

BOARD OF ADJUSTMENT OFFICIAL MINUTES

June 5, 2017

Members Present:	Staff:
Seth Teel	Catherine Hernandez, Planning Manager
Frank Quijano	Ted Murphree, City Attorney
Denise Ojeda	Margaret Pahl, Senior Planner
Maria Cruz	Shepard Beamon, Senior Planner
George Britton	Oscar Aguilar, Planner
John Kuderer	
Alan Neff	
Jesse Zuniga	
Richard Acosta	
Roger Martinez	
Henry Rodriguez	
Mary Rogers	

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.

Olga Valadez, Interpreter was present

Case #A-17-114 was withdrawn by applicant

Case Number: A-17-113

Applicant: Walton Signage

Owner: Methodist Healthcare System HCA

Council District: 8

Location: 7700 Floyd Curl Drive

Legal Description: Lot 6, Block 4, NCB 12814

Zoning: "C-3 S AHOD" General Commercial Airport Hazard

Overlay District with Specific Use Authorization for a

Hospital not to exceed 175 feet in height

Case Manager: Shepard Beamon, Senior Planner

Request

A request for a variance from the provision that prohibits a second electronic message center on the same freestanding sign, as described in Chapter 28 Section 28-241(e)(7)(c).

Shepard Beamon: Senior Planner presented the background information and staff's recommendation of the variance. He indicated 19 notices were mailed, 0 returned in favor, 0 returned in opposition, and no neighborhood association.

Andrew Perez: Chief Sign Inspector answered the Boards questions regarding options for the digital signs.

Tami Goltz: representative explained the reasons for the second sign, answered the Boards questions and asked for the Board for Approval.

Kay Balzer: 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-17-113 closed.

A motion was made by **Mr. Martinez**. "Regarding Appeal No., A-17-113, a request for a variance to allow a second electronic message center digital display on the same freestanding sign, subject property being Lot 6, Block 4, NCB 12814, situated at 7700 Floyd Curl Drive, applicant being Walton Signage.

I move that the Board of Adjustment grant the applicant's request for the 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 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; or*
2. *A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property; and*

The site is unique in that it provides both routine and emergency health services. The most efficient manner to allow promotion of both the emergency and routine services provided is to allow a second digital display on the sign that can change at regular intervals with multiple pieces of information.

3. *After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:*

A. Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

The request would not grant the applicant with special privilege as other signs within the area do not provide the same services as the subject property. To better service the surrounding community, additional information must be provided to promote all aspects of health and welfare care to the public.

B. Granting the variance will not have a substantially adverse impact on neighboring properties. Granting the variance is unlikely to adversely impact neighboring properties

as both digital display signs will provide a benefit to surrounding properties by informing them of health care services available to them.

C. Granting the variance will not substantially conflict with the stated purposes of this article.

Granting this variance will not substantially conflict with preserving economic cornerstones or providing freedom of expression and creativity. Further the sign will not impair the safety of persons and property or the promotion of harmony and order for surrounding on - premise signs." Mr. Neff seconded the motion.

AYES: Neff, Rodriguez, Zuniga, Britton,

NAYS: Teel, Cruz, Martinez, Ojeda, Quijano, Kuderer, Rogers

VARIANCE FAILED

Case Number: A-17-118

Applicant: Jose Gallegos, Jr.

Owner: Norma Carrillo Ortiz

Council District: 10

Location: 822 N. Alamo St.

Legal Description: Lot 7, Block 30, NCB 452

Zoning: "FBZ T4-2 AHOD" Form Base Zoning Airport Hazard Overlay District

Case Manager: Shepard Beamon, Senior Planner

Request

A request for a variance from the FBZ zoning district sign regulation, that only permits blade signs, to allow a wall sign with a total area of less than 50 square feet, as described in Section 35-209(e)(4)(G).

Shepard Beamon: Senior Planner presented the background information and staff's recommendation of the variance. He indicated 24 notices were mailed, 2 returned in favor, 0 returned in opposition, and no response from the Downtown Neighborhood Association.

Jose Gallegos Jr: representative stated this particular application is the best possible solution for the property due to the mature trees that hinder blade signage.

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-17-118 closed.

MOTION

A motion was made by **Mr. Rodriguez**, "Regarding Appeal No., A-17-118, a request for a variance from the FBZ zoning district sign regulation, that only permits blade signs, to allow a wall sign with a total area of less than 50 square feet, subject property being Lot 7, Block 30, NCB 452, situated at 822 N. Alamo Street, applicant being Jose Gallegos, Jr.

I move that the Board of Adjustment grant the applicant's request for the 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 not contrary to the public interest. The public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by sign design and size requirements under the Form Base zoning district. The proposed wall sign will not interfere in the public right-of-way, or distract motorists. Therefore, the request is not contrary to the public interest.

1. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. The literal enforcement of the ordinance would result in the installation of a sign that would not be visible from the street, as there are existing large trees the obscure visibility for motorists. This creates a condition that hinders promotion for the event center.*
2. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. The intent of the Form Base zoning encourages development that shall adequately accommodate automobiles while respecting the pedestrian and the spatial form of public space. The request will adequately accommodate both pedestrians and automobiles and observe the spirit of the ordinance. The variance will not authorize the operation of a use other than those uses specifically authorized in the district in which the request for a variance is located. The variance will not authorize the operation of a use other than those uses specifically authorized in the "FBZ T4-2 AHOD" Form Based Zoning Airport Hazard Overlay District.*
3. *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. The requested variance will not significantly alter the essential character or appearance of the neighborhood. Further, the request will not have any negative impact on 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. As indicated by the applicant and by City staff, the property contains existing mature trees in front of the building. This unique circumstance existing on the property was not created by the owner." Ms. Cruz seconded the motion.*

AYES: Rodriguez, Cruz, Quijano, Martinez, Britton, Neff, Ojeda, Teel, Zuniga, Kuderer, Rogers

NAYS: None

VARIANCE IS GRANTED.

Case Number: A-17-110

Applicant: Maria Gonzalez

Owner: Maria and Raul Gonzalez

Council District: 2

Location: 6203 Binz Engleman Road

Legal Description: Lot 82 Block 7, NCB 16612

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

Case Manager: Oscar Aguilera, Planner

Request

A request for a special exception to allow a four-year renewal of a special exception granted on September 20, 2010 (A-10-066) for a one-operator beauty shop. The special exception expired.

Oscar Aguilera: Planner presented the background information and staff's recommendation of the variance. He indicated 21 notices were mailed, 0 returned in favor, 0 returned in opposition, and no neighborhood association.

Maria Gonzalez: applicant requested interpretation services. She asked for the Boards forgiveness for not reapplying because she was dealing with family medical 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-17-110 closed.

MOTION

A motion was made by **Mr. Neff**. "Regarding Appeal No., A-17-110, a request for special exception to allow a four-year renewal for a one-operator beauty shop, Operating from Tuesday through Saturday from 10am to 6pm, subject property being Lot 82, Block 7, NCB 16612, situated at 6203 Binz Engleman Road, applicant being Maria Gonzalez.

I move that the Board of Adjustment grant the applicant's request for the special exception 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:

- A. *The special exception will be in harmony with the spirit and purpose of the chapter. The purpose of the review is to ensure that the operation of a one-operator beauty/barber shop does not negatively impact the character of the community. The applicant has fulfilled all requirements for a one-operator shop as established in the Unified Development Code. As such, staff finds that the special exception will be in harmony with the purpose of the chapter.*
- B. *The public welfare and convenience will be substantially served. Public welfare and convenience will be served as it will provide a valuable service to the residents of the neighborhood.*

- C. *The neighboring property will not be substantially injured by such proposed use. The subject property will be primarily used as a single family residence. The beauty/barber shop will occupy only a small portion of the home, as required by the UDC. A neighboring property owner should not have any indication that a portion of the home is being used for this purpose.*
- D. *The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought. The requested special exception is not likely to negatively impact adjacent property owners as the home is in character with those around it. During the field visit, staff noted nothing visible from the street that would indicate the presence of a beauty/barber shop. Also, staff noted a large driveway capable of providing any necessary parking for the proposed use.*
- E. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district. The primary use of the dwelling remains a single-family home. The granting of this special exception will not weaken the purposes of the residential zoning district.” Ms. Cruz seconded the motion.*

AYES: Neff, Cruz, Zuniga, Rodriguez, Martinez, Britton, Ojeda, Quijano, Teel, Kuderer, Rogers

NAYS: None

SPECIAL EXCEPTION IS GRANTED.

The Board of Adjustment convened for a 10 minute break at 1:50pm and reconvened at 2:00pm. Ms. Rogers left the meeting and was replaced by Mr. Richard Acosta

Case Number: A-17-108

Applicant: Arturo Vargas

Owner: Arturo and Ernestina Vargas

Council District: 6

Location: 5446 Ergill Lane

Legal Description: Lot 16, Block 6, NCB 13957

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

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 3.5 foot variance, as described in Table 35-310, to allow a building addition 1.5 feet from the side property line.

Margaret Pahl: Senior Planner presented the background information and staff’s recommendation. She indicated 38 notices were mailed, 1 returned in favor, 1 returned in opposition, and no neighborhood association.

Ernestine Vargas: applicant stated she was cited by the City for the violations and explained the structure is for storage only. She then asked for the board to vote in her favor.

Angelica Vargas: spoke in favor

Ms. Pahl: read into the record 5 letters of support for the applicant from their neighbors.

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-17-108 closed.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No, A-17-108, a request for a 2 foot variance to allow a *building addition 3 feet* from the side property line, subject property being Lot 16, Block 6 NCB 13957, situated at 5446 Ergill Lane, applicant being Arturo Vargas.

I move that the Board of Adjustment grant the applicant's request for the 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. Although the application was for a greater variance this would allow for a better use of the structure.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*
The public interest is represented by minimum setbacks for fire separation and long term maintenance without trespass.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
Literal enforcement of the ordinance would require that the property owner relocate the wall to provide a five foot setback, uncharacteristic for this neighborhood.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The intent of the Code is to provide a minimum side setback for fire separation and room for maintenance.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in the "R-6" Residential Single-Family 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.*
The applicant is requesting a variance to allow the enclosure of a carport for use as living space. During the building permit review, construction standards will be incorporated into permit and inspections to ensure safety and building code compliance.
6. *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. The plight of the owner is unique in that the structure was already in this location.” The Motion was seconded by Mr. Britton.

AYES: Martinez, Britton, Teel, Zuniga, Cruz, Acosta, Rodriguez, Neff, Quijano, Ojeda, Kuderer

NAYS: None

THE VARIANCE IS GRANTED

Case Number: A-17-115

Applicant: Marco Garcia

Owner: Marco and Ramon Garcia

Council District: 3

Location: 236 Dullnig Court

Legal Description: Lot 17, Block 11, NCB 7643

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

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 1) 4 foot variance to allow a carport 1 foot from the side property line, 2) a variance from the eave overhang limitation to allow an eave on the side property line, and 3) a 25% variance from the 50% impervious coverage limitation to allow 75% of the front yard impervious.

Margaret Pahl: Senior Planner presented the background information and staff’s recommendation of the variances. She indicated 28 notices were mailed, 0 returned in favor, 1 returned in opposition, and no response from the Hot Wells Neighborhood Association.

Marco Garcia: applicant requested interpretation services. The applicant stated he needs protection from the sun and hail and for his family and four vehicles.

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-17-115 closed.

A motion was made by **Ms. Ojeda**. “Regarding Appeal No., A-17-115, a request for 1) a 4 foot variance to allow a carport 1 foot from the side property line, 2) a variance from the eave overhang limitation to allow an eave on the side property line, and 3) a 25% variance from the 50% impervious coverage limitation to allow 75% of the front yard impervious, subject property being Lot 17, Block 11, NCB 7643, situated at 236 Dullnig Court, applicant being Marco Garcia.

I move that the Board of Adjustment grant the applicant’s request for the 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 not contrary to the public interest. The public interest is represented by minimum setbacks for fire separation and long term maintenance without trespass. The applicant will be required to secure a permit, which may require modification, but will ensure safety.

1. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

Literal enforcement of the ordinance would require that the property owner relocate the carport to provide a five foot setback and remove some of the concrete to increase the pervious surface.

2. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The intent of the Code is to provide a minimum side setback for fire separation and room for maintenance.

3. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in the "R-4" Residential Single-Family District.*

4. *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.*

The applicant is requesting a variance to allow the carport to remain along the property line. The building permit may require a fire wall along the property line, given the proximity.

5. *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." The plight of the owner is unique in that the owner wanted more covered parking, and previously, the property had none."* The motion was seconded by Mr. Martinez.

AYES: Rodriguez, Britton

NAYS: Acosta, Zuniga, Teel, Cruz, Martinez, Neff, Ojeda, Quijano, Kuderer

THE VARIANCE FAILED

Case Number: A-17-117

Applicant: Elvira G. Oviedo

Owner: Elvira G. Oviedo

Council District: 2

Location: 8242 Campobello Drive

Legal Description: Lot 33, Block 2, NCB 13675

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

Case Manager: Oscar Aguilar, Planner

Request

A request for a 20 foot variance from the 30 foot platted front setback, as described in Section 35-516 (O), to allow a carport 10 feet from the front property line.

Oscar Aguilera: Planner presented the background information and staff's recommendation. He indicated 30 notices were mailed, 0 returned in favor, 1 returned in opposition, and no neighborhood association.

Ramiro Meza: representative stated he wants to comply with all rules and regulations and that is why he is requesting the variance prior to construction and asked for the Boards approval.

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-17-117 closed.

A motion was made by **Mr. Teel**. "Regarding Appeal No., A-17-117, a request for a 20 foot variance from the 30 foot platted front setback to allow a carport 10 feet from the front property line, subject property being Lot 33, Block 2, NCB 13675, situated at 8242 Campobello Drive, applicant being Elvira G. Oviedo.

I move that the Board of Adjustment grant the applicant's request for the 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 variance is not contrary to the public interest.*
The public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by setback limitations to protect property owners and create a cohesive streetscape. The City's zoning setback of 10 feet provides this streetscape protection in other areas. Since the carport will meet the side setback and the front setback will be 10 foot from the property line, the variance request from the recorded plat would not be contrary to the public interest.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. Literal enforcement of the platted setback would not allow any carport. Providing equal treatment of enforcing the 10 foot zoning setback is not a hardship.*
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. The spirit of the ordinance represents the intent of the requirement. The City zoning setback is 10 feet and represents the ordinance and the proposed carport meets this spirit.*
4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located. 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.*
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.*

The proposed carport will meet the side setback of 5 feet. There are other carports prevalent in the area. A 20 foot variance from the 30 foot platted setback for a 10 foot front setback will be equivalent to the City's established standard for front setback.

6. *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. The City of San Antonio has an established 10 foot front setback, applied in all residential districts, and the proposed carport meets this established setback.*" The motion was seconded by Mr. Martinez.

AYES: Teel, Martinez, Rodriguez, Cruz, Britton, Quijano, Kuderer, Acosta, Neff, Zuniga Ojeda,

NAYS: None

THE VARIANCE IS GRANTED

The May 15, 2017 Board of Adjustment Minutes were approved.

Director's Report: none

There being no further discussion the meeting adjourned at 3:50pm.

APPROVED BY: Mary E Rogers DATE: 6-19-17 Chairman

OR _____ DATE: _____ Vice-Chair

ATTESTED BY: M. Murphy DATE: 6-20-17 Executive Secretary