

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
July 15, 2013**

Members Present:

Michael Gallagher
Andrew Ozuna
Helen Dutmer
George Britton
Jesse Zuniga
John Kuderer
Gene Camargo
Maria Cruz
Henry Rodriguez
Harold Atkinson

Staff:

John Jacks, Assistant Director
Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Planner
Osniel Leon, 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.

CASE NO. A-13-054

Applicant – Frances Cisneros.
Lot 14, Block 31, NCB 11757
507 Creath Place
Zoned: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a special exception to allow a renewal of a special exception granted July 20, 2009, for a one-operator beauty or barber shop.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the special exception. He indicated 27 notices were mailed, 5 were returned in favor and none were returned in opposition.

Frances Cisneros, applicant, stated this special exception is convenient for her lifestyle. She also stated she can service her family and friends. She further stated she has been operating this beauty shop for several years.

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-13-054 closed.

MOTION

A motion was made by **Mr. Rodriguez**. “Re Appeal No. **A-13-054**, applicant is **Frances Cisneros**, legal description **Lot 14, Block 31, NCB 11757**, zoning is “**R-4 AHOD**” **Residential Single-Family Airport Hazard Overlay**. I move that the Board of Adjustment grant the applicants request for a **one-operator beauty shop**, 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 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 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 and the neighboring properties will not be substantially injured**. 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 granting of this special exception will not weaken these purposes, nor will it weaken those purposes**. The applicant is asking for a **four-year extension and I move that we grant such**. Also the operation will be **Tuesday, Wednesday, Thursday, Fridays, and Saturdays from 9am until 4pm**. I move once again that **this board approve this**.” The motion was seconded by **Ms. Dutmer**.

AYES: Rodriguez, Dutmer, Kuderer, Atkinson, Cruz, Britton, Zuniga, Camargo, Ozuna, Gallagher

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED.

CASE NO. A-13-055

Applicant – Christopher Ortiz.
Lo 32, Block 17, NCB 8991
919 SW 39th Street

Zoned: “R-6 AHOD” Residential Single-Family District Airport Hazard Overlay Districts

The applicant is requesting a special exception to allow the relocation of two residential buildings to a lot zoned for single family use, located at 919 SW 39th Street. The buildings will be combined into one single family structure.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested special exception. She indicated 32 notices were mailed, 2 were returned in favor and 5 were returned in opposition.

Christopher Ortiz, applicant, stated he has purchased and has obtained the structure from his father. He also stated his family will be the only ones who will live in the residential structure. He further stated the property where the structure currently sits is zoned commercial and he would like move the structure to a residential property.

The following citizens appeared to speak:

Rosalinda Herrera, citizen, expressed concerns about the use of the property.

Mary Alice Mendez, citizen, expressed concerns about the zoning of the property.

Teresa Hernandez, citizen, expressed concerns about the use of the property.

Delicia Herrera, citizen, expressed concerns about the use of the property.

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-13-055 closed.

MOTION

A motion was made by **Mr. Ozuna**. "Re Appeal No. **A-13-055**, application for **919 SW. 39th Street**, subject property is **Lot 32, Block 17, NCB 8991**, located again at **919 SW. 39th Street**, applicant being **Christopher Ortiz**, the motion before us and the request is for a **special exception to allow the relocation of two residential buildings to a lot zoned for single family use, located at 919 SW 39th Street. The buildings will be combined into one single family structure.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-055**, 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 that the original property owner recorded a residential subdivision plat nearly 100 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 applicant is proposing a large side-yard setback of 25-feet from the neighboring property. In addition, mature trees line this shared boundary, providing privacy screening. Along the opposite side property line, rear yards of homes facing Marbauch Avenue abut. With these accommodations in place, 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 in this area have developed over time, and are each unique in design. Therefore, the character is eclectic, showing a broad diversity of residential styles. The character is more reinforced by the large lots with wide setbacks. 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 "R-6 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 not exceed the minimum front, side and rear yard setbacks of the district."** The motion was seconded by Mr. Zuniga. Discussion followed with comments from Mr. Rodriguez regarding the importance of speaking with the neighbors.

AYES: Ozuna, Zuniga, Dutmer, Kuderer, Rodriguez, Camargo, Atkinson, Cruz, Britton, Gallagher

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED.

CASE NO. A-13-056

Applicant – Gerald & Lady Ellen Clark

Lot 16, NCB 12351

310 Clubhill

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

The applicant is requesting 1) a 2-foot variance from the required 5-foot minimum side yard setback to allow a building addition 3-feet from the property line; 2) a 2-foot variance from the maximum allowed projection of an architectural feature to allow an eave within 1-foot from the side property line; and 3) a 5-foot variance from the required 5-foot minimum side yard to allow an atrium on the property line.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variances. She indicated 22 notices were mailed, 6 were returned in favor and none were returned in opposition.

Gerald Clark, applicant, stated his variance would enhance his property by having more use of the facility. He also stated the atrium, along with the rail road ties, were existing when the home was purchased. He further stated this addition would be an indoor/outdoor room and would add value to the property. He enclosed the deck to keep animals away from the deck.

The following citizens appeared to speak:

Annie Rugh, 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-13-056 closed.

MOTION

A motion was made by **Mr. Kuderer**. “Re Appeal No. **A-13-056**, variance application for **Gerald & Lady Ellen Clark**, subject property at **310 Clubhill**, property description **Lot 16, NCB 12351**, situated at **310 Clubhill**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-056**, 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 interest is protected by minimum setbacks established to ensure adequate air, light and fire separation. There are construction methods that can be used to enhance the fire protection when these minimum setbacks have been compromised. These methods will be enforced if the Board decides these variances 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 require that the applicant remove enough of the proposed addition to provide the 5-foot setback. The existing exterior wall of the main home is located at the minimum 5-foot setback, so the addition would then be “in-line” with the main structure. The interior space would be reduced to about 6.5 feet wide without the variance.** The spirit of the ordinance is observed and substantial justice is done in that **various zoning court cases have provided guidance as to the “spirit” of the ordinance as contrasted with the “strict letter” of the law. In observing the spirit, the Board is directed to weigh the competing interests of the property owner and the community. The community has a right to the prescribed setback, but reduction in the required setback is one of the most frequently requested variances. In this neighborhood, many homes were constructed very close to the property line, a fairly common occurrence with narrow lots.** 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-5 AHOD” zoning district.** Such variances 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 property in question had an existing deck in the same location. The deck had a roof and fencing attached around its**

edge to provide privacy. Eventually, the owner decided to make this space more permanent with the plan as proposed. It would seem that allowing the building addition to match the historic deck would not alter the character of the district. Though the requested variance to allow the roofline within a foot of the property has the potential to injure the adjacent property in the event of a fire, residential plans examiners have stated that mitigation methods are available to protect the neighboring property. In addition, this property owner has responded in favor of the requested variance and has no concerns that the requested variance or a reduced variance be granted. Regarding the last variance to allow the atrium on the property line, the construction is very similar to a wooden fence, which is allowed on the property line. It is also somewhat temporary in nature and could remain without injuring the neighbor to this side. This neighbor has called and submitted a written response to the Notice of Public Hearing in support of the requested variances. 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 existing on this property are similar to all lots with 50-feet of lot width, but not necessarily self-imposed. The house was not built by the applicant; they purchased it in 1992 with the existing deck and the atrium as well. A clear-glass picture window in the restroom is a very unique circumstance that warrants some remedy.** The motion was seconded by Ms. Dutmer. Discussion followed with comments from Mr. Camargo stating his concerns of the public interest outside of the 200 foot notification; no special conditions or unique circumstances existed on the property since the prior work was done without a permit and the original foundation constructed was an open deck; and that the spirit of the code would not be observed and would injure adjacent property by allowing an intrusion into the neighboring property. Ms. Dutmer and Mr. Rodriguez stated their disagreement since the adjacent property owner spoke in favor of the variance.

AYES: Kuderer, Dutmer, Atkinson, Britton, Rodriguez, Ozuna, Gallagher

NAYS: Cruz, Zuniga, Camargo

THE VARIANCE IS NOT GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-13-057

Applicant – Araceli Sanchez

Lot 10, Block 197, NCB 9655

1702 La Manda Blvd

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

The applicant is requesting a 1.6 foot side setback variance from the required 5 foot minimum side yard setback to allow an accessory dwelling unit 3.4 feet from the side property line.

Osniel Leon, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 35 notices were mailed, one was returned in favor and none were returned in opposition.

Araceli Sanchez, applicant, stated her parents will be living in the accessory dwelling. This would allow for her to care for her parents while she is a home with her two small children. She also stated her parents are elderly and have several medical conditions. She further stated the accessory dwelling has a small bedroom, kitchen, and bathroom.

Martha Escobedo, representative, stated the accessory structure already existed. She also stated the owner is in fact enhancing the characteristic her property. She further stated the existing structure will be for family and not for renters. The adjoining neighbor has no problem with the addition.

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-13-057 closed.

MOTION

A motion was made by **Mr. Ozuna**. "Re Appeal No. **A-13-057** variance application for **Araceli Sanchez** subject property description **Lot 10, Block 197, NCB 9655**, situated again at **1702 La Manda Blvd**, applicant being **Araceli Sanchez**, variance request is for a **1.6 foot side setback variance from the required 5 foot minimum side yard setback to allow an accessory dwelling unit 3.4 feet from the side property line**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-057**, 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 variance request would not be contrary to the public interest. Testimony was provided that this dwelling and the main building were built prior to the existence of the side setbacks. The property owner most affected by the property is in support of the subject variance.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant provided testimony to us today that the building will be utilized for her parents to provide housing for them and if the ordinance were to be enforced the applicant would not be able to utilize the building for such use.** The spirit of the ordinance is observed and substantial justice is done in that **the granting of the variance would provide the applicant use of the property, which not only affects the adjacent property owner, and allows for their continued enjoyment and use of the property.** 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 existing "R-4" residential zoning district will remain and no changes are proposed.** 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 **accessory structures**

are very common in the surrounding neighborhood. Many appear to be built on the property lines. It would seem that allowing the existing building to remain by granting the variance would not alter the character of the district. 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 existing on the subject property were not caused by the applicant, but rather by adoption of the property within the City of San Antonio which then later enforced side setback requirements which were not required when the accessory structure of the main building were constructed.** The motion was seconded by Mr. Rodriguez.

AYES: Ozuna, Rodriguez, Dutmer, Camargo, Atkinson, Kuderer, Britton, Zuniga, Cruz, Gallagher

NAYS: None

THE VARIANCE IS GRANTED.

Approval of the Minutes

The July 1, 2013 minutes were approved with all members voting in the affirmative with the exception of Ms. Dutmer abstaining.
