

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
January 14, 2013**

Members Present:

Michael Gallagher
Andrew Ozuna
Frank Quijano
Edward Hardemon
Helen Dutmer
George Britton
Jesse Zuniga
Mary Rogers
Gene Camargo
Maria Cruz
Henry Rodriguez

Staff:

John Jacks, Assistant Director
Margaret Pahl, Senior Planner
Tony Felts, 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.

Mr. Zuniga arrived at 1:04 p.m.

Ms. Cruz arrived a 1:10 pm.

CASE NO. A-13-009

Applicant – Laurie McKinney
Lot 17, Block 1, NCB 13146
2955 and 2969 Nacogdoches Road
Zoned: “O-2 AHOD” High-Rise Office Airport Hazard Overlay District and “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the maximum 6-foot fence height to allow an 8-foot fence along the rear property line.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 44 notices were mailed, two were returned in favor and none were returned in opposition and no response from the Forest Oak Neighborhood Association.

Laurie McKinney, applicant, stated they are replacing the existing fence with a non-climb fence. She also stated the fence is to keep trespassers from the property and to prevent dumping of trash onto the property. She further stated the fence will not screen the property but will be maintained with some sort of landscaping.

The following citizens appeared to speak:

Mike Drewry, 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-13-009 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that in Case **A-13-009**, the applicant being **Laurie McKinney**, on property legally described as **Lot 17, Block 1, NCB 13146**, be granted the request for a **2-foot variance from the maximum 6-foot fence height to allow an open fence of 8-feet in height to be constructed along the rear property line of the property previously legally described**. Such variance will not be contrary to the public interest in that **all of the notices that were mailed to the property owners within two hundred feet none were returned in opposition and two were returned in favor**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **they do not necessarily apply in that the property on three sides, both on east, west, and north are surrounded and developed on non-single family residential uses**. The spirit of the ordinance is observed and substantial justice is done in that **the requested 8-foot open fence abuts a fairly large drainage easement and a roadway providing access to the use of the north which is out of a church**. 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 **in which it is zoned for, which is "O-1" Office 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 **it is a church in a residential use and further the applicant is proposing as required by the ordinance a buffer strip of natural vegetation on this 8-foot fence as to be constructed on the north property line**. 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 circumstances which exist on the property which is an extremely large deep lot from the public right of way to the southeast and it will afford them an amount of protection from a stand point of individuals cutting across from the open space to the north onto the subject property**. The motion was seconded by **Mr. Rodriguez**.

AYES: Camargo, Rodriguez, Quijano, Rogers, Hardemon, Zuniga, Dutmer, Ozuna, Cruz, Britton, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-010

Applicant – Michel Alexis Courtines

Lot 108, Block 2, NCB 17613

1111 Marchesi

Zoned: “R-6 PUD ERZD MLOD” Residential Planned Unit Development Edwards Recharge Military Lighting Overlay Districts

The applicant is requesting a 2-foot variance from the maximum 6-foot fence height to allow an 8-foot screening fence 58 feet in length along a corner side yard.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 12 notices were mailed, one was returned in favor and none were returned in opposition and the Pinnacle Homeowner’s Association is in support.

Kevin Fitzgerald, representative, stated the windows are placed low and due to the topography this fence would allow for some privacy for the homeowners. He also stated due to the curve of the lot they are limited to what can be built on the property.

The following citizens appeared to speak:

Tony Recine, 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-13-010 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No. **A-13-010**, variance application for **1111 Marchesi**, subject property is **Lot 1, Block 1, NCB 13146**, again situated at **1111 Marchesi**, the applicant is **Michel Alexis Courtines**, the variance request is for a **2-foot variance from the 6-foot maximum fence height to allow construction of an 8-foot screening fence for a length of 58-feet along a corner side yard**. I would also add that the variance is for the specific location as identified in the site plan that was provided to the staff as part of the application. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-010**, 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 at large. The public in this case is the people who live on this section of Marchesi and daily drive along this property line. The Institute of Traffic Engineers (ITE) recommends a 30-foot sight triangle for intersections. The applicant has provided a minimum of 50-feet between the intersection and the start of the screening fence to ensure adequate sight lines and distances. In addition, the property is within a gated community served by private streets. Only nine single family homes gain access from this cul-de-sac. Therefore, the variance would not be 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 ordinance would allow a 6 foot screening fence in the side yard, but with the house constructed at 7-feet below the street level, the second-story windows are very close to the street level. Additionally, the applicant provided testimony to us today that the ordinance does allow for an 8-foot fence in similar situations where if it was an adjoining single-family lot, then the height elevation would allow an 8-foot. The difference is because of the street instead of a single-family there in requires the applicant to come before the board for this variance. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance is represented by its equal application to all citizens. In certain instances however, a unique property characteristic warrants flexibility from a provision. For this lot, several characteristics limit design options. Specifically the three fronted streets on three sides of the lot make it a difficult lot to situate. Also the sloping variance and elevation make it an additional burden for the property owner. 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-6 PUD ERZD MLOD" zoning districts.** 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 **there are several rock fences throughout the neighborhood which are equal to or exceed 8-feet in height which the applicant is requesting so the subject property is in character of the neighborhood.** 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 applicant is requesting a variance from a fence height limitation along a property line where the street is elevated 7-feet above the finished floor elevation of the proposed house.** In addition, the lot has streets along three of its property lines. The elevation difference is allowing views from the street into the bedrooms on the second story. The owner did not create this situation and it is a unique circumstance in the district. The motion was seconded by Mr. Quijano.

AYES: Ozuna, Quijano, Camargo, Dutmer, Rodriguez, Hardemon, Rogers, Britton, Zuniga, Cruz, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.



CASE NO. A-13-011

Applicant – Hilda De Hoyos
Lot 25, Block 32, NCB 1934
1910 W Gramercy Place
Zoned: “R-6 H AHOD” Residential Historic Airport Hazard Overlay District

The applicant is requesting a special exception to allow a one-operator beauty shop.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested special exception. She indicated 27 notices were mailed, one was returned in favor and 3 were returned in opposition and received no response from both Jefferson and Woodlawn Lake Neighborhood Associations. (4:12:28)

Hilda De Hoyos, applicant, stated she has been in cosmetology for over 30 years and will have customers by appointment only which would limit the amount of traffic on her property. She also stated she purchased the property a little over four years ago and cleaned it up. She further stated she has spoken to several neighbors and will speak to the other neighbors who are in opposition.

The following citizens appeared to speak:

Rosie Gonzales, 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-13-011 closed.

MOTION

A motion was made **Ms. Rogers**. Re Appeal No. **A-13-011**, subject property **1910 W Grammercy Place, Lot 25, Block 32, NCB 1934**, applicant **Hilda De Hoyos**. I move that the Board of Adjustment grant the applicant’s request, application for a Special Exception for the subject property s 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 UDC 35-399.01. The special exception will be in harmony with the spirit and purpose of the chapter in that **the UDC which has established performance measures which, when followed, eliminate the anticipated impacts from the home occupation. The requested special exception is in harmony with the spirit and purpose of this chapter in that the proposed one-operator beauty shop will follow the specified criteria established in Section 35-399.01 of the UDC.** The public welfare and convenience will be substantially served in that **the requested special exception will further serve the public welfare in that this beauty shop will operate within the parameters set forth by Section 35-399.01 and will serve as a public convenience within a residential area. Not only for the cliental which the applicant has established but once the shop is established possibly the surrounding neighbors will take advantage of it also and find what a nice convenience it is.** The neighboring property will not be substantially injured by such proposed use in that **the granting of the special exception will**

not alter the use of the property for which the special exception is sought. The primary use of the subject property will remain a single-family residence. Under the standards for the special exception, there should be no obvious indication that a business is in operation. Only a small sign, 1-square foot in size, is allowed. In addition, the special exception is only valid for a specific time frame. Complaints and concerns voiced by neighbors can be cause for a future decision to revoke the special exception in accordance with Section 35-406 or not approve a renewal request therefore there are checks and balances for the neighbors in this regard. 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 it does not appear that the granting of the special exception will alter the essential character of the zoning district in which the subject property is located; the proposed beauty shop will remain confined to under 10%, about 7% as stated by the applicant, of the gross floor area of the primary residence. In addition, adequate space is available on site to park the anticipated customer. On-street parking is also available although it is not shown in the case here that would be necessary. And this does mention a district and this is a historical district area designated historical but having a shop within confined of a dwelling would not in any way harm the designation of a historical area and particularly since the signage is described as to how it can be. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that the purpose of the zoning district is to promote the health, safety, and general welfare of the public at large. It has been determined that a home-owner can conduct certain businesses without a negative impact on neighboring properties. This one-operator beauty shop will not impact the public at large, nor will it weaken the regulations established for this district. The hours of operation will be Tuesday thru Saturday from 9:00 am until 5:00 p.m., a total of forty hours. This granting will be for four year grant. The motion was seconded by Mr. Cruz.

AYES: Rogers, Cruz, Hardemon, Camargo, Dutmer, Rodriguez, Quijano, Zuniga, Britton, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-13-012

Applicant – Pura Zavala
 Lots 46 and 47, Block 30, NCB 8523
 2031 West Pyron Avenue
 Zoned: “R-6 AHOD” Residential Single-Family Hazard Overlay District

The applicant is requesting a special exception to allow a four-year renewal of a previous special exception for a one-operator beauty shop.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested special exception. He indicated 29 notices were mailed, 3 were returned in favor and none were returned in opposition.

Pura Zavala, applicant, stated she is requesting a renewal of her special exception. She also stated his special exception is convenient for to work from home.

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-13-012 closed.

MOTION

A motion was made **Mr. Quijano**. Re Case No. **A-13-012**, variance application **special request for an exception to allow a four-year renewal of a special exception granted February 23, 200, for a one-operator beauty shop**, subject property is located at **Lots 46 and 47, Block 30, NCB 8523**, the location is at **2031 West Pyron**, the applicant and owner is **Pura Zavala**, and the zoning is **"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District**. I move that the Board of Adjustment grant the applicants request for a variance 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 UDC 35-399.01. 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 requested special exception will be in harmony with the spirit and purpose of the chapter in that the proposed one-operator beauty salon will follow the specified criteria established in Section 35-399.01 of the Unified Development Code**. The public welfare and convenience will be substantially served in that **public welfare and convenience will be served with the granting of this request as it will provide a valuable and needed public service to the residents of the neighborhood and it will not negatively impact surrounding properties**. The neighboring property will not be substantially injured by such proposed use in that **the subject property will be primarily used as a single-family residence. The beauty shop will occupy only a small part of the structure, and the fact that a beauty shop is being operated from the home will likely be indiscernible to passersby. As such, neighboring properties will not be substantially injured**. 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 requested special exception will not alter the essential character of the district as the use will likely be indiscernible to passersby**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the purpose of the zoning district is to promote the public health, safety, morals, and general welfare of the city. The granting of this special exception will not weaken these purposes, nor will it weaken the regulations established for this district. The specified hours of operation will not exceed forty hours per week, from Tuesday thru Saturday from 9:00 am until 5:00 pm and this recommendation is for a period of forty-eight months or four years**. The motion was seconded by **Ms. Dutmer**.

AYES: Quijano, Dutmer, Rodriguez, Hardemon, Camargo, Britton, Rogers, Cruz, Zuniga, Ozuna, Gallagher

NAYS: None

THE SPECIAL EXCEPTION WAS GRANTED.

CASE NO. A-13-013

Applicant – Iron Horse Apartments 1, Ltd.

Lot 7 and a portion of Lot 6, NCB 13868

2439 and 2441 NE Loop 410

Zoned: “C-2 & MF-33 AHOD” Commercial & Multi-family Residential Airport Hazard Overlay District

The applicant is requesting a 305-foot variance from the 90-foot maximum front setback to allow an existing building 395 feet back from the front property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 67 notices were mailed, one was returned in favor and none were returned in opposition and no response from The Greater Marymont Neighborhood Association.

Shannon Castro, representative, stated the front of the building would not be conforming. She also stated the shape of the property would make it difficult to rebuild closer to the street line. She further stated due to heavy traffic if a building would be built closer to the front it would impede traffic for tenants coming in and out of the apartment complex.

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-13-013 closed.

MOTION

A motion was made **Mr. Ozuna**. Re Appeal No. **A-13-013**, variance application for **2439 and 2441 NE Loop 410**, subject property is **Lot 7 and a portion of Lot 6, NCB 13868**, situated again at **2439 and 2441 NE Loop 410**, the applicant being **Iron Horse Apartments 1, LTD.**, the variance is for a **305-foot variance from the maximum 90-foot front yard setback in order to allow an existing building 395-feet from the front property line**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-013**, 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 at large**. A maximum setback is generally established to create a

streetscape of buildings in a consistent location along a block facade. Building proximity also adds natural surveillance, thought to discourage criminal activity. The visual impact of maximum setbacks can be dramatic in a residential neighborhood or a neighborhood commercial district. There is far less potential visual impact from a large maximum setback, particularly in an area like the subject property. The property fronts on a freeway access road, with an office/warehouse use next door. The large landscaped setback does not detract from the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the existing distant setback allows for a long driveway which in this situation is very beneficial. The complex includes 464 dwelling units and two points of ingress and egress. The Institute of Traffic Engineers estimates that over 200 vehicles will use this driveway during the morning peak hour. The driveway can currently stack approximately 15 vehicles at one time, providing a safe way to exit the property. Constructing a building with its necessary parking within this area, while avoiding the easements, would reduce the stacking potential and result in an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance is represented by its equal application to all citizens. In certain instances however, a unique property characteristic warrants flexibility from a provision. This parcel is 120-feet wide, but it has an easement reducing its useable area to 70-feet. Within the remaining area, access is provided for 464 dwelling units which generate over 3,000 vehicle trips each day. The competing public interests will be served by authorizing a greater setback in this apartment complex. 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 C-2 & MF-33 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 existing 395-foot setback, in place since 1975, has established the character in this block.** Mature trees grow along the access driveways. The frontage is zoned for commercial uses and is developed nearby with a technology business park, office buildings and a hotel. 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 applicant is requesting a variance from a maximum front setback requirement which currently makes one building non-conforming.** The ordinance was changed after the building was constructed, so the building is permitted to remain in place unless and until it is destroyed by more than 50% of its replacement value. Non-conforming status can impact a project's financial status, but the issue is larger than a non-conforming rating. It is the disruption caused to the access of the remaining units should the setback requirement force a building to be reconstructed on the narrow portion of the parcel. The International Fire Code requires a minimum of two points of access into an apartment complex with more than 100 units. It would be unsafe if one of these access points were blocked, even temporarily. Therefore, the width of the parcel, the 50-foot easement, and the existing site design providing access to the dwelling units create a unique circumstance which warrants the requested variance. The motion was seconded by Mr. Quijano.

AYES: Ozuna, Quijano, Camargo, Hardemon, Rodriguez, Dutmer, Rogers, Britton,
Zuniga, Cruz, Gallagher
NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-014

Applicant – Kaufman and Killen, Inc..
Lot 14, Block 4, NCB 17851
14811 Huebner Road

Zoned: “C-2 AHOD MLOD ERZD” Commercial Airport Hazard Overlay Camp Bullis Military Lighting Overlay Edwards Recharge Zone District and “MF-25 AHOD MLOD ERZD” Multi-Family Airport Hazard Overlay Camp Bullis Military Lighting Overlay Edwards Recharge Zone District

The applicant is requesting a 2-foot variance from the maximum 6-foot fence height to allow an 8-foot fence along the rear property line.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 24 notices were mailed, none were returned in favor and none were returned in opposition and the City of Shavano Park is in support.

Bill Kaufman, representative, stated there is a grade decline on the property. He also stated the fence would mitigate the view of the apartments from the residential property and there is no opposition. He further stated the fence consists of wood and will be maintained.

The following citizens appeared to speak:

Kyle McCain, 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-13-014 closed.

MOTION

A motion was made **Mr. Camargo**. I would move that in Case No. **A-13-014**, the applicant being **Kaufman and Killen, Inc.**, be granted a **2-foot variance from the maximum 6-foot fence height to allow an 8-foot fence to be constructed along the rear property line, which in this case would be the northwest property line of the subject property which is Lot 14, Block 4, NCB 17851**. It is felt that such variance will not be contrary to the public interest in that **there was no opposition. It was stated that in fact there was a representative, the City Manager of Shavano Park, that appeared at the meeting supporting the request that the applicant has made**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance may not be a hardship for the applicant, but for the abutting properties to the north and in that respect**

the applicant’s proposal will benefit the neighbors to the northwest of the subject property. The spirit of the ordinance is observed and substantial justice is done in that the UDC contemplates higher fences between intensity land uses which is the case here between single family and multiple family type uses. I should point out also that it has been stated that the adjacent property, which is in Shavano Park, does in fact allow 8-foot fences similar to that which is being requested by this 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 requested variance will not authorize the operation of a use that is not permitted on the zoning classification and the use which is under construction of a multiple family or condominium type uses isn’t allowed within the various zoning classifications on this property. 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 have an adverse effect on adjacent property in that it is a property which is situated upon the intersection of two major thoroughfares with single family residences to the southeast and back to the subject property and likewise on the northwest side of the 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 in that the plight of the owners is based upon separation of different intensity land uses and the desire of the applicant to be a good neighbor with the adjacent property owners of Shavano Park. The motion was seconded by Mr. Rodriguez.

AYES: Camargo, Rodriguez, Quijano, Rogers, Hardemon, Zuniga, Dutmer, Cruz, Britton, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The November 19, 2012 minutes were approved with all members voting in the affirmative.

The December 10, 2012 minutes were approved with all members voting in the affirmative.

Mr. Zuniga departed at 3:14 pm.

Mr. Britton departed at 3:26 pm.

