

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
March 16, 2015**

Members Present:

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

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.

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

CASE NO. A-15-054

Applicant – Comet Signs, LLC
Lot 3, Block 9, NCB 7299
300 W. Olmos Drive
Zoning: "I-1 AHOD" General Industrial Airport Hazard Overlay District

The applicant is requesting a 12 foot variance from the 24 foot maximum sign height as described in Section 28-239, to allow a free-standing pole sign that is 36 feet tall

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 41 notices were mailed, one was returned in favor and none were returned in opposition.

Edward Gutierrez, representative, stated they would like to utilize the existing structure. He also stated the two story structure adjacent to the property makes it difficult to view the sign that existed before the adjacent structure was built.

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-15-054 closed.

MOTION

A motion was made by **Mr. Camargo**. “Re Appeal No. **A-15-054**, applicant being **Comet Signs, LLC**, on property located at **300 W. Olmos Drive**, legally described as **Lot 3, Block 9, NCB 7299**, be granted the request for a variance for a **12 foot variance from the 24 foot maximum sign height as described in Section 28-239, to allow a free-standing pole sign that is 36 feet tall**. A denial of the variance would probably cause a cessation of **identification of the use that has existed on this property for some time**. The proposed signage would allow the **HEB Grocery** to be more easily identified by passing motorists. Because of the new update symbols on the building and the structure that is proposed is the exact height as that which exists. It is merely an updated design of the **HEB logo**. 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’s requested signage would serve only to market the business to the community**. Granting the variance will not have a substantially adverse impact upon neighboring properties in that **it is unlikely that neighboring property owners will be negatively impacted by the proposed update and signage to identify the existing grocery store**. 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. Specifically in this case it is not like a new structure, like a new height, it merely will utilize the existing structure and replace the identification of the business at the same height.**” The motion was seconded by **Mr. Martinez**.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-053

Applicant – David Malley

Lot 5, Block 2, NCB 609

118 Kansas Street

Zoning: “RM-4 AHOD” Residential Mixed Airport Hazard Overlay District

The applicant is requesting a special exception in accordance with UDC 35-399.03 to allow the relocation of a residential building from 314 Jim Street to a lot zoned for single family use, located at 118 Kansas Street.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 41 notices were mailed, none were returned in favor and none were returned in opposition and response from the Alamodome Gardens Neighborhood Association.

Gator Dodson, representative, stated the house fits the lot and they will be providing interim housing for the neighborhood. He also stated the house will occupy one of the last remaining lots in the neighborhood. He further stated the driveway will be touched up and off street parking will also be provided. The house will be brought up to city code.

The following citizens appeared to speak:

Barbara McDonald, 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-15-053 closed.

MOTION

A motion was made by **Mr. Neff**. "Re Appeal No. **A-15-053**, application for a **special exception in accordance with UDC 35-399.03 to allow the relocation of a residential building from 314 Jim Street to a lot zoned for single family use, located at 118 Kansas Street**, subject property description **Lot 5, Block 2, NCB 609**, located at **118 Kansas Street**, applicant being **David Malley**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-053**, Application for a Special Exception for the subject property as described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UD 35-399.03. Specifically, we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **the applicant is proposing to relocate a structure to a vacant lot and intends to renovate the structure to meet current buildings codes. New electrical service and new plumbing are planned. A residential use on this vacant lot is preferred, given the previous house was demolished over 20 years ago. Therefore, granting the special exception will be in harmony with the spirit and purpose of the chapter.** The public welfare and convenience will be substantially served in that **the structure will be used as a single family dwelling, making use of an undeveloped parcel within a neighborhood that could benefit from incremental revitalization. The public welfare and convenience will be substantially served by the relocation.** The neighboring property will not be substantially injured by such proposed use in that **the addition of this home will add integrity to the streetscape, bring a family to the block and convert a vacant lot into a personal yard. The proposed home will not negatively impact the neighboring property.** 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 in that **the houses along this block are each unique and contribute to the character of the district. This home is an ideal candidate for this vacant parcel and much preferred to a new home as an alternative. Therefore, the special exception authorizing the relocation will not alter the essential character of the district.** The special exception will not weaken the general

purpose of the district or the regulations herein established for the specific district in that **the special exception will not weaken the general purpose of "RM-4 AHOD" zoning district, a district designed to support residential land uses. The site plan submitted by the applicant and the size of the parcel show the proposed placement of the home will exceed the minimum front, side and rear yard setbacks of the district.** The motion was seconded by Ms. Cruz.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-052

Applicant – Carlos Gutierrez

Lot 23, Block 12, NCB 8990

747 SW 38th Street

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

A request for a two foot variance from the four foot maximum front yard fence height, as described in Section 35-514, to allow a six foot tall wrought iron fence in the front yard of the property

The applicant is requesting a two foot variance from the four foot maximum front yard fence height, as described in Section 35-514, to allow a six foot tall wrought iron fence in the front yard of the property.

Logan Sparrow, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 24 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Community Workers Council Neighborhood Association.

Carlos Gutierrez, applicant, stated the fence would prevent his dogs from getting out of the yard. He also stated the neighborhood is dangerous and the fence would provide protection for this family from criminal activity and trespassers.

The following citizens appeared to speak:

Jesse De Los Santos, 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-15-052 closed.

MOTION

A motion was made by **Mr. Rodriguez**. "Re Appeal No. **A-15-052**, variance application for a **two foot variance from the four foot maximum front yard fence height, as described in Section 35-514, to allow a six foot tall wrought iron fence in the front yard of the property**, subject property description **Lot 23, Block 12, NCB 8990**, situated at **747 SW 38th Street**, applicant being **Carlos Gutierrez**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-052**, 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 will not create a damage to the value of the properties in the adjacent area**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance would result in an unnecessary hardship for the owner because that area is not policed as well and therefore the concerned safety of the residence and also the special condition that he cited concerns with his dog being able to jump lower fences**. The spirit of the ordinance is observed and substantial justice is done. 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 **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. 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 motion was seconded by **Mr. Zuniga**.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-051

Applicant – John Ugarte

Lot 29, Block 13, NCB 10176

226 Wayside Street

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

The applicant is requesting 1) a three foot variance from the five foot minimum side yard setback requirement, as described in Section 35-310.01, to allow a home two feet from the west side property line and 2) a two foot variance from the minimum five foot side setback, also described in Section 35-310.01, to allow a home three feet from the west side property line.

Logan Sparrow, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 32 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Greater Dellview Neighborhood Association.

John Ugarte, applicant, stated because the current owner did not purchase the property with a mortgage loan, it did not require a survey. He also stated if the property is sold in the future, a mortgage company would require an approved variance on the existing addition.

The following citizens appeared to speak:

Peter Vargas, 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-15-051 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Re Appeal No. **A-15-051**, variance application for **1) a three foot variance from the five foot minimum side yard setback requirement, as described in Section 35-310.01, to allow a home two feet from the west side property line and 2) a two foot variance from the minimum five foot side setback, also described in Section 35-310.01, to allow a home three feet from the west side property line**, subject property description **Lot 29, Block 13, NCB 10176**, situated at **226 Wayside Street**, applicant being **John Ugarte**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-051**, 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 minimum setback requirements to ensure that there is adequate distance between structures to reduce the threat of fire and to ensure equal access to air and light. Per Bexar County records the home was constructed in 1954 and has remained, without expanding the footprint of the structure, since. The survey provided by the applicant shows a two foot setback from the east property line to the structure, which necessitates the first variance request. The second variance request corresponds to the three foot setback from the west property line. The required side yard setback in an "R-4" Residential Single-Family District is five feet. However, as the structure was built 61 years ago and, to date, has not generated any concern among neighbors, staff finds that the requested variance is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that a literal enforcement of the code would require that the applicant remove portions of the home to make the structure conforming to the side setback standards established by the Unified Development Code. As the property was built in 1954, long before its current owner purchased the**

home; staff finds that requiring the owner to remove a total of five feet of the house would constitute an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance intends to provide distance between structures to prevent the spread of fire and to ensure equal access to air and light. After purchasing the home, the applicant was informed that the subject property did not meet the side setback requirements. In an attempt to make the property legal, he is pursuing the variance. As the structure has been in place for many years without incident staff finds that by granting the variance the spirit of the ordinance will be observed and substantial justice will be served. 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 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 the requested variance is unlikely to harm adjacent, conforming properties. The existing home was built in 1954 and has not expanded since, per Bexar County records. Staff also noted that the property line does not follow the fence line between properties. Staff noted enough spacing between the subject property and adjacent homes to reduce the threat of fire and the fencing on the property gives the look of respected setbacks. As such, staff finds that the requested variance does not negatively alter the character of the district in which it is located. 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 circumstances present in this case are that, when the house was built in 1954, it was not built to a standard which respected the mandatory five foot side yard setbacks in place today. This is not the fault of the owner of the property who purchased the home in December of 2014, 60 years after the home was built." The motion was seconded by Mr. Martinez.

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

NAYS: None

THE VARIANCE IS GRANTED.

The March 2, 2015 minutes were approved with all members voting in the affirmative.

APPROVED BY:

OR

DATE:

ATTESTED BY:

DATE:

9/6/15