

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
June 16, 2014**

Members Present:

Andrew Ozuna
Mary Rogers
Frank Quijano
Alan Neff
Gabriel Velasquez
Maria Cruz
Jesse Zuniga
John Kuderer
Roger Martinez
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.

CASE NO. A-14-067

Applicant – Salvador F Ramos
Lot 39, Block 8, NCB 13654
5819 Sloan Drive
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the 6-foot maximum height limit to allow a solid fence 8 feet in height in the side and rear yard.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 27 notices were mailed, 4 were returned in favor and none were returned in opposition and no response from Thunderbird Hills Neighborhood Association.

Salvador Ramos, applicant, stated the fence would provide security for his property. There have several break-ins and the neighbor’s dog has attempted to jump the fence and almost chocked on the fence. He also stated he was not aware of obtaining permits of the fence. He further stated he built the new fence along the existing fence.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-14-067 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-14-067**, variance application for a **2-foot variance from the 6-foot maximum height limit to allow a solid fence 8 feet in height in the side and rear yard**, subject property description **Lot 39, Block 8, NCB 13654**, situated at **5819 Sloan Drive**, applicant being **Salvador F. Ramos, Jr.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-067**, 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 the fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. The applicant’s side and rear yard fences serve to protect the applicant from crime issues and the intrusion into their yard from a neighbor’s dog. As the fence is only within the side and rear yard of the property, it does not change the character of the neighborhood and 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 special conditions existing on the property are a function of criminal activity in the area and intrusion from the neighbor’s dog into the applicant’s yard, as such, a literal enforcement of the ordinance would likely result in an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed as there are special conditions apparent to warrant the granting of a variance.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-5” Residential Single-Family base zoning district.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **the requested variance, if approved, will likely not injure the appropriate use of any adjacent conforming properties, and the fence will likely not have a harmful effect on the character of the area.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in that **due to crime issues in the area, there are unique circumstances readily apparent to warrant the granting of the requested variance.”** The motion was seconded by **Ms. Cruz.**

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-11-069

Applicant – Victor Rodriguez
N 50 feet of Lots 20 & 21, Block 12, NCB 3113
1510 Capitol Ave
Zoned: “I-1 NCD-5 AHOD” General Industrial Beacon Hill Neighborhood Conservation,
Airport Hazard Overlay District

The applicant is requesting 1) a 26-foot variance from the 30-foot rear yard setback; 2) a 26-foot variance from the 30-foot side yard setback; 3) a 21-foot variance from the minimum 25-foot south and east property bufferyards to allow a building 4 feet from the property lines; and 4) a 30-foot variance from the minimum 80-foot lot width to allow a 50-foot wide lot in an Industrial I-1 zoning district

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variances. She indicated 13 notices were mailed, none were returned in favor and 4 were returned in opposition and no response from the Beacon Neighborhood Association.

Alejandro Farias, representative, stated the property has been vacant for the last two years. He also stated he acquired information in regards to platting the property but was informed that is was a big amount of investment without the guarantee of the property being useful. He further stated the owner is just asking for electricity for the storage of vehicles.

The following citizens appeared to speak:

John Karliss, 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-11-069 closed.

MOTION

A motion was made by **Ms. Rogers**. “Re Appeal No. **A-11-069**, variance application to **1) a 26-foot variance from the 30-foot rear yard setback; 2) a 26-foot variance from the 30-foot side yard setback; 3) a 21-foot variance from the minimum 25-foot south and east property bufferyards to allow a building 4 feet from the property lines; and 4) a 30-foot variance from the minimum 80-foot lot width, as required in Table 35-310-1, to allow a 50-foot wide lot in an Industrial I-1 zoning district, subject property description N. 50 feet of Lots 20 & 21, Block 12, NCB 3113, situated at 1510 Capitol Avenue, applicant being Victor Rodriguez. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-069**, 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 setbacks are intended to provide separation****

between conflicting uses. Enforcing the minimum 30-foot setbacks on a 50-foot wide parcel would effectively reduce the lot to “unbuildable”. If the building can be used as a caretaker’s facility, it could function as a single family home. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that literal enforcement of the ordinance would require that the applicant remove the building and adapt the industrial use to a 20-foot square in the northwest corner of the parcel. A car could not legally park there because it would be forced to back out into the street. This could be an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that for each requested variance, the Board must determine the “spirit” of the ordinance as contrasted with the “strict letter” of the requirement. The applicant is prepared to bring the property into compliance with building code and platting standards, honoring the spirit of the ordinance, while addressing a neighborhood concern. 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 “I-1 NCD-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 Capitol Avenue is a street that has very few homes fronting on it; most of the homes in Beacon Hill front on the east & west streets. There are several industrial uses on Capitol Avenue and as such, this request will not alter the character of the district. It would be ideal if it could function as a residential type of use. 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 that the subject property has been in this tiny configuration for over 65 years. The property has never succeeded since the original tenant sold it in 1966. Sheriff sales and City liens make up the majority of the title history. It needs variances to support any use, regardless of the zoning district.” The motion was seconded by Mr. Rodriguez.

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

THE VARIANCE WAS NOT GRANTED.

Board members recessed for 5 minutes.

CASE NO. A-14-068

Applicant – Juan F Villanueva
 Lot 38, Block 1, NCB 9645
 174 Brandywine Avenue
 Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 5-foot variance from the 5-foot side yard to allow a structure on the west side property line.

Tony Felts, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 19 notices were mailed, 4 were returned in favor and none were returned in opposition and no response from the University Park Neighborhood Association

Juan Villanueva, applicant, stated there is another similar carport across the street from him. He also stated he hired a contractor to construct the carport assuming he obtained any necessary permits. He further stated the carport would provide shelter for his vehicles.

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-14-068 closed.

MOTION

A motion was made by **Mr. Camargo**. "I would move that in case **A-14-068**, the request of **Juan F. Villanueva**, on property located at **174 Brandywine Avenue**, legally described as **Lot 38, Block 1, NCB 9645**, be granted a **2-foot variance from the 5-foot side yard for an open carport**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-14-068**, 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 **from the notices mailed out to adjacent property owners, none returned a notice in opposition. The applicant has stated that he has spoken with the owner of the property to the right or east of the vacant lot and they did not pose any opposition.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the only hardship that I can think of is the fact that he relied on a contractor to construct this carport in accordance to regulations and now it turns out that it was totally in violation.** The spirit of the ordinance is observed and substantial justice is done in that **this is an older area of the city and its north of Culebra and on both sides of Hillcrest Ave, while new residences have been built in the area. It is an older area which I believe has many other homes with three foot setbacks which used to be allowed many years ago.** 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 **it is zoned single-family and will be continued to be used for single-family use.** 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 fire codes which have already been looked into will be have to adhered to if this variance is granted.** 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 that **not necessary existing on the property, the only unique circumstances again, and I am repeating that he relied on a contractor that he assumed was a reliable, knowledgeable individual to erect this and he has been paid for. It's up to the applicant to**

take whatever steps he may seem necessary to try to recoup his expenses.” The motion was seconded by Mr. Quijano.

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-14-069

Applicant – Brown & Ortiz

E 150 ft of Lot 15, Block 15 & E 135 ft Lot 14, Block 14, NCB 1067

150 Humphrey Avenue

Zoned: “IDZ NCD-6 AHOD” Infill Development Zone, Mahncke Park Neighborhood Conservation District, Airport Hazard Overlay District

The applicant is requesting a 25.5-foot variance from the minimum 50-foot lot width to allow new single family lots at least 24.5 feet wide.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 11 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Mahenke Park & Westfort Alliance Neighborhood Association

Daniel Ortiz, representative, stated the severity of the hardship was underestimated. He also stated the area is very dense. He further stated the variance would accommodate easements for CPS and SAWs.

The following 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-14-069 closed.

MOTION

A motion was made by **Mr. Rodriguez**. “Re Appeal No. **A-14-069**, variance application for a **25.5-foot variance from the minimum 50-foot lot width to allow new single family lots at least 24.5 feet wide**, subject property description **E. 150 ft. Lot 15, Block 15 and the E. 135 ft. Lot 14, Block 14, NCB 1067**, situated at **150 Humphrey Avenue**, applicant being **Brown & Ortiz**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-069**, 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 property is surrounded**

by taller, high-density housing and is located on the fringe of the neighborhood conservation district. Many provisions of the NCD have been modified, with the support of the Neighborhood Association, to allow the project to be constructed. The requested variance will not be contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the Board already granted six variances to assist this project to reach completion. As details were finalized, lot width consistent with the previous variance was 1.5 feet too wide.** The spirit of the ordinance is observed and substantial justice is done in that **the “spirit” of the ordinance as contrasted with the “strict letter” of the requirement.** The spirit of the NCD is based on preserving the continuity of the single-family home on a 50 foot wide lot found on most of the blocks in the neighborhood. **This characteristic is not present in this part of the neighborhood.** 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 “IDZ-NCD-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 **in this isolated location, surrounded by three and four story apartment buildings, the project will not alter the essential 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 property includes some heritage trees that are proposed for protection.** **The site improvement plan was designed to satisfy as many of the NCD goals as possible, orienting homes toward the public streets, hiding the garages in the back and providing pedestrian connectivity.”** The motion was seconded by **Mr. Zuniga.**

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

NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The June 2, 2014 minutes Board of Adjustment were with all members voting in the affirmative
