

REGULAR MEETING

BOARD OF ADJUSTMENT

Development & Business Services Center
1901 S. Alamo Street
BOARD ROOM
February 5, 2007

MEMBERS PRESENT:

D. Michael Villyard, Chair
Michael Gallagher, Vice Chair
Rene Balderas
Raymond Flores
Jesse Jenkins
Paul Klein
Mary Rogers
Gerald Yarbrough
Maria Cruz
Pete Vallone

CITY STAFF PRESENT:

Chris Looney, Planning Manager
Rod Sanchez, AICP, Interim Director
Fernando Deleon, Interim Asst. Director
David T. Arciniega, Planner II
Michael Taylor, Planner II
David Simpson, Chief Sign Inspector
Jon Kaplan, Asst. City Attorney III
Dolly F. Gonzalez, Admin. Secretary

"Call to Order and Invocation"

Mr. Villyard called the meeting to order and Ms. Rogers presented the invocation.

Mr. Balderas arrived at 1:05 p.m.

Pledge of Allegiance to the United States and Texas Flags.

Mr. Villyard called roll of the applicants for each case.

CASE NO. A-07-006

Applicant - Bibiana Stosberg
Lot 7, Block 2, NCB 14806
17006 Silverwood Drive
Zoned: "R-6 ERZD" Residential Single-Family Edwards Recharge Zoning District

The applicant is requesting **1)** a 3-foot variance from the Unified Development Code requirement that solid screen fences in front yards be no taller than 3 feet, in order to keep an existing 6-foot tall solid screen fence along the north and south property lines, and **2)** a 1-foot variance from the Unified Development Code requirement that solid screen fences in front yards be no taller than 3 feet, in order to keep an existing 4-foot tall solid screen fence along the west property line.

Mr. Arciniega presented background and Staff's recommendation of denial on this case.

There were 20 notices mailed, 0 were returned in favor and 1 was returned in opposition.

Nathan Stosberg of 17006 Silverwood Drive submitted information to the members to review as he went through his presentation. He stated that the main issue for consideration is the proximity to the frontage road and the entrance to the neighborhood. He showed photographs of other properties in the area that have fences of the same height and he submitted a petition from homeowners in the area that are in favor of his request.

Bibiana Stosberg said that because they live on the access road to Hwy 281 she fears for the safety of her family. She added that she has called the police on several occasions due to trespassers on her property. She said that they have a homeowners association but it is not mandatory and the bylaws do not govern the fence height. She said that she spoke to the daughter of the President of the Homeowners Association and she approved of the

quest. The reason that a permit was not obtained was because she called the city and the county many times and was told the height restrictions but not that she required a permit to build the fence. The contractor did not tell her she needed a permit either.

A discussion ensued among the members as to why a permit was not obtained and the number of times that the applicant was cited for the fence. The applicant submitted a letter from the Code Compliance Department indicating that they were cited in July, and then in September and October they received a violation from the Development Services Department.

FAVOR

None

OPPOSED

None

RESULTS:

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-07-006 closed.

MOTION made by Mr. Flores, "I move that the Board of Adjustment in Appeal A-07-006 in requesting **1)** a 3-foot variance from the Unified Development Code requirement that solid screen fences in front yards be no taller than 3 feet, in order to keep an existing 6-foot tall solid screen fence along the north and south property lines, and **2)** a 1-foot variance from the Unified Development Code requirement that solid screen fences in front yards be no taller than 3 feet, in order to keep an existing 4-foot tall solid screen fence along the west property line, **grant the applicant's request** 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." "Such variance will not be contrary to the public interest, in that": The petitioners submitted in the package indicate that the majority of the neighbors are in favor of keeping the fence as is. "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that: The applicant cited safety concerns for their family. And "So that the spirit of the ordinance is observed and substantial justice is done" in that: The applicant has made a contention that they had attempted to work with the City in this process and it was communicated to them that they needed 6-foot on the side and 4-foot on the front and they built according to that guidance. "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 property is zoned R-6, ERZD Residential like most of their neighbors and evidence was shown that similar type fence heights in front and side yards are in existence around the neighborhood. "Such variance will not substantially or permanently injure the district in which the variance is sought" in that: The applicant believes that this is in keeping with the character of the area. "Such variance will be in harmony with the spirit and purposes of this chapter" in that: The hardship submitted by the applicant is that there are safety concerns both for the children as well as traffic issues along Silverwood Drive. "The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located" in that: The applicant has submitted for the record that they were going by the dimensions stated by the Code Compliance Department with the City with respect to what was allowed by Code. "The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district" in that: The fence is in keeping with the character of the area. "The variance will not adversely affect the public health, safety or welfare of the public" in that: It is more geared to protect the safety and welfare of the public. Motion seconded by Mr. Vallone.

ROLL CALL VOTE: Mr. Flores, Mr. Vallone, Mr. Gallagher, Mr. Balderas, Mr. Jenkins, Mr. Klein, Ms. Rogers, Mr. Yarbrough, Ms. Cruz, Mr. Villyard. **The variance was granted unanimously.**

CASE NO. A-07-008

Applicant – Anthony H. & Catherine Liberto
Lot 6, Block 1, NCB 12193
332 Prinz Drive
Zoned: "R-5" Residential Single-Family District

The applicant is requesting a 2-foot variance from the Unified Development Code requirement that fences in side or rear yards be no taller than 6 feet, in order to erect an 8-foot tall fence in the side and rear yards.

Mr. Taylor presented background and Staff's recommendation of denial on this case.

There were 18 notices mailed, 8 were returned in favor and 0 were returned in opposition.

Tony Liberto of 332 Prinz said the request is for the privacy of the applicant's family. He showed photographs demonstrating a change in topography from his property to the properties south of his lot. He said they do not have privacy for the pool they have installed and it is very possible that a halfway house will be built one house down from theirs. He has a 21 year old daughter and he worries for her safety when she is out in the pool. Additionally, there is a drop off in topography from the pool to the property line, therefore the additional height will serve to compensate for the drop off.

FAVOR

None

OPPOSED

None

RESULTS:

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-07-008 closed.

MOTION made by Mr. Gallagher, "I move that the Board of Adjustment in Appeal A-07-008 in requesting a 2-foot variance from the Unified Development Code requirement that fences in side or rear yards be no taller than 6 feet, in order to erect an 8-foot tall fence in the side and rear yards, **grant the applicant's request** 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." "Such variance will not be contrary to the public interest, in that": It will serve the public interest by providing privacy to the family. "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that: There is an issue of height in the area between the homes that should be considered. And "So that the spirit of the ordinance is observed and substantial justice is done" in that: The neighbors in the area have concurred with this change. "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: We are looking at one particular property with this specific problem. "Such variance will not

“Substantially or permanently injure the district in which the variance is sought” in that: It is being built to provide security. “Such variance will not alter the essential character of the district in which the variance is sought” in that: There are a variety of fences in that area. “Such variance will be in harmony with the spirit and purposes of this chapter” in that: It will be done for the purpose of public safety. “The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located” in that: This issue would have existed whether or not the individual requested the fence height or not. “The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district” in that: We are looking at one property only. “The variance will not adversely affect the public health, safety or welfare of the public” in that: The owner has come to us prior to constructing the fence with the idea of asking permission for this variance and for that he should be commended because it does provide for public safety. Motion seconded by Mr. Jenkins.

ROLL CALL VOTE: Mr. Gallagher, Mr. Jenkins, Mr. Klein, Ms. Rogers, Mr. Yarbrough, Ms. Cruz, Mr. Vallone, Mr. Balderas, Mr. Flores, Mr. Villyard. **The variance was granted unanimously.**

CASE NO. A-07-009

Applicant – Angelica F. Contreras
Lot G, Block 7, NCB 2398
2209 San Fernando Street
Zoned: “R-4” Residential Single-Family District

The applicant is requesting **1)** a 5-foot 5-inch variance from the Unified Development Code requirement that a minimum 10-foot front setback be maintained in “R-4” zoning districts, in order to keep an existing covered porch 4 feet, 7 inches from the front property line, and **2)** a 3-foot 3-inch variance from the Unified Development Code requirement that a minimum 5 foot side setback be maintained in “R-4” zoning districts, in order to keep an existing carport 1 foot, 9 inches from the east side property line.

Mr. Taylor presented background and Staff’s recommendation of denial on this case.

There were 35 notices mailed, 1 was returned in favor and 0 were returned in opposition.

Angelica Contreras of 2209 San Fernando Street said that they remodeled the porch and carport. They replaced the siding and the roof but did not move either of them from the original position. The reason they replaced the items is because the carport was damaged from run-off from the neighbors’ house. She reiterated that they did not remove the post only the rooftop of the carport. They only repainted the post. She said there is not enough room elsewhere on the property to place a carport.

Mr. Taylor added that the home was built prior to the 1938 zoning; in 1935, and it is possible that the side yard could have fallen under the 3-foot side setback.

Ms. Contreras added they would build a firewall if necessary.

FAVOR

One

POSED

None

RESULTS:

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-07-009 closed.

MOTION made by Mr. Flores, "I move that the Board of Adjustment in Appeal A-07-009 in requesting **1)** a 5-foot 5-inch variance from the Unified Development Code requirement that a minimum 10-foot front setback be maintained in "R-4" zoning districts, in order to keep an existing covered porch 4 feet, 7 inches from the front property line, and **2)** a 3-foot 3-inch variance from the Unified Development Code requirement that a minimum 5 foot side setback be maintained in "R-4" zoning districts, in order to keep an existing carport 1 foot, 9 inches from the east side property line, **grant the applicant's request** 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." "Such variance will not be contrary to the public interest, in that": Similar carports and porches exist in that area of town. "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that: The applicant is simply seeking to keep what was already there; just a nicer, updated version. And "So that the spirit of the ordinance is observed and substantial justice is done" in that: As the applicant mentioned, she is familiar with the City process but because her porch and carport were existing and she was just updating, she did not understand that she needed to pull a permit. "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: Given testimony presented, this lot and house likely predate the Unified Development Code, in which case that should be factored into the Board's decision. "Such variance will not substantially or permanently injure the district in which the variance is sought" in that: It's not uncommon for this area of town to see carports and porches extended into the front setback. "Such variance will not alter the essential character of the district in which the variance is sought" in that: This area of town, with narrow streets, small lots, and non-traditional configuration of lots on blocks is evidence that the character will not be affected by virtue of keeping the carport and the front porch. "Such variance will be in harmony with the spirit and purposes of this chapter" in that: An argument could be made that a hardship exists given the change in the Unified Development Code and retroactively applying that to a property that was in compliance at one point in time. "The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in which the property is located" in that: As mentioned earlier, when the applicant purchased the property 15 years ago, there was an existing carport and porch that encroached on the front and side setbacks. "The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specified district" in that: This is a unique case, given the lot size, lot width, and the age of this side of town. "The variance will not adversely affect the public health, safety or welfare of the public" in that: If we grant this variance the applicant will have to put up a fire wall for safety reasons. Motion seconded by Mr. Balderas.

ROLL CALL VOTE: Mr. Flores (F), Mr. Balderas (F), Mr. Jenkins (F), Mr. Klein(O), Ms. Rogers(O), Mr. Yarbrough(O), Ms. Cruz(O), Mr. Vallone(O), Mr. Gallagher(O), Mr. Villyard (O). **The variances were denied by a vote of 3 in favor and 7 opposed.**

Discussion ensued among the members.

Motion made by Mr. Flores to grant the request for a 5-foot 5-inch variance from the Unified Development Code requirement that a minimum 10-foot front setback be maintained in "R-4" zoning districts, in order to keep an existing covered porch 4 feet, 7 inches from the front property line, with the previous findings of fact based on the

Following reasons: 1) the size of the Lot and the lack of a front yard, 2) because they want to encourage ownership in these types of inner city neighborhoods, 3) given that there is no room for a porch in the back given the legally constructed unit in the back, and 4) the applicant has submitted that the front porch is within the same footprint that was there before. Motion seconded by Mr. Balderas.

ROLL CALL VOTE: Mr. Flores, Mr. Balderas, Mr. Jenkins, Mr. Klein, Ms. Rogers, Mr. Yarbrough, Ms. Cruz, Mr. Vallone, Mr. Gallagher, Mr. Villyard. **The Variance was granted unanimously.**

Mr. Looney stated that the newly adopted Residential Building Code requires a fire-rated wall for anything closer than 5 feet on the side yard.

“Discussion and recommendation regarding Sign Master Plan No. 07-001 for Culebra Crossing, located at 8355 Culebra Road”

David Simpson, Chief Sign Inspector presented the proposed Sign Master Plan. The plan consists of one single-tenant standard sign and three (3) multi-tenant standard signs for the premises of this development, one existing previous BOA approved multi-tenant sign oriented to Culebra at approximately forty-seven feet (47') over-all-height with a total of seven hundred and ninety six (796) square feet of sign face area, one proposed secondary multi-tenant sign is to be oriented to Culebra Road at thirty-two and a half feet (32.5') over-all-height with a total of three-hundred and thirty-three (333) square feet of sign face area, one proposed multi-tenant sign is to be oriented to Timberview at twenty feet (20') over-all-height with a total of one hundred and twenty-five (125) square feet of sign face area, and one proposed single-tenant sign is to be oriented to Culebra Road at twenty feet (20') over-all-height with a total of one hundred and twenty-five (125) square feet of sign face area.

Discussion ensued regarding the size and locations of the signs.

Mr. Gallagher moved to approve the Sign Master Plan for Culebra Crossing. **Mr. Balderas** seconded the motion and all members present voted in the affirmative.

The Board took a 5 minute recess

“Discussion and recommendation regarding Sign Master Plan No. 07-002 for Braune Pointe, located at Braun Road and Loop 1604”

David Simpson presented the proposed Sign Master Plan. The plan consists of four multi-tenant and nine single-tenant standard signs for a total of thirteen free standing signs for the development. One primary multi-tenant sign oriented to Loop 1604 at sixty feet (60') over-all-height with a total of five hundred (500) square feet of sign face area, one secondary multi-tenant sign oriented to Loop 1604 at forty-five feet (45') over-all-height with a total of three hundred and fifty (350) square feet of sign face area, three secondary single-tenant signs oriented to Loop 1604 at twenty-five feet (25') over-all-height with a total of one hundred and eighty (180) square feet of sign face area, one primary multi-tenant sign oriented to Braun at forty-five feet (45') over-all-height with a total of three hundred and fifty (350) square feet of sign face area, one secondary multi-tenant sign oriented to Braun at thirty feet (30') over-all-height with a total of two hundred and seventy-five (275) square feet of sign face area, one secondary single-tenant sign oriented to Braun at twenty-five feet (25') over-all-height with a total of one hundred and eighty (180) square feet of sign face area, and five secondary single-tenant standard signs oriented to Amelia Pass at ten feet (10') over-all-height with a total of fifty (50) square feet of sign face area.

Mr. Klein moved to approve the Sign Master Plan for Braun Pointe. Mr. Jenkins seconded the motion and all members present voted in the affirmative.

“Approval of the minutes from the regular meetings on January 8th and January 22nd 2007”

Mr. Klein moved to approve the minutes of January 8th, 2007. Mr. Balderas seconded the motion and all members present voted in the affirmative.

Mr. Gallagher moved to approve the minutes of January 22nd, 2007. Mr. Klein seconded the motion and all members present voted in the affirmative.

“Staff Report”

Mr. Looney advised the Board that Mr. Jenkins will no longer serve on the Board of Adjustment. A formal recognition ceremony will follow at a later date. He also advised that with the appointment of the new member, Staff will coordinate an orientation for them and all Board members are welcome to attend the orientation.

Mr. Arciniega provided an update to the status of board cases that were denied in the past. He said he would have a report for the Board at the next meeting. He also advised the Board that the next meeting will be March 5th.

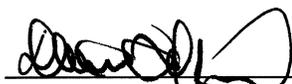
Ms. Rogers asked if the City could pay the registration fee for the members to attend the San Antonio Conservation Society event on the 16th of February.

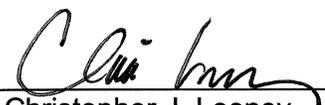
Mr. Looney said he would look into it.

“Executive Session”

NONE

There being no further discussion, meeting adjourned.

APPROVED BY:  DATE: 03-05-07 OR _____
D. Mike Villyard, Chairman Michael Gallagher, Vice-Chair

ATTESTED BY:  DATE: 3-5-07
Christopher J. Looney
Development Services, Planning Manager