BOARD OF ADJUSTMENT
OFFICIAL MINUTES
August 16, 2010

Members Present:

Michael Gallagher
Andrew Ozuna
Liz Victor
Edward Hardemon
Helen Dutmer
George Britton
Jesse Zuniga
Mary Rogers
Mike Villyard
Paul Klein
Mimi Moffat

Staff:

Rudy Niño, Senior Planner
Jacob Floyd, Planner
Paul Wendland, City Attorney

Call to Order

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

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

Ms. Moffat, arrived at 1:04 p.m.

CASE NO. A-10-059

Applicant – Juan Avila
Lot 23, Block 3, NCB 13461
1935 Duluth Drive
Zoned: "R-4 AHOD" Residential Single Family Airport Hazard Overlay District

The applicant is requesting **1)** a 3-foot, 5-inch variance from the 5-foot side setback requirement of the "R-4" zoning district, to keep a carport 1-foot 7-inches from the west side property line and **2)** a 1-foot 8-inch variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, to keep an existing front yard fence at a height of 5-feet 8-inches.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variances. He indicated 36 notices were mailed, 2 were returned in favor and none were returned in opposition.

Juan Avila, applicant, stated he was not aware of the rules and regulations regarding permits. He also stated his son pulled the permits. He further stated he wants to protect his property from break-ins, vandalism, and theft.

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-10-059 closed.

1st Motion

A motion was made by **Mr. Ozuna.** Re Appeal **A-10-059,** variance application for **Juan Avila,** subject property description **Lot 23, Block 3, NCB 13461**, situated at **1935 Duluth Drive,** the specific motion is that the applicant is requesting **a 3-foot 5-inch variance from the 5-foot side setback requirement of the "R-4" zoning district, to keep a carport 1-foot 7-inches from the west side property line.** I move that the Board of Adjustment grant the applicant's request regarding appeal No. **A-10-059,** application for 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 granting of the variance would not be contrary to the public interest. The applicant has stated that his intent to comply with the fire code and construct any required fire wall between his property and the adjacent property owner.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property presents a special condition in that the size of the lot with a 50 foot front lot is not wide enough to construct the two car garage configuration that the applicant has constructed.** The spirit of the ordinance is observed and substantial justice is done in that **the granting of the variance will be in keeping with the spirit of the ordinance in that the surrounding neighborhood is consistent with the garage the applicant built. Basically the garages are built over and we see that as a fabric of the neighborhood and before.** 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 granting of the variance will not authorize a use other than those specifically authorized in the "R-4 AHOD" zoning 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 granting of the variance will not substantially injure the appropriate use of adjacent conforming property as we have seen from evidence by staff of similar uses of garages built over the setback lines and the applicant has informed us that the watershed will be contained within the property. The character of the neighborhood is a single-family residential will not be altered by this variance.** The plight of the owner of the property for which the variances 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 size of the lot with a 60-foot front setback is a major consideration and mandated the construction of the garage over that side setback.** The motion was seconded by **Ms. Dutmer.**

AYES: Ozuna, Dutmer, Britton, Rogers, Gallagher
NAY: Villyard, Hardemon, Klein, Victor, Zuniga, Moffat

THE MOTION FAILS.

2nd Motion

A motion was made by **Ms. Rogers.** Re Appeal **A-10-059,** variance application for a **1-foot 8-inch variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, to keep an existing front yard fence at a height of 5-feet 8-inches,** subject property description **Lot 23, Block 3, NCB 13461,** situated at **1935 Duluth Drive,** and the applicant being **Juan & Amelia Avila.** I move that the Board of Adjustment grant the applicant's request regarding appeal No **A-10-059 as stated above.** Specifically, we find that such variance will not be contrary to the public interest in that **having a higher fence is in no way contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property would be open to vandalism which appears to be rampant in the neighborhood.** The spirit of the ordinance is observed and substantial justice is done in that **the granting of the variance would be in keeping with the spirit of the ordinance because it allows a measure of security to the applicant.** 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 granting of this variance will not in any way jeopardize the district in which it is located.** 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 **having a higher fence would in no way hinder the neighboring property.** The plight of the owner of the property for which the variances 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 not the applicant's fault that there is so much criminal activity in the neighborhood that drives him to have this higher fence.** The motion was seconded by **Mr. Hardemon.**

AYES: Rogers, Hardemon, Klein, Dutmer, Britton, Ozuna, Gallagher
NAY: Villyard, Zuniga, Victor, Moffat

THE MOTION FAILS.

CASE NO. A-10-060

Applicant – Spanish Grove Academy
Lot 2, Block 2, NCB 19216
22215 Wilderness Oak
Zoned: "C-1 ERZD MLOD-1" Light Commercial Edwards Aquifer Recharge Zone Military Lighting Overlay District

The applicant is requesting a 2-foot variance from the requirement that front yard fences in commercial districts not exceed a height of 4 feet, to allow a 6-foot tall fence in the front yard.

Jacob Floyd, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 34 notices were mailed, one was returned in favor and none were returned in opposition.

Stephanie Habern, representative, stated the reason for this request is for is for safety and protection from vandalism and trespassers who have broken windows, put holes in the sheetrock, burn a port of potty and atv's driving through their property causing their landscaping to be damaged. She has also stated the academy has spent a big amount of money on the property due to vandalism. She further stated the general contractor informed them that they were allowed to construct a fence on their property as long as it did not encroach with city property.

The following citizens appeared to speak:

David Walsworth, 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-10-060 closed.

MOTION

A motion was made by **Mr. Villyard.** Re Appeal Case No **A-10-060,** a variance application for a **2-foot variance from the requirement that front yard fences in commercial districts not exceed a height of 4 feet, to allow a 6-foot tall fence in the front yard,** subject property described as **Lot 2, Block 2, NCB 19216,** situated at **22215 Wilderness Oak,** the applicant being **Ms. Habern and representing the Spanish Grove Academy.** I move that the Board of Adjustment grant the applicant's request regarding this appeal, 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 **as the increased security and greater control of the property access will deter the vandalism of the property and discourage crime in the area. The applicant has provided copies of the police reports and photograph showing the vandalism on the property.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the literal enforcement of the fence height standards results in unnecessary hardship due to the proximity of subject property to open space and storm water drainage facilities which cannot be served. The inability to control access to these areas exposes the subject property to vandalism and other criminal mischief.** The spirit of the ordinance is observed and substantial justice is done in that **the granting of the variance would be in keeping with the spirit of the ordinance to allow private property to be secured in a reasonable manner and would do substantial justice in allowing the day care to protect its assets and students. The daycare serves as an educational facility and schools would be entitled to a 6-foot fence. I feel that would also provide the same advantage to the**

academy. Such 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 in that **the granting of the variance will not authorize the use other than those specifically authorized in the "C-1 ERZD MLOD-1" zoning 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 granting of the variance will not substantially injure the appropriate uses of the adjacent conforming property as the subject property is surrounded by established residential uses and zoning as we have seen in photographs that were provided. Neither will the granting of the variance alter the essential character of the district as the residential subdivisions in the area possess perimeter fences 6 feet in height and make up the frontage of Wilderness Oak.** 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 plight of the property owner is due to unique circumstances existing on the property that are not a result of the general conditions of the area, but rather are due to the inability to restrict access to the subject property caused by the adjacent open space.** The motion was seconded by **Mr. Zuniga.**

AYES: Villyard, Zuniga, Victor, Klein, Hardemon, Rogers Dutmer, Moffat, Britton, Ozuna, Gallager
NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-10-061

Applicant – Barrett Motor Cars
Lot 4, Block 1, NCB 14858(North Point West Subdivision)
15423 IH 10 West
Zoned: "C-3 GC-1 MLOD-1" General Commercial Hill Country Gateway Corridor Military Lighting Overlay District

The applicant is requesting for a 50-foot variance from the 200-foot spacing requirement for on-premises signs in the "GC-1" overlay district, to allow 150 feet of spacing between on-premise signs.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 5 notices were mailed, none were returned in favor and none were returned in opposition.

Ann Bell, representative, stated the reason for this variance is to allow Barrett to advertise the four dealerships on the property because the current sign currently only advertises the Jaguar dealership. She also stated the placement of 100 feet separation is for the sign itself to be most visible on the property. She further stated Barret Motors has a contractual agreement with Jaguar that there would be no signs advertising the other three dealerships on the Jaguar sign.

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-10-061 closed.

MOTION

A motion was made by **Mr. Ozuna.** Re Appeal No **A-10-061,** variance application for **15423 IH 10 West,** subject property description is **Lot 4, Block 1, NCB 14858 (North Point West Subdivision),** located again at **15423 IH 10 West,** the motion is for a **50-foot variance from the 200-foot spacing requirement fro on-premise signs in the "GC-1" overlay district, to allow 150 feet of spacing between on-premise signs.** I move that the Board of Adjustment grant the applicants request regarding appeal number **A-10-061**, 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 **it does appear that the strict enforcement of the sign regulations prohibits the reasonable provision of adequate signs on the site. The subject property is characterized by unique or exceptional features in that the overpass obstructs visibility from IH 10 to the subject site and the topography is such that 200 foot spacing does not provide adequate signage to the project.** After seeking on or more of the findings set forth, the boards finds that: (A) The granting of variance does not provide the applicant with a special privilege not enjoy by others similarly situated or potentially similarly situated in that **the applicant has provided testimony about similar signage configurated properties within the overlay district which have the multi-tenant type situation in the "G7-1" Hill Country Gateway Corridor**. (B) The granting of the variance will not have substantially adverse impact on neighboring properties in that **the applicant has provided testimony there is no opposition to the spacing from any of the surrounding land use owners that were notified.** (C) The granting of the variance will not substantially conflict with the stated purposes of this article in that **there isn't sufficient frontage to locate the sign.** The motion was seconded by **Ms. Rogers.**

AYES: Ozuna, Rogers, Victor, Hardemon, Zuniga, Dutmer, Britton, Gallagher
NAY: Klein, Villyard, Moffat

THE VARIANCE WAS NOT GRANTED.

Approval of the August 2, 2010 Minutes

The August 2, 2010 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 2:55 p.m.

APPROVED BY: _____ OR _____
Michael Gallagher, Chairman Andrew Ozuna, Vice-Chair

DATE: 9 – 20 – 10

ATTESTED BY: _____ DATE: 9-20-10
Executive Secretary