

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
May 4, 2015**

Members Present:

Frank Quijano
Alan Neff
Gabriel Velasquez
Maria Cruz
Jesse Zuniga
John Kuderer
Roger Martinez
Gene Camargo
Lydia Fehr
Jeffrey Finlay
Christopher Garcia

Staff:

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

Call to Order

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

Mr. Kuderer called the meeting to order and called roll of the applicants for each case.

CASE NO. A-15-063

Applicant – AM Signs & LED
SW IRR 364 ft of Lot 4, NCB 14978
9837 IH 10 W
Zoning: “C-3 AHOD” General Commercial Airport Hazard Overlay District

The applicant is requesting a 7 foot variance from the minimum 200 foot spacing between two signs in an Urban Corridor, as described in Chapter 28-220, to allow 2 signs which are 193 feet apart.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 6 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Vance Jackson Neighborhood Association.

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-15-063 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No **A-15-063**, variance application for a **7 foot variance from the minimum 200 foot spacing between two signs in an Urban Corridor, as described in Chapter 28-220, to allow 2 signs which are 193 feet apart**, subject property description being the **SW IRR 364 ft of Lot 4, NCB 14978**, applicant being **AM Signs & LED**, located at **9837 IH 10 W**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-063**, 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 the Unified Development 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. **The applicant states that the restaurant is a major commercial franchise entering the San Antonio market for the first time. The sign as installed is the same size as the previous sign cabinet, and consistent with sign allowance for height and size.** After seeking one or more of the findings set forth in (1) or (2), the board finds that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated. **The applicant asserts that the sign is the same size as the other restaurant located next door. Indeed the two signs are exactly the same rectangular shape and share the free-standing pole.** Granting the variance will not have a substantially adverse impact upon neighboring properties. **Since the sign has been in the same location for over 30 years, it is unlikely that the variance will have a substantial adverse impact on neighboring properties.** Granting the variance will not substantially conflict with the stated purposes of this article. **The legislative purposes of the adopted sign regulations are to provide minimum standards to protect the general public by regulating the design, construction, location, use and maintenance of out-door advertising signs. The requested variance is minimal in nature and will not conflict with the purpose of the regulations.”** The motion was seconded by **Mr. Garcia**.

AYES: Velasquez, Garcia, Finlay, Fehr, Quijano, Neff, Cruz, Zuniga, Camargo, Martinez, Kuderer

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-064

Applicant – Francisco Esparza
Lot 5, Block 1, NCB 14067
4050 Burning Tree Drive
Zoning: “R-6” Residential Single-Family District

The applicant is requesting a variance from the 50 percent limitation on front yard impervious cover, as described in Table 35-515-1, to allow the front yard to be primarily concrete.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of denial of the requested variance. She indicated 22 notices were mailed, none were returned in favor and 9 were returned in opposition and the Lauren Hills Neighborhood Association is in opposition.

Russell Felan, representative, stated the applicant is requesting an alternate variance should the current variance is denied. He also stated they are requesting a continuance so that the applicant may communicate with the neighbors that are in opposition.

The following citizens appeared to speak:

Paul Mena, citizen, spoke in opposition.

Robert Martinez, citizen, spoke in opposition.

Jacob Shakey, 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-15-064 closed.

MOTION

A motion was made by **Mr. Velasquez to continue this case until the June 15, 2015 Board of Adjustment meeting.** The motion was seconded by **Mr. Camargo.**

AYES: Velasquez, Camargo, Finlay, Fehr, Garcia, Cruz, Kuderer, Martinez

NAYS: Quijano, Neff, Zuniga

THE MOTION PASSES

CASE NO. A-15-079

Applicant – Rudy Barrera

Lots 31 and 32, Block 13, NCB 8301

627 N. San Felipe

Zoning: "R-5 AHOD" Residential Single-Family Airport Hazard Overlay

The applicant is requesting 1) a three foot variance from the three foot front yard solid fence height limitation to allow a six foot tall wood fence along the south property line in the front yard; 2) a two foot variance from the four foot predominately open front yard fence height limitation, as described in Section 35-514 (d) to allow a six foot tall wrought-iron fence on the east and north property lines in the front yard of the property and 3) a request for a variance from

the clear vision requirements to allow a six foot tall solid screen fence up to the front property line.

Logan Sparrow, Planner, presented background and staff's recommendation of denial of variances #1 and #3 and approval of variance #2. He indicated 37 notices were mailed, 10 were returned in favor and none were returned in opposition and no response from the Loma Vista Neighborhood Association.

Rudy Barrera, applicant, stated the fence would be provide security for his family. He also stated there have trespassers who jump his fence to the get to the adjacent property through the alley. He further stated that he is trying to protect his children from deviant behavior including cigarette smoking and alchoolt.

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-15-079 closed.

MOTION

A motion was made by **Mr. Quijano**. "Re Appeal No. **A-15-079**, variance application for **1) a three foot variance from the three foot front yard solid fence height limitation to allow a six foot tall wood fence along the south property line in the front yard; 2) a two foot variance from the four foot predominately open front yard fence height limitation, as described in Section 35-514 (d) to allow a six foot tall wrought-iron fence on the east and north property lines in the front yard of the property and 3) a request for a variance from the clear vision requirements to allow a six foot tall solid screen fence up to the front property line**, subject property description **Lots 31 and 32, Block 13, NCB 8301**, situated at **627 N. San Felipe**, applicant being **Rudy Barrera**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-079**, 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 can include the applicant as well and it's clear that not enabling his application for variance is contrary to his interest**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **due to the sensitive nature of the conservation and the fear and repressions most definitely describes a situation that creates a hardship that is not created by the applicant**. The spirit of the ordinance is observed and substantial justice is done in that **every community has a culture of its own with regard to its standard of design and fence and residential use. Clearly this is not out of the norm in that community having fences of this nature**. 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 just a fence and does not change the nature of the use of the property**. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property

is located in that **several images have been presented to us that show an identical situation and there isn't any indication that this alters the use of the neighboring 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 **it is very clear that the owner has the ability to construct. This is not a situation that is a result of financial situation, but unique circumstances that present themselves to this community.**" The motion was seconded by Mr. Neff.

Mr. Martinez made a friendly amendment to include the following: to allow a wrought iron fence fourteen feet away from the curb to account for the requirements of the clear vision on the portion replacing the solid privacy fence portion, which would allow for the field of the view for safety. Mr. Quijano accepted the friendly amendment.

AYES: Velasquez, Neff, Finlay, Fehr, Quijano, Garcia, Cruz, Zuniga, Martinez, Camargo, Kuderer

NAYS: None

THE VARIANCE IS GRANTED.

Board members recessed for 5 minutes.

CASE NO. A-15-078

Applicant – Lissette Freabe

Lot 10, Block 16, NCB 16954

13919 Brantley

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

The applicant is requesting a two foot variance from the 20 foot rear building setback requirement, as described in Section 35-310.01, to allow her to enclose her existing covered patio to a home that is 18 feet from the rear property line.

Logan Sparrow, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 37 notices were mailed, one was returned in favor and none were returned in opposition.

Lissette Freabe, applicant, stated the covered patio was constructed about 8 years and a permit was obtained. She also stated when the patio was built it was in compliance with city codes. She further stated that over the years the code has changed which makes it non compliance.

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-15-078 closed.

MOTION

A motion was made by **Mr. Martinez**. “Re Appeal No. **A-15-078**, variance application for a **two foot variance from the 20 foot rear building setback requirement, as described in Section 35-310.01, to allow an enclosed addition to a home that is 18 feet from the rear property line**, subject property description **Lot 10, Block 16, NCB 16954**, situated at **13919 Brantley**, applicant being **Lisette Freabe**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-078**, 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 minimum setback requirements to ensure equal access to air and light and to prevent the spread of fire. In this case, the applicant is seeking only a ten percent deviation from the requirement established by the Unified Development Code. Staff finds that the requested variance is not contrary to the public interest in that the addition will still be 18 feet from the rear property line – a reduction that is unlikely to go noticed. 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 are the patio slab that was poured when the home was built. A literal enforcement of the ordinance would result in the applicant building the wall of the addition so that two feet of the patio protruded into the rear yard. Staff finds that not granting the requested variance is likely to result in unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that granting the requested variance will result in substantial justice. Considering the requested seeks only a ten percent deviation from the requirement, a distance that is hardly noticeable, staff finds that the spirit of the ordinance will be observed. 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” Residential 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 it is unlikely that granting the requested variance will harm adjacent properties as the request seeks to eliminate only two feet of a 20 foot rear setback. Adjacent property owners will still be protected by an 18 foot rear setback. The two-foot variance is unlikely to even be noticed by those adjacent to the applicant. 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 the property was the depth of the patio slab poured when the home was built. The applicant wishes to enclose the**

patio into an addition to the home and seeks only a two foot variance from the 20 foot rear building setback.” The motion was seconded by Ms. Cruz.

AYES: Martinez, Cruz, Finlay, Fehr, Quijano, Neff, Velasquez, Garcia, Zuniga, Camargo, Kuderer

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-067

Applicant – Gilbert & Terri Landa
Lot 3, Block 5, NCB 11786
230 Bemis Drive
Zoning: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay

The applicant is requesting a five foot variance from the five foot side setback requirement, as detailed in Table 35-310-1, to allow a carport to remain on the side property line.

Logan Sparrow, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 30 notices were mailed, 4 were returned in favor and none were returned in opposition and no response from the Community Worker’s Association.

Terri Landa, applicant, stated if the post were moved they would not be able to access the driveway or the backyard. She also stated they did not have to access the neighbor’s property to construct the carport.

Gilbert Landa, stated he will construct gutters to control the flow of water when it rains.

The following citizens appeared to speak:

Aida Joiner, 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-15-067 closed.

MOTION

A motion was made by **Mr. Camargo**. “I would like to move that in Case No. **A-15-067**, the request of **Gilbert & Terri Landa**, on property located at **230 Bemis Drive**, legally described as **Lot 3, Block 5, NCB 11786**, be granted a **five foot variance from the five foot side setback requirement in order to maintain a metal open carport on the property line**. Specifically, we find that such variance will not be contrary to the public interest in that **the adjacent property owner which would be mostly affected does not oppose the requested variance**. In addition to that, a property owner caddy corner to the subject property also appeared to

the hearing to voice approval of the request. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the literal enforcement of the ordinance would be in fact possible had the structure not already been constructed but staff has pointed out that various other properties in the area that in fact have similar construction existing on the property.** The spirit of the ordinance is observed and substantial justice is done in that **it is somewhat in the spirit of the ordinance in that it would not be a conformance but in line with the development that exists in this particular area.** 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 will not authorize the use not permitted in the zoning classification in that this is a 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 **as mentioned before because similar properties to this have the same condition existing throughout the neighborhood.** 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 **if the variance is denied what would affect their ability to get access to the rear of the property due to construction that exists at the rear of the residence in the front .”** The motion was seconded by Mr. Zuniga.

AYES: Camargo, Zuniga, Finlay, Fehr, Neff, Velasquez, Garcia, Cruz, Martinez, Kuderer

NAYS: Quijano

THE VARIANCE IS GRANTED.

CASE NO. A-15-065

Applicant – Marco Vasquez

E IRR 106.47ft of Lots 31 & 32 EXC W IRR 25.1ft, Block 15, NCB 8303

627 N San Gabriel Street

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

The applicant is requesting 1) a three foot variance from the five foot side yard setback requirement, as detailed in Table 35-310-1 to allow an addition to a home that is two feet from the side property line; 2) a one foot variance from the minimum 20 foot rear yard setback, as detailed in Table 35-310-1, to allow a building addition with a 19 foot setback and 3) a two foot variance from the four foot maximum front yard predominately open fence height, as described in Section 35-514 (d), to allow a six foot tall wrought-iron fence in the front yard of the property

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 33 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Loma Vista Neighborhood Association.

Marco Vasquez, applicant, stated his ex wife hired a contractor to construct the addition. He also stated the fence will provide protection for his ex-wife and her family.

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-15-065 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-065**, variance application for **1) a three foot variance from the five foot side yard setback requirement, as detailed in Table 35-310-1 to allow an addition to a home that is two feet from the side property line; 2) a one foot variance from the minimum 20 foot rear yard setback, as detailed in Table 35-310-1, to allow a building addition with a 19 foot setback and 3) a two foot variance from the four foot maximum front yard predominately open fence height, as described in Section 35-514 (d), to allow a six foot tall wrought-iron fence in the front yard of the property, subject property description being the E IRR 106.47ft of Lots 31 & 32 EXC W IRR 25.1ft, Block 15, NCB 8303, situated at 627 N San Gabriel Street, applicant being Marco Vasquez. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-15-065, 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, the public interest is represented by equal access to air and light provided by minimum setbacks.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special condition for this property is its peculiar shape because of its proximity to the storm drain. The small side lot is too small to function as a primary building site and in this case is providing adequate separation to allow long term maintenance and reduced fire threat for the side setback.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is observed by providing space between buildings to reduce the threat of fire spread and allow for long-term maintenance.** 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” Residential 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 **because of the small vacant parcel adjacent to the primary building lot, the addition appears to satisfy minimum setbacks. In the rear, the drainage ditch provides a large separation between the rear yard of the two abutting homes. Wrought-iron fencing is very common around this neighborhood and could be considered a character-defining feature.** 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 characteristics for this property are created by the location of the historic Encino's Creek, which has now been improved to function as a regional storm drain facility. It borders both the side and rear property lines of this parcel, justifying the need for all three variances.**" The motion was seconded by **Mr. Martinez.**

AYES: Velasquez, Martinez, Finlay, Fehr, Quijano, Neff, Garcia, Cruz, Camargo, Kuderer

NAYS: Zuniga

THE VARIANCE IS GRANTED.

CASE NO. A-15-077

Applicant – Ricardo Campos
Lot 143, Block E, NCB 11546
4107 Horseshoe Bend
Zoning: "R-20 NCD-3 AHOD" Large Lot Single-Family Ingram Hills

The applicant is requesting a 25 foot variance from the Ingram Hills Neighborhood Conservation District's 50 foot front building setback, as detailed in Section 35-335, to allow a new home to be built 25 feet from the front property line.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of denial of the requested variance. She indicated 18 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Ingram Hills Neighborhood Association.

Ricardo Campos, applicant, stated he is not able to build on half of the property since most of his property is in a flood zone. He also stated he was not aware of the flood zone when he purchased the property and with the current heavy rains his property has not flooded. He further stated that this variance would provide him with more rear yard space.

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-15-077 closed.

MOTION

A motion was made by **Mr. Velasquez**. "Re Appeal No. **A-15-077**, variance application for a **25 foot variance from the Ingram Hills Neighborhood Conservation District's 50 foot front building setback, as detailed in Section 35-335, to allow a new home to be built 25 feet from the front property line**, subject property description **Lot 143, Block E, NCB 11546**, situated at **4107 Horseshoe Bend**, applicant being **Ricardo Campos**. I move that the Board of Adjustment

grant the applicant's request regarding Appeal No. **A-15-077**, 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 located in an area that has a varying front setback character already and does not introduce a pattern that isn't already demonstrated in the area.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the property is dealing with several characteristics that restrict its location in many of the areas of that property.** The spirit of the ordinance is observed and substantial justice is done in that **the property is on a corner lot that gives it opportunities to be distances from the property line that if originally addressed would still have a similar end result.** 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 authorizing the uses of residential use as still residential 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 **this being a corner lot and considering that there is possible pattern already existing.** **This property is not out of characteristic with the adjacent two properties with regards to the difference in setbacks.** 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 has brought his testimony demonstrating and illustrating the flood plain restrictions that alter or that seriously affect his use of the rear property, such a large piece of property that makes adjacent use in the flood plain not near proximity to the house therefore his hope to create a larger use to the rear of the property is created by the flood plain and not by the owner's design of the house."** The motion was seconded by Mr. Neff.

Mr. Martinez made a friendly amendment to include the following: 15 foot variance from the Ingram Hills Neighborhood Conservation District's 50 foot front building setback, as detailed in Section 35-335, to allow a new home to be built 35 feet from the front property line. Mr. Velasquez accepted the friendly amendment

AYES: Velasquez, Neff, Quijano, Garcia, Cruz, Martinez, Kuderer

NAYS: Finlay, Fehr, Zuniga, Camargo

THE VARIANCE WAS NOT GRANTED

The April 20, 2015 minutes were approved with all members voting in the affirmative.

May 4, 2015,

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There being no further discussion, meeting adjourned at 4:24 pm.

APPROVED BY: _____
Andrew Ozuna, Chairman

OR _____
Mary Rogers, Vice-Chair

JOHN KUDERER
FOR

DATE: 5/18/15

ATTESTED BY: _____
Executive Secretary

DATE: 5-18-15