side property line. Also the applicant provided testimony that the alleyway is not a viable use to get to the access of the back property because of the uncut nature of the alleyway in the back.** The motion was seconded by Ms. Dutmer.

AYES: Ozuna

NAYS: Dutmer, Camargo, Quijano, Kuderer, Klein, Rogers, Britton, Zuniga, Smith Gallagher

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-13-072

Applicant – Jaime & Esthela Gacia
Lot 58, Block 5, NCB 14513
5431 Greyrock Drive
Zoned: “C-3 AHOD” General Commercial Airport Hazard Overlay District

The applicant is requesting a 1-foot variance from the 4-foot maximum fence height as stated in Section 35-514 to allow a fence 5-foot in height in the front yard.

Osniel Leon, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 35 notices were mailed, none were returned in favor and one was returned in opposition.

Sharaid Rodriguez, representative, stated the fence was constructed because of numerous break-ins in the neighborhood. She also stated the neighbors have thrown trash in their yards. She further stated the fence would provide safety and security.

No citizens appeared to speak.

Ernesto Narvaiz, citizen, spoke in favor.

Maria Ferdin, citizen, spoke in favor.

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-13-072 closed.

MOTION

A motion was made by Mr. Camargo. "In Case A-13-072, the request of **Jaime & Esthela Garcia, 5431 Greyrock Drive, Lot 58, Block 5, NCB 14513**, I would request that the board grant a **1-foot variance from the 4-foot maximum fence height as stated in Section 35-514 to allow a fence 5-foot in height in the front yard on the above described property**. I move that the Board of Adjustment grant the applicant's request regarding the 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 **although there was one notice returned in opposition, it is not immediately adjacent to the property and in addition to that the property owners in the immediate area appeared before the board to voice their favoritism to fences of this height which is five feet**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it has been stated by the various people that appeared before the board that due to thefts that have occurred in the area and that the fencing such as the one being requested today would, in their opinion, deter the crimes that have been occurring in this particular area**. The spirit of the ordinance is observed and substantial justice is done in that **by allowing a fence of five feet, which is only one foot above of that which is allowed, will generally assist the neighbors in this particular area in protecting their 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 variance will not authorize the operation of a use other than those that are permitted in a residential zone. Although the property is zoned commercial we are advised that the city council is in the process of rezoning this area to that which the property is being used for**. 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 **other fences exist in this area and this variance for this particular request will be compatible to those other fences that already exist on the property**. 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 **which according to the people that appeared is the vandalism that has occurred in the area and it is their opinion that the fence requested for this height would deter such crimes.**" The motion was seconded by Ms. Rogers.

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

NAYS: Klein

THE VARIANCE WAS GRANTED.

CASE NO. A-13-073

Applicant – Pape-Dawson Engineers

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 District

The applicant is requesting a 6-foot variance from the 6-foot maximum height limitation to allow a wall up to 12 feet in height.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 107 notices were mailed, 2 were returned in favor and 2 were returned in opposition and no response from the East Village Neighborhood Association.

Frank Corey, representative, stated the fence would provide level of sound and light mitigation to the abutting residential neighborhood. He also stated the alternative would be a six foot chain link fence. He further stated the fence would provide security.

No citizens appeared to speak.

Jimmy Robinson, citizen, spoke in opposition.

Rogelio Alvarado, 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-13-072 closed.

MOTION

A motion was made by **Mr. Camargo**. “I would like to make a motion to **continue this case to allow the applicants to meet with the adjacent property owners to see if there can be some agreement as far as fence heights and locations. But I would further like to see the examples that Mr. Hall that you mentioned how it’s worked in this other area. A little bit more information as far as site elevation as to why you need six and twelve foot there and then the security issue that I think has concern of a good portion of the board members. I would motion to continue the case until such time that the applicants and adjacent property owners can come up with some solution and if there is no solution bring it back to the board.**” The motion was seconded by **Mr. Smith**.

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

NAYS: None

THE MOTION PASSES.

CASE NO. A-13-075

Applicant – Shirley Homeier-McBrayer

Lot 9, Block 10, NCB 17414

6730 Manassas Drive

Zoned: “R-5 AHOD” Residential Single-Family, Airport Hazard Overlay District

The applicant is requesting a 6-foot variance from the minimum 20-foot rear yard setback, as detailed in Table 35-310-1, to allow a building addition with a 14-foot rear setback

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 23 notices were mailed, 4 were returned in favor and none were returned in opposition.

Shirley Homeier-McBrayer, applicant, stated the fence would help alleviate direct sun exposure to the southern portion of her home. She also stated has also weatherized her home and to no avail has helped with sun exposure. She further stated she has also thought about installing a retractable awning but it would also require repairs within time because of the direct sun exposure.

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-13-075 closed.

MOTION

A motion was made by **Ms. Rogers**. “Re Appeal No. **A-13-075**, variance application for a **6-foot variance from the minimum 20-foot rear yard setback, as detailed in Table 35-310-1, to allow a building addition with a 14-foot rear setback**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. , 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 public interest in this case is represented by minimum setbacks established to ensure activities on individual properties do not impact the rights of a neighboring property owner. In this case, the applicant abuts a local street, fenced off by a 6-foot brick wall. In addition, the requested 14-foot setback will provide adequate setback for property maintenance. There is also beyond that wall about a 15 foot setback to the road. Therefore, the requested variance would not be contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance would allow a 4-foot cover to be installed, reducing the desired shading effect and creating an awkward addition. The double**

frontage lot creates a special condition that may warrant consideration by the Board. The Board will have to determine if the required 20-foot rear yard setback results in an unnecessary hardship in this case and in this case it does not appear to have any hardship. The spirit of the ordinance is observed and substantial justice is done in that in observing the spirit, the Board is directed to weigh the competing interests of the property owner and the community. The community's interest is altered by the location of a street abutting the rear lot line, rather than other owners' rear yards. Therefore, the spirit of the ordinance could be observed by reducing the required setback by 6 feet. 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" 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 small lots and well-appointed red brick homes create a very distinct character for this subdivision. The narrow 5-foot side yard setbacks and fencing restrict the public view of each individual rear yard. This is especially true for the applicant's property where there are no houses abutting the rear property line. Only the two neighboring property owners will be able to see the proposed structure and each of these has pledged their support. Therefore, the variance 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 the lot is a double-frontage lot, a rare lot configuration approved in limited circumstances. These parcels share a rear property line with a street. This lot configuration reduces the impact of the proposed variance. The applicant has done just about everything she can possibly do to make that house cooler especially in accordance with all of our energy efficiency things that are available." The motion was seconded by Quijano.

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

NAYS: None

THE MOTION PASSES.

Approval of the Minutes

The October 7, 2013 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 4:01 pm.

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

DATE: 10-7-13

ATTESTED BY: JPT DATE: 10-11-13
Executive Secretary