

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
August 3, 2015**

Members Present:

Mary Rogers
Frank Quijano
Gabriel Velasquez
George Britton
Maria Cruz
Jesse Zuniga
Roger Martinez
Gene Camargo
Jeffrey Finlay
Christopher Garcia
Henry Rodriguez

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Logan Sparrow, Senior Planner
Kristin Flores, Planner
Paul Wendland, City Attorney

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Ms. Rogers, Vice-Chair, called the meeting to order and called roll of the applicants for each case.

CASE NO. A-15-124

Applicant – Greg Burkett
Lot 4, Block 1, NCB 11893
902 NE Loop 410
Zoning: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting 1) 12.5 foot variance from the maximum 37.5 foot sign height, as described in 28-241, to allow a sign that is 50 feet tall and 2) a 37 square foot variance from the 281.75 square foot sign area limitation, as described in 28-241, to allow the secondary sign on the property to be 318 square feet in area.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 16 notices were mailed, one was returned in favor and none were returned in opposition.

Greg Burkett, applicant, stated the existing sign for the Magic Time machine is under the spacing and height limitations.

The following citizens appeared to speak:

Jimmy Hasslocher, 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-15-124 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No **A-15-124**, variance application for **1) 12.5 foot variance from the maximum 37.5 foot sign height, as described in 28-241, to allow a sign that is 50 feet tall and 2) a 37 square foot variance from the 281.75 square foot sign area limitation, as described in 28-241, to allow the secondary sign on the property to be 318 square feet in area**, subject property description being **Lot 4, Block 1, NCB 11893, Lot 4, Block 1, NCB 11893**, located at **902 NE Loop 410**, applicant being **Greg Burkett**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-124**, 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 Section 28-247 Chapter 28: Signs and Billboards of the City Code, as amended, would result in an unnecessary hardship. Specifically, we find that 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. **Considering the unique features of this site, a literal enforcement of the ordinance would result in an unnecessary hardship. The Magic Time Machine Sign matches the theme and age of the restaurant. The applicant is seeking the variance to allow preservation of this sign. The site has 700 feet of frontage on the freeway, providing enough separation for 4 signs, but only two are proposed. 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. Properties along the freeway are allowed generous signage, depending on their parcel configuration and spacing. Each lot can have a free-standing pole sign similar to the subject sign. Because the property owner chooses to retain the 6.5 acre parcel as one lot, the multiple signs on the parcel are subjected to a 75% reduction with a minimum spacing of 150 feet. This provision was adopted with smaller parcels in mind, such as one with 200 feet of frontage, rather than the 700 feet as the subject parcel includes. Because the spacing between signs will far exceed the minimum, no special privilege is granted. Granting the variance will not have a substantially adverse impact upon neighboring properties. The ordinance intends to protect the public from over-crowding of signage. The requested variances do not authorize over-crowding. In this case, the requested variances will allow a historic sign to remain in place. Granting the variance will not substantially conflict with the stated purposes of this article. The requested variance does not conflict with the stated purpose of this chapter as the requested variances would authorize an existing sign 650 feet away from a proposed new sign to remain as it exists.” The motion was seconded by **Mr. Camargo**.**

AYES: Quijano, Camargo, Finlay, Velasquez, Britton, Cruz, Zuniga, Garcia, Rodriguez, Martinez, Rogers

NAYS: None

THE VARIANCES ARE GRANTED.

CASE NO. A-15-132

Applicant – David Fabian

Lot 38, Block A, NCB 8695

1327 Austin Highway

Zoning: “C-2 MC-3 AHOD” Commercial Austin Highway/Harry Wurzbach

The applicant is requesting a 20 foot variance from the maximum 25 foot sign height, as required in Section 35-339.01, to allow a free-standing pole sign that is 45 feet tall.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 8 notices were mailed, one was returned in favor and one was returned in opposition.

Steve Tyo, applicant, stated the sign would not be visible from southbound traffic until you reach the Taco Bell. He also stated the existing Good Year sign larger than the existing Taco Bell sign and would make the Taco Bell sign non-visible. He further stated due the topographical issue heading southbound on Austin Highway, the variance would be needed.

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-15-132 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-132**, variance application for a **20 foot variance from the maximum 25 foot sign height, as required in Section 35-339.01, to allow a free-standing pole sign that is 45 feet tall**, subject property description being **Lot 38, Block A, NCB 8695**, situated at **1327 Austin Highway**, applicant being **David Fabian**. I move that the Board of Adjustment grant a **modified variance** of the applicant’s request regarding Appeal No. **A-15-132**, application for a variance to the subject property **at 20 feet for a maximum height at 40 feet which would be a 15 foot 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.**

Nearly doubling the height of the sign over the limitations adopted by the City Council is not within the public interest. However, the sign is difficult to see and some additional height is warranted and within the public interest. The sign is also located currently in a location that is a result of other code restrictions. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the special circumstance present on the subject property is that the shared driveway forces vehicles to enter the site on the wrong side requiring a two way internal driveway between the public right of way and the building. This site design decision pushed the sign back more than 40 feet from the street. Therefore this unique circumstance makes literal enforcement an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that the variance process was created to address those situations that are unique. The corridor anticipated the signs would be closer to the street, with no setback required. An additional 15 feet would increase its visibility and 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 that is not specifically permitted in the "C-2 MC-3 AHOD" Commercial Austin Highway/Harry Wurzbach Metropolitan Corridor Airport Hazard Overlay 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 current conforming sign is adjacent to the recently installed sign for the Bubble Bath Car Wash, both measuring 25 feet in height. The requested modified for an additional 15 feet in height could alter the anticipated character of the corridor. A smaller modification of 15 feet in height, still within the requirements of the overlay should accommodate the need for height and visibility. 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 according to the applicant, trees block the view of the sign for vehicles traveling south. In addition, the corridor has high voltage power lines along the right of way, adding to the visual clutter. This circumstance was not created by the applicant. The particular circumstance regarding the unique design requirements is a result of a front shared entry and was more mandated on the site design than anything that is not a result of any decision of the owner." The motion was seconded by Mr. Quijano.

AYES: Velasquez, Quijano, Finlay, Britton, Cruz, Zuniga, Garcia, Rodriguez, Martinez, Camargo, Rogers

NAYS: None

THE VARIANCE IS GRANTED.



CASE NO. A-15-123

Applicant – William Goodman
Lot 3, Block 5, NCB 16963
13011 North Hunters Circle
Zoning: “R-6” Residential Single-Family District

The applicant is requesting a two foot variance from the maximum six foot maximum rear yard fence height, as described in Section 35-514 (d), to allow an eight foot tall fence in the rear yard of the property.

Kristin Flores, Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 21 notices were mailed, 3 were returned in favor and one were returned in opposition.

Jay Hudack, applicant, stated the fence would provide protection from unauthorized users having access to their pool. He also stated they have had trespassers around their property. He further 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-15-123 closed.

MOTION

A motion was made by **Mr. Garcia**. “Re Appeal No. **A-15-123**, variance application for a **two foot variance from the maximum six foot maximum rear yard fence height, as described in Section 35-514 (d), to allow an eight foot tall fence in the rear yard of the property minus the returns**, subject property description being **Lot 3, Block 5, NCB 16963**, situated at **13011 North Hunters Circle**, applicant being **William Goodman**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-123**, 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. In this case, these criteria are represented by fence height limitations to provide for safety, and also to promote a sense of community. The applicant asserts that the fence is required to secure the property from trespassing patrons. Reducing crime and protection of personal property is well within the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **staff finds that the special condition present in this case is that the request serves to mitigate trespass and increase security of property. In addition, the rear of the property backs onto a drainage easement providing increased opportunity for trespass in the rear yard. A literal**

enforcement would result in the reduction in fence height along the back property line and result in an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance provides fencing height and design requirements to protect homes and also to encourage a sense of community. This fence does not detract from the residential nature of the community, nor does its design conflict with the spirit of the ordinance. In addition, due to the large amount of landscaping and trees located on the property, the fence would not be visible from any public right of way. Therefore, the variance would be consistent with 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 "R-6" Residential Single-Family 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 subject property fence is in keeping with adjacent property and 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 district in which the property is located in that **the applicant's property abuts a drainage easement increasing access to the property and the potential for trespass. Thus, the applicant wishes to minimize the liability risk of uninvited swimmers. This circumstance was not created by the applicant.** The motion was seconded by Ms Cruz.

AYES: Garcia, Cruz, Quijano, Finlay, Britton, Rodriguez, Rogers

NAYS: Velasquez, Zuniga, Martinez, Camargo

THE VARIANCE IS NOT GRANTED.

AMENDMENT

A motion was made by **Mr. Martinez** in regards to this particular issue to allow an 8 foot fence along the rear property line which would be the southwest side and leave the side fences 6 feet as normal under code. The motion was seconded by **Mr. Camargo**.

AYES: Martinez, Camargo, Velasquez, Zuniga,

NAYS: Quijano, Finlay, Briton, Cruz, Garcia, Rodriguez, Rogers

THE AMENDMENT FAILS.

SUBSTITUTE MOTION

A motion was made by **Mr. Camargo**. "Re Appeal No. A-15-123, the request of **William Goodman**, I would propose that we grant a two foot variance to allow an 8 foot fence within that area that is described as a rear portion abutting a drainage channel and that portion of the side of the rear yard from the rear of the house back to the drainage area and it does not include the side area that we all know it on the subject property for the reasons that

were stated in the original motion that came before. 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. In this case, these criteria are represented by fence height limitations to provide for safety, and also to promote a sense of community. The applicant asserts that the fence is required to secure the property from trespassing patrons. Reducing crime and protection of personal property is well within the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **staff finds that the special condition present in this case is that the request serves to mitigate trespass and increase security of property. In addition, the rear of the property backs onto a drainage easement providing increased opportunity for trespass in the rear yard. A literal enforcement would result in the reduction in fence height along the back property line and result in an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance provides fencing height and design requirements to protect homes and also to encourage a sense of community. This fence does not detract from the residential nature of the community, nor does its design conflict with the spirit of the ordinance. In addition, due to the large amount of landscaping and trees located on the property, the fence would not be visible from any public right of way. Therefore, the variance would be consistent with 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 "R-6" Residential Single-Family 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 subject property fence is in keeping with adjacent property and 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 district in which the property is located in that **the applicant's property abuts a drainage easement increasing access to the property and the potential for trespass. Thus, the applicant wishes to minimize the liability risk of uninvited swimmers. This circumstance was not created by the applicant.**" The motion was seconded by Mr. Garcia.

AYES: Camargo, Finlay, Britton, Cruz, Zuniga, Garcia, Rodriguez, Martinez, Rogers

NAYS: Quijano, Velasquez

THE SUBSTITUTE MOTION IS GRANTED.

CASE NO. A-15-126

Applicant – Sonia Onofre

Lot 2, Block 20, NCB 10547

170 Willee Drive

Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay

The applicant is requesting a 1 foot variance from the 4 foot maximum front yard, predominately open fence height limitation, as described in Section 35-514 (d), to allow a 5 foot tall predominately open fence in the front yard of the property.

Kristin Flores, Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 35 notices were mailed, 3 were returned in favor and 3 were returned in opposition and no response from the Loma Park Neighborhood Association.

Oscar Onofre, applicant, stated the fence would provide security for the family. He also stated their home has been burglarized.

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-15-126 closed.

MOTION

A motion was made by **Mr. Velasquez**. "Re Appeal No. **A-15-126**, variance application for a **1 foot variance from the 4 foot maximum front yard, predominately open fence height limitation, as described in Section 35-514 (d), to allow a 5 foot tall predominately open fence in the front yard of the property**, subject property description being **Lot 2, Block 20, NCB 10547**, situated at **170 Willee Drive**, applicant being **Sonia Onofre**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-126**, 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 applicant was constructing a five foot tall fence in the front yard of the property without a fence permit and was cited by Code Enforcement. The five foot tall fence is being built to deter thefts and home burglaries which, per the applicant, have affected her recently. Staff finds that the additional one foot 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 condition present in this case is the occurrence of criminal activity within this community. The applicant is having the fence built to protect the home from such crime. The additional one foot of height will serve to protect the home more adequately from such activity.** The spirit of the ordinance is observed and substantial justice is done in that **granting the requested variance would result in substantial justice as the variance would allow the applicant to adequately protect her home from crime in the community.** 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 AHOD" Single-Family Airport Hazard Overlay 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 **staff noted that several homes in this community which have fences constructed of**

the same material and height. Staff does not find that the request detracts from the character of the community. 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 circumstance present in this case is that the applicant has been negatively affected by criminal activity. Staff finds that the request for one additional foot of fence height to protect the home is a legitimate request that is not merely financial in nature, nor the fault of the owner of the property.** The motion was seconded by **Mr. Rodriguez.**

AYES: Velasquez, Rodriguez, Quijano, Finlay, Britton, Cruz, Zuniga, Garcia, Martinez, Camargo, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-15-122

Applicant – Richard Rosas
Lot 19, Block 15, NCB 14404
5218 Grovehill Drive
Zoning: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a two foot variance from the minimum three foot side yard setback, as described in Section 35- 370 (b), to allow an unattached carport to be located one foot from the side property line.

Kristin Flores, Planner, presented background and staff’s recommendation of denial of the requested variance. She indicated 31 notices were mailed, 12 were returned in favor and none were returned in opposition and no response from the Culebra Park Neighborhood Association.

Richard Rosas, applicant, stated the carport provides protection from the sunlight. He also stated the carport also provides some relief to his electricity bill. He further stated he was given several different recommendations from city employees in regards to the setback of the carport.

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-15-122 closed.

MOTION

A motion was made by **Mr. Martinez**. “Re Appeal No. **A-15-122**, variance application for a **two foot variance from the minimum three foot side yard setback, as described in Section 35-370 (b), to allow an unattached carport to be located one foot from the side property line**, subject property description being **Lot 19, Block 15, NCB 14404**, situated at **5218 Grovehill Drive**, applicant being **Richard Rosas**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-122**, 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 structure is engineered to safety specification and is usually used throughout the city for other purposes for protection and sunshade**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the owner of the property had sought the advice of city staff for the design and construction of this and has been going through a lot of hardship**. The carport appears to be attractive in meeting the standards that would normally be associated with such a structure. Unfortunately he was not advised properly and he would be subjective to additional hardship by having to go through and additional expense to move this. The spirit of the ordinance is observed and substantial justice is done in that **the homeowner in dealing with the city has had controversial dealings and at this particular time has had to do what is right for his community**. 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 **this is an “R-5 AHOD” Residential Single-family Airport Hazard Overlay District and usage for this location will not be altered from that limitation**. 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 **there are no oppositions to this particular carport by adjacent neighbors**. 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 **this appears to be a well constructed carport shade and adds additional benefit in reducing the heat reflection off concrete saving the homeowner a substantial amounts of money in cooling his home**.” The motion was seconded by **Mr. Rodriguez**.

AYES: Martinez, Rodriguez, Quijano, Finlay, Velasquez, Britton, Cruz, Zuniga, Garcia, Camargo, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-125

Applicant – Stripes, LLC
Lot 20, NCB 10930
7622 South Presa Street

Zoning: "C-2 MC-2 RIO-6 AHOD" Commercial South Presa Metropolitan Corridor Overlay
River Improvement Overlay Airport Hazard Overlay

The applicant is requesting 1) a variance from the River Improvement Overlay design requirement that shared driveways shall not exceed 25 feet in width, as described in Section 35-672(b)(1)(B) to allow one driveway that is 40 feet wide and another that is 45 feet wide and 2) a 511 square foot variance from the maximum 50 square foot sign area limitation, as described in Section 35-678(e) to allow a total of 561 square feet of signage on the subject property and 3) a variance from the South Presa Metropolitan Corridor design requirement that 30% of a street wall façade include a three foot wide planting strip, as described in Section D-10.

Logan Sparrow, Senior Planner, presented background and staff's recommendation of approval of the requested variances. He indicated 8 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Hot Wells Neighborhood Association.

Jennifer Boss, representative, stated the sign variance would allow for the advertisement of the several businesses on the property. She also stated the proposed wider driveways would allow for vehicular safety, both entering and exiting the site, and for the fuel trucks not to impede or impose traffic on the thoroughfare. The main entrance for the development is going to be on Presa St. She further stated the planters would allow for the safety of the vendors to exit and enter the property safely with imposing on the customers.

The following citizens appeared to speak:

Richard Gallegos, 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-15-125 closed.

MOTION

A motion was made by **Mr. Velasquez**. "Re Appeal No. **A-15-125**, variance application for **1) a variance from the River Improvement Overlay design requirement that shared driveways shall not exceed 25 feet in width, as described in Section 35-672(b)(1)(B) to allow one driveway that is 40 feet wide and another that is 45 feet wide and 2) a 511 square foot variance from the maximum 50 square foot sign area limitation, as described in Section 35-678(e) to allow a total of 561 square feet of signage on the subject property**, subject property description being **Lot 20, NCB 10930**, situated at **7622 South Presa Street**, applicant being **Stripes, LLC**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-125 excluding Item #3**, 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 will be served by granting the first variance request that would**

allow for driveways 40 and 45 feet wide. Large fuel and delivery trucks may struggle turning uphill into a narrow driveway; this is potentially unsafe. Allowing the applicant to increase the width of the driveways will make accessing the property easier for the type of delivery trucks. Staff further supports the requested sign variance. The RIO signage standards, which are intended to reduce sign clutter from overwhelming the natural environment, namely the river, will still be respected if the property is granted the requested signage. The subject property is nearly a third of a mile from the river ROW and, as such, the additional signage, which is necessary to effectively market to businesses along an arterial like SE Military, will not detract from the character of the river community. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **regarding the driveway width, there are two conditions that should be considered by the Board. First, the property will be developed as a convenience store with a gas station. This type of business brings high customer counts throughout the day, as well as frequent deliveries, often arriving on large semi-trucks. Delivery trucks of this variety are likely to struggle turning into narrow driveways. Additionally, the subject property is elevated over adjacent roads, adding further to the difficulty of turning into tight ingress points. Staff finds that a literal enforcement of the ordinance, which would limit the applicant to driveways not to exceed 25 feet wide, is likely to result in unnecessary hardship. These driveways in the future will be sharing egress and ingress with other businesses which will require further traffic widths. A literal enforcement of the code regarding signage would result in an unnecessary hardship. The location is set to house a Stripes convenience store, a Sunoco gas station, and a Laredo Taco restaurant. Requiring the development of three businesses to be advertised on two major streets, utilizing only 50 square feet in signage, is an unnecessary hardship. The Office of Historic Preservation, which reviews all projects in the River Improvement Overlay District, has expressed support for the proposed signage. The spirit of the ordinance is observed and substantial justice is done in that granting the requested variance for driveway width will result in substantial justice as the property will be developed with safety in mind. Granting the requested sign variances will result in substantial justice, too, in that they will allow both effective marketing of the business, and remain consistent with the intent of the RIO overlay district, per the Office of Historic Preservation. 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-2 MC-2 RIO-6 AHOD" Commercial South Presa Metropolitan Corridor Overlay River Improvement Overlay Airport Hazard Overlay 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 allowing the applicant to develop a property with safe ingress and egress points, and with necessary signage will not negatively affect adjacent, conforming 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 unique circumstance present on this property related to driveway width is twofold: the type of business demands wider access points, and the property is elevated. Increasing the driveway width would increase safety for this development. Regarding signage, staff has**

determined that, as the subject property is located a third of a mile from the river ROW, the increased signage, which is necessary, is needed because the property fronts along two major roads. Limiting the applicant to only 50 square feet in frontage is insufficient space for a convenience store, gas station, and a restaurant.” The motion was seconded by Mr. Garcia.

AYES: Velasquez, Garcia, Quijano, Finlay, Britton, Cruz, Zuniga, Rodriguez, Martinez, Camargo, Rogers

NAYS: None

VARIANCE #1 AND #2 IS GRANTED.

MOTION

A motion was made by Mr. Garcia. “Re Appeal No. A-15-125, variance application for a variance from the South Presa Metropolitan Corridor design requirement that 30% of a street wall façade include a three foot wide planting strip, as described in Section D-10, subject property description being Lot 20, NCB 10930, situated at 7622 South Presa Street, applicant being Stripes, LLC. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-15-125, 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 **staff further finds that eliminating the planting strip is not contrary to the public interest in that the design element is, generally, intended for pedestrian-oriented development. A gasoline station, by its function, is necessarily automobile-oriented and, therefore not pedestrian oriented, the planting strip doesn’t serve much of a purpose.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special condition present in this case to warrant the elimination of the pedestrian-oriented planting strip is that this business is, by its very use, not pedestrian-oriented.** The spirit of the ordinance is observed and substantial justice is done in that **as the planting strip would not benefit the proposed development, staff finds that removing it will result in substantial justice and as an alternative the applicant provided a landscaping alternative.** 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 **as stated before the variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “C-2 MC-2 RIO-6 AHOD” Commercial South Presa Metropolitan Corridor Overlay River Improvement Overlay Airport Hazard Overlay 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 **by eliminating the planting strip is unlikely to harm adjacent-conforming properties. When nearby pad sites are developed, they may very well be pedestrian-oriented, in which case the establishment of the planting strip would benefit those development. As this project is vehicle-oriented, the pedestrian friendly planting strip is not necessary, and will not detract from the character of the**

community. 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 proposed development would not benefit from the planting strip design element. The landscape plan that staff has reviewed and as stated exceeds the minimum requirements being made part of this approval. The landscaping requirements exceed the minimum requirements set forth by the city.** The motion was seconded by **Mr. Zuniga.**

AYES: Garcia, Zuniga, Finlay, Britton, Cruz, Camargo, Rogers

NAYS: Quijano, Velasquez, Rodriguez, Martinez

VARIANCE #3 IS NOT GRANTED.

CASE NO. A-15-127

Applicant – Myles Caudill

Lots 16, 17, 18 & W half of 19, Block 2, NCB 6525

534 Pershing Avenue

Zoning: “R-4 NCD-6 AHOD” Residential Single-Family Mahncke Park

The applicant is requesting 1) a 29 foot variance from the Mahncke Park Neighborhood Conservation District (NCD) design standard, as described in Section 35-335, limiting the structure width to no wider than 50 feet to allow a home addition resulting in a 79 foot wide house; and 2) a 3 foot variance from the minimum 5 foot side yard setback, as shown on Table 35-310-1, to allow the existing home to remain 2 feet from property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 9 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Mahncke Park Neighborhood Association.

Myles Caudill, applicant, stated the addition to the house will give the property a contiguous design.

No citizens appeared to speak.

Joseph Burger, 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-15-127 closed.

MOTION

A motion was made by **Mr. Rodriguez.** “Re Appeal No. **A-15-127**, variance application for a **1) a 29 foot variance from the Mahncke Park Neighborhood Conservation District (NCD)**

design standard, as described in Section 35-335, limiting the structure width to no wider than 50 feet to allow a home addition resulting in a 79 foot wide house and 2) a 3 foot variance from the minimum 5 foot side yard setback, as shown on Table 35-310-1, to allow the existing home to remain 2 feet from property line, subject property description being Lots 16, 17, 18 & W half of 19, Block 2, NCB 6525, situated at 534 Pershing Avenue, applicant being Myles Caudill. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-15-127, 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 **in terms of the NCD, the public interest is represented by the design regulations limiting the width of residential structures which contribute to the rhythm of the streetscape. This street is different; the lots are wider and the homes are elevated from the streetscape. Therefore, allowing the addition as proposed 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 circumstance present on the subject property is primarily its lot width of 92 feet, making a literal enforcement of the limited house width an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is represented by limiting those inconsistent design proposals and preserving the bungalow/porch development pattern. This section of the neighborhood, east of New Braunfels, does not conform to this development pattern and therefore, the variance 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 "R-4 NCD-6" Residential Single-Family Mahncke Park Neighborhood Conservation 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 homes within this section of Pershing do not represent a repeating design pattern, but instead are each unique. This variance will contribute to the renovation of this home and replace a rental unit in decline.** 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 owner is attempting to improve the property without damaging a huge heritage oak tree in the front yard of the property. In addition, the proposed master suite will be over 70 feet from the front property line."** The motion was seconded by Mr. Martinez.

AYES: Rodriguez, Martinez, Quijano, Finlay, Britton, Cruz, Zuniga, Garcia, Rogers

NAYS: Velasquez, Camargo

THE VARIANCE IS GRANTED.



The July 20, 2015 Board of Adjustment minutes were approved with all members voting in the affirmative.

APPROVED BY:

OR

DATE:

8/17/15

ATTESTED BY:

Executive Secretary

DATE:

8-17-15