

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
December 21, 2015**

DRAFT

Members Present:

Mary Rogers
Frank Quijano
Alan Neff
George Britton
Maria Cruz
Jesse Zuniga
Christopher Garcia
John Kuderer
Roger Martinez
Gene Camargo

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Kristen Flores, Planner
Paul Wendland, City Attorney

Call to Order

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

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

Consideration of amendments to Chapter 35 of the Municipal Code, the Unified Development Code, to modify regulations for Conservation Subdivisions, and the add provisions to the Code to allow for Low Impact Development (LID)

A motion was made by Mr. Neff to approve the proposed revisions to the regulations for conservation subdivisions, as well as the new added provisions to the code to allow for Low Impact Development as presented by City Staff. The motion was seconded by Mr. Camargo.

AYES: Neff, Camargo, Quijano, Britton, Cruz, Zuniga, Garcia, Martinez, Kuderer, Rogers

NAYS: None

THE MOTION PASSED

CASE NO. A-16-017

Applicant – Down on Grayson

Lot 1, Block 19, NCB 975

303 E. Grayson

Zoning: "C-3 RIO-2 AHOD" General Commercial River Improvement Overlay

Airport Hazard Overlay District

The applicant is requesting for a 4 foot variance from the maximum 6 foot free-standing pole sign limitation, as described in 35-678, to allow a 10 foot tall pole sign.

Margaret Pahl, Senior Planner, presented the background and staff's recommendation of the variance. She indicated 5 notices were mailed, 1 returned in favor, and 0 returned in opposition. The Pearl is in favor, and no response from the Tobin Hill Neighborhood Associations.

Katy H, representative, stated the owner has been working to match the signs and building design to compliment the surrounding area.

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-16-017 closed.

MOTION

The motion was made by **Mr. Kuderer**. "Regarding Appeal No. A-16-017, variance application for a request for a 4 foot variance from the maximum 6 foot free-standing pole sign limitation to allow a 10 foot tall pole sign, subject property description Lot 1, Block 19, NCB 975, situated at 303 E. Grayson, applicant being Down on Grayson.

"I move that the Board of Adjustment grant the applicant's request 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:

- 1) "Such variance will not be contrary to the public interest" in that **the public interest is represented by sign height limitations to create more visually appealing conditions along our streets while still providing opportunity for businesses to advertise. The requested variance is not contrary to the public welfare as the additional, minimal height allows the business owner to identify a new restaurant.**
- 2) "Due to special conditions, **a literal enforcement of the code would require that the applicant construct a sign to a height not to exceed six feet tall. During field visits staff noted the presence of many trees lining the E. Grayson right-of-way. Without the additional height, these trees would block visibility of the sign if it were limited to six feet.**

- 3) **“The spirit of the ordinance calls for sign height limitations to encourage a neat and orderly development pattern. In this case, the requested variance asks for four feet greater in height. Staff finds that this request respects the spirit of the ordinance as it allows the owner of the property to identify the business for the public.**
- 4) **“Such variance will not authorize the operation of a use other than those uses specifically authorized in the “C-3 RIO-2 AHOD” General Commercial River Improvement Overlay Airport Hazard Overlay District.**
- 5) **“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 proposed sign is in scale with the surrounding community and serves to identify a new business.**
- 6) **“The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property in that that the trees planted along the E. Grayson right-of-way would totally obscure a six foot tall sign. No business would be able to adequately advertise its location with a six foot tall sign along E Grayson.”** The motion was seconded by **Mr. Garcia.**

AYES: Kuderer, Garcia, Quijano, Neff, Britton, Cruz, Zuniga, Martinez, Camargo, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-16-014

Applicant – Jerry Cruz
Lot 11, Block 18, NCB 13384
8330 Ridge Top
Zoning: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting for a 1) a 5 foot variance from the minimum 5 foot side yard setback to allow and attached carport to remain on the side property line and 2) a 25 foot variance from the 30 foot official front building setback, as described in Section 35-310-1 to allow the same carport to be located 5 feet from the front property line.

Margaret Pahl, Senior Planner, presented the background and staff’s recommendation of the requested variances. She indicated 28 notices were mailed, 0 returned in favor, 5 returned in opposition, and 2 would like a better design.

Jerry Cruz, applicant, stated he uses the carport for leisure uses and to help accommodate his disability.

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-16-014 closed.

MOTION

A motion was made by **Mr. Martinez**. “Regarding Appeal No. A-16-014, variance application for 1) a 5 foot variance from the minimum 5 foot side setback & 2) a 15 foot variance from the minimum 30 foot front building setback to allow a new metal carport on the side property line and 15 feet from the front property line, subject property description Lot 11, Block 18 NCB 13384, situated at 8330 Ridge Top Drive, applicant being Jerry Cruz.

“I move that the Board of Adjustment grant the applicant’s request 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:

- 1) “Such variance will not be contrary to the public interest” in that **due to the layout of the lot, and the location of the driveway, any carport construction is likely to result in the need for a variance. The front variance of 15 feet will allow room for adequate parking. In addition, the carport should be reduced in width to remain over the driveway.**
- 2) “Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship” in that **the applicant needs parking and maneuvering area for potential future disability.**
- 3) “The spirit of the ordinance is observed and substantial justice is done” in that **the carport which is already made of metal will be reviewed for fire rating.**
- 4) “Such variance will not authorize the operation of a use other than those uses specifically authorized in the “**R-5 AHOD**” Residential Single-Family Airport Hazard Overlay District.
- 5) “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” if the carport is reduced in size to simply cover the driveway, and reduced in depth to provide more distance from the street, **the flat roof is hardly visible from the street.**
- 6) “The plight of the owner of the property for which the modified **variance is sought is due to unique circumstances existing on the property, in that the driveway was constructed virtually on the side property line.** The motion was seconded by **Mr. Garcia.**

AYES: Martinez, Garcia, Finlay, Kuderer, Rogers

NAYS: Quijano, Neff, Britton, Cruz, Zuniga, Camargo

THE VARIANCES FAILED

CASE NO. A-16-018

Applicant – Caroline Brown

Lots 13, 15 & 24, Blocks 10 & 11, NCB 11851

3831 Harry Wurzbach

Zoning: “IDZ MC-3 AHOD” Infill Development Austin Highway Harry Wurzbach Metropolitan Corridor Airport Hazard Overlay District with single family residential uses not to exceed 25 units per acre.

The applicant is requesting for a 2 foot variance from the minimum 5 foot rear setback, as described in 35-343, to allow a second story overhang 3 feet from the property line.

Margaret Pahl, Senior Planner, presented background, and staff’s recommendation of the variance. She indicated 5 notices were mailed, 35 returned in favor, and 0 returned in opposition. No responses from the Oak Park and Northwood Neighborhood Association.

James McKnight, representative, stated the overhang variance request is due to a mistake made on 3 of the 46 units.

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-16-018 closed.

MOTION

A motion was made by **Mr. Camargo**. **“I move we grant the variance application for Appeal No. A-16-018, applicant being Caroline Brown, on property owned by the Weekly Homes LLC situated at 3831 Harry Wurzbach, BLDG#2, BLDG#4 and BLDG#20, property description Lots 13, 15, & 24, Block 10 & 11, NCB 1185. The requested variance being for a 2 foot variance from the minimum 5 foot rear yard setback as described in Section 35-343 to allow a second story overhang 3 feet from the property line.**

Specifically, we find that:

- 1) **“Such variance will not be contrary to the public interest” in that it is felt that this is not against the public interest in that the home builder stills owns majority of the lots in this subdivision, and therefore will not be affecting anyone at this point in time, and certainly future buyers will know what the development exist in this area.”**
- 2) **“Due to special conditions, a literal enforcement of the code would require that the applicant demolish the homes, currently under construction, resulting in an unnecessary hardship.”**

- 3) “The spirit of the ordinance is observed and substantial justice is done” in that it would be met and still have **a distance setback requirement between structures and the structures to the rear and the applicants’ representative has indicated that they have made modifications to those plans to ensure that there was a separation.”**
- 4) “Such variance will not authorize the operation of a use other than those uses specifically authorized **in the “IDZ MC-3 AHOD” Infill Development Austin Highway Harry Wurzbach Metropolitan Corridor Airport Hazard Overlay District.”**
- 5) “Such variance is **unlikely to harm adjacent, conforming properties. The neighboring property is a recently constructed high density residential project with parking and landscaping along the perimeter of the site.”**
- 6) “The **plight of the owner is the result of a survey/construction error or design at this point, which will not be perpetuated throughout the project, but is only applicable to 3 of the 46 lots within this subdivision.”** The motion was seconded by **Mr. Zuniga.**

AYES: Camargo, Zuniga, Quijano, Neff, Finlay, Britton, Cruz, Garcia, Martinez, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-16-019

Applicant – Frio Medical Properties
Lot 7, Block 2, NCB 262
301, 303 & 305 N. Frio Street
Zoning: “I-1 AHOD” Industrial Airport Hazard Overlay District

The applicant is requesting for a two (2) foot variance from the maximum four (4) foot fence height, as described in 35-514 (d), to allow a six (6) foot predominately open fence in the front yard.

Kristin Flores, Planner, presented background and staff’s recommendations of the requested variance. She indicated 11 notices were mailed, 0 returned in favor, and 0 returned in opposition

Russell Napper, applicant, requesting the fence variance due to high crime on the property.

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-16-019 closed.

MOTION

A motion was made by **Mr. Martinez**. “Regarding Appeal No. A-16-019, variance application for a 2 foot variance from the maximum 4 foot front fence to allow a 6 foot predominately open fence in the front yard, subject property description Lot 7, Block 2, NCB 262 situated at 301, 303 & 305 N. Frio applicant being Frio Medical Properties.

“I move that the Board of Adjustment grant the applicant’s request 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:

- 7) “Such variance will not be contrary to the public interest” in that **the public interest is represented by fence height limitations to protect property owners and the request for a six foot fence is intended to protect the subject property, employees, and clients.**
- 8) “The special circumstance present is trespass and high crime rates. Allowing the property owner to install a six (6) foot front fence will help to deter acts of trespass in the future and ensure the safety of the employees and clients.
- 9) “The spirit of the ordinance is observed and substantial justice is done” in that **the fence will be able to protect the subject property from trespass and ensure the safety of employees and clients.**
- 10) “Such variance will not authorize the operation of a use other than those uses specifically authorized **in the “I-1 AHOD” Industrial Airport Hazard Overlay District.**
- 11) “Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in that **the proposed fence is similar to several other fences in the area.**
- 12) “The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, in that **the subject property has experienced trespass and the additional fence height will ensure the safety of the employees and clients.**” The motion was seconded by **Mr. Kuderer**.

AYES: Martinez, Kuderer, Quijano, Neff, Finlay, Britton, Cruz, Zuniga, Garcia Camargo, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

2:30 p.m. Board members recessed for 10 minutes.

CASE NO. A-16-020

Applicant – Jeffery A. Wells
Lot 141, Block 39, NCB 19215

20703 Alta Mesa

Zoning: "PUD R-6 MLOD ERZD" Planned Unit Development Residential
Single-Family Military Lighting Edwards Recharge Zone District

The applicant is requesting for a two (2) foot variance from the maximum six (6) foot fence height, as described in 35-514 (d), to allow an eight (8) foot fence in the rear yard.

Kristin Flores, Planner, presented the background and staff's recommendation for the variance. She indicated 19 notices were mailed, 0 returned in favor, 4 returned in opposition, and no official response from the Promontory Point HOA.

Jeff Wells, applicant, requesting the fence variance for the safety of trespassing children and for the security of the home and pool.

The following citizens appeared to speak:

Matthew Thomas, 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-16-020 closed.

MOTION

A motion was made by **Mr. Garcia**. "Regarding Appeal No. A-16-020, variance application for a 2 foot variance from the maximum 6 foot fence height to allow an 8 foot fence in the rear yard, subject property description Lot 141, Block 39, NCB 19215, situated at 20703 Alta Mesa, applicant being Jeffery Wells.

"I move that the Board of Adjustment grant the applicant's request 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:

- 1) **"The request for an eight foot fence is not contrary to the public interest as the fence is intended to protect the property owner and neighborhood children.**
- 2) **"A literal enforcement of the ordinance would result in unnecessary hardship in that the special condition present in this case is trespass. Allowing the property owner to install an eight (8) foot rear fence will help to deter acts of trespass in the future and ensure the safety of the residents.**
- 3) **"The spirit of the ordinance is observed and substantial justice is done" in that the fence will be able to protect the property owner from trespass and ensure the safety of residents.**

- 4) “Such variance will not authorize the operation of a use other than those uses specifically authorized **in the “PUD R-6 MLOD ERZD” Planned Unit Development Residential Single-Family Military Lighting Edwards Recharge Zone District.**
- 5) “Such variance will not alter the essential character of the district in which the property is located” in that **the fence will not be visible from the public right of way.**
- 6) “The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property in that **they have experienced trespass and want the additional fence height to ensure the safety of the residents.**” The motion was seconded by **Mr. Camargo.**

Mr. Camargo amended the motion to have the fence only around the property shown in the site plan.

AYES: Garcia, Camargo, Neff, Finlay, Britton, Cruz, Kuderer, Rogers

NAYS: Quijano, Zuniga, Martinez

THE VARIANCE FAILED.

CASE NO. A-16-021

Applicant – Urban Surveying, Inc.

Lot 141, Block 39, NCB 19215

7406 Stonefruit

Zoning: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting for 1) a 16.2 foot variance from the 20 foot official front setback, as described in Section 35-310.01, to allow a carport 3.8 feet from the front property line; and 2) a 2.6 foot variance from the minimum 5 foot side setback, as described in Section 35-310.01, to allow a carport 2.4 feet from the side property line.

Kristin Flores, Planner, presented the background and staff’s recommendation for the variances. She indicated 27 notices were mailed, 4 returned in favor, 1 returned in opposition. No contact information was available for the Wildwood Neighborhood Association.

Michael Williams, representative, amending variance request, and stated he has a plan amendment scheduled on January 13, 2015.

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-16-021 closed.

A motion was made by **Mr. Martinez to continue this case to the February 8, 2016 meeting.**
The motion was seconded by **Mr. Kuderer.**

**AYES: Martinez, Kuderer, Quijano, Neff, Finlay, Britton, Cruz, Zuniga, Garcia,
Camargo, Rogers**

NAYS: None

THE CONTINUANCE IS GRANTED

CASE NO. A-16-022

Applicant – Refugio Mendez

Lot 10, Block 2, NCB 15355

242 Meadow Path

Zoning: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay
District

The applicant is requesting for a 6 foot variance from the 10 foot front setback, as described in
Section 35-310.01, to allow a carport 4 feet from the front property line.

Kristin Flores, Planner, stated the applicant is out of town and requested a continuance to the
January 11, 2016 meeting.

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-16-022 closed.

MOTION

A motion was made by **Mr. Garcia to continue this case to the January 11, 2016 meeting.**
The motion was seconded by **Ms. Cruz.**

**AYES: Martinez, Kuderer, Quijano, Neff, Finlay, Britton, Cruz, Zuniga, Garcia,
Camargo, Rogers**

NAYS:

THE CONTINUANCE IS GRANTED

CASE NO. A-16-024

Applicant – George Massiatte

Lot 17, NCB 6804

207 Sonora

Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting for or 1) a 5 foot variance from the minimum 5 foot side setback to allow a carport on the side property line; 2) a 5 foot variance from the minimum 10 foot front setback to allow a carport 5 feet from the front property line and 3) a 10 foot variance from the minimum 20 foot rear setback all described in Table 35-310-1, to allow a carport 10 feet from the rear property line.

Margaret Pahl, Senior Planner, presented the background and staff's recommendation of the variances. She indicated 62 notices were mailed, 1 returned in favor, and 3 returned in opposition. No response from the Collins Garden Neighborhood Association.

George Massiatte, applicant, requesting the variances to help with mobility challenged by terminal illness.

The following citizens appeared to speak:

Albert Santiago, spoke in opposition and is concerned with the storm water issues.

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-16-024 closed.

MOTION

The motion was made by **Ms. Cruz**. "Regarding Appeal No. A-16-024, variance application for 1) a 5 foot variance from the minimum 5 foot side setback to allow a carport on the side property line; 2) a 5 foot variance from the minimum 10 foot front setback to allow a carport 5 feet from the front property line & 3) a 10 foot variance from the minimum 20 foot rear setback to allow a carport 10 feet from rear property line, subject property description Lot 17, NCB 6804, situated at 207 Sonora, applicant being George Massiatte.

"I move that the Board of Adjustment grant the applicant's request **for the front and rear setback variances and a modified side setback variance of 3 feet** 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:

- 1) "Such variance will not be contrary to the public interest" in that **the requested front and rear setback variances, there is space for long term maintenance and fire separation. A modified side setback variance of 3 feet would allow for maintenance and reduce storm water runoff.**
- 2) "Due to special conditions, a literal enforcement of the ordinance would result in an unnecessary hardship in that the **lot is 8 feet more shallow than the original 80 feet in**

depth. A reduced side setback variance of 3 feet would provide 2 feet separation, and space for continued long term maintenance.

- 3) **“The spirit of the ordinance is observed and substantial justice is done” in that ___the small homes in this neighborhood are near the 10 foot front setback, making the requested front and rear variances justifiable. A reduced side setback variance of 3 feet will still allow maintenance and fire separation strategies.**
- 4) **“Such variance will not authorize the operation of a use other than those uses specifically authorized in the “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District.**
- 5) **“The requested front and rear variances will not alter the character of the district, however allowing the carport to remain on the side property line will injure the adjacent property. A revised variance of 3 feet would still allow use of the carport while providing a 2 foot setback for maintenance.**
- 6) **“The plight of the owner of the property is due to the circumstances on the property include the original description of 80 feet in depth and the real measurement of only 72 feet in depth. This loss of 8 feet results in the need for front and rear variances. The carport however, is wide enough to provide a modified side setback. The motion was seconded by Mr. Garcia.**

AYES: Cruz, Garcia, Neff, Finlay, Britton, Zuniga, Martinez, Kuderer, Rogers

NAYS: Quijano, Camargo

THE VARIANCES ARE GRANTED.

Ms. Rogers made a motion to approve the December 7, 2015 minutes with all members voting in the affirmative.

Directors Report:

There being no further discussion, meeting adjourned at 4:05 pm.

APPROVED BY: _____ OR _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: _____
Executive Secretary