

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
March 2, 2009**

Members Present:

Michael Gallagher
Paul Klein
Liz Victor
Edward Hardemon
Helen Dutmer
George Britton Jr.
Mary Rogers
Mike Villyard
Mimi Moffat

Staff:

Fernando De Leon, Assistant Director
Rudy Niño, Senior Planner
Jacob Floyd, Planner
Michael Farber, 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-09-014 cont.

Applicant – Eric Eidelbach
Lot 1, Block 7, NCB 9136
115 Wyanoke
Zoned: “R-4” Residential Single-Family District

The applicant is requesting a 2-foot fence from the requirement that side and rear-yard fences not exceed 6 feet in height, in order to keep an existing 8-foot tall side and rear-yard fence.

Michael Farber, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 21 notices were mailed, 5 were returned in favor and none were returned in opposition.

Eric Eidelbach, representative, stated the reason for this request is for the noise pollution. He also stated the request of the fence would be for safety issues due to accidents happening in this area. He further stated the fencing company obtained a permit after city code compliance told him about the permit.

No citizens 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-09-014 closed.

MOTION

A motion was made by **Mr. Klein**. In Appeal No. **A-09-014 continued**, this is a variance application for a **2-foot variance from the requirement that side and rear-yard fences not exceed 6 feet in height, in order to keep an existing 8-foot tall side and rear-yard fence**, the subject property is **Lot 1, Block 7, NCB 9136**, also known as **115 Wyanoke**, the zoning is **"R-4" Residential Single-Family District existing use is Single-Family residence**, the applicant is **Eric Eidelbach**. I move that the Board of Adjustment grant the application's request regarding this appeal, 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 fence is currently existing along Burr Rd.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the existing fence posts which are currently 8-feet in height would need to be removed**. The spirit of the ordinance is observed and substantial justice is done in that **fences are allowed in rear-yard applications such as this**. 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 zoning is "R-4" Residential Single-Family District and that is the current use of the 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 **fences are located along Burr Rd.** The plight of the owner of the property for which the variance is sought 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 **noise pollution is an issue along Burr Rd.** The motion seconded by **Ms. Dutmer**.

AYES: Dutmer

NAY: Klein, Villyard, Britton, Rogers, Moffat, Hardemon, Victor, Gallagher

THE VARIANCE WAS NOT GRANTED.

Mr. Ozuna arrived at 1:28 p.m.

CASE NO. A-09-018 cont.

Applicant – Nathan Golik

Lot P-14A, NCB 19221 or Lot 7, Block 9, NCB 19221

19100 Block of Stonehue

Zoned: "C-2 S ERZD" Commercial Edwards Recharge Zone District with a Specific Use Authorization for a Hospital

The applicant is requesting a 23 space parking adjustment from the standard that hospitals with a gross floor area of 40,831 square feet maintain a minimum of 102 parking spaces, in order to allow only 79 parking spaces.

Jacob Floyd, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated that there were 21 notices mailed, 1 was returned in favor and 3 were returned in opposition, Stone Oak Communities of Mutual Amenities Association is in favor and no response from Stone Oak Property Owners Association.

Steven Gose, representative, stated the state has a requirement of having 78 parking spaces which is how the applicant came up with 79 parking spaces. This is a rehabilitation hospital which will have some neurological patients and others. These patients come here to stay for about three to four weeks for rehabilitation and they do not leave on a daily basis. This is not a traditional hospital, but the patients do have family members visiting them.

No citizens 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-09-018 cont. closed.

MOTION

A motion was made by **Mr. Ozuna to continue until the next regularly scheduled meeting on March 16, 2009.** The motion seconded by **Mr. Villyard.** All members voted in the affirmative.

AYES: Klein, Dutmer, Villyard, Hardemon, Ozuna, Britton, Camargo, Victor, Alejos, Rogers, Gallagher

NAY: None

THE MOTION CARRIES.



CASE NO. A-09-020

Applicant – Charles M. and Sarah J. McCraig
Lot 27, Block, 12, NCB 15910
1214 Fillmore Drive
Zoned: "R-6" Residential Single-Family District

The applicant is requesting a complete variance from the requirement that a minimum 5-foot side setback be maintained in "R-6" zoning districts, in order to keep an existing carport on the north side property line.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of this variance. He indicated that there were 27 notices mailed, 1 was returned in favor and 1 was returned in opposition.

Sarah McCraig, representative, stated the reason for this variance is because of security problems and vandalism to their vehicles. She also stated their vehicles have been damaged by hail. She further stated her contractor informed her that she did not need a permit because it was not an enclosed carport. She also stated there are several other carports in the area. It would be a hardship for her to knock down the carport due to her husband being a disabled vet and her upcoming surgeries. Code compliance advised her to cut the overhang.

No citizens 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-09-020 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No **A-09-020**, variance application for **Charles M. and Sarah J. McCraig**, subject property described as **Lot 27, Block 12, NCB 15910**, situated at **1214 Fillmore Drive**, the variance is for a **complete variance from the requirement that a minimum 5-foot side setback be maintained in R-6 zoning districts, in order to keep an existing carport on the north side property line**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-09-020**, 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 **of the evidence presented before us we had one person in opposition which facts were debated by the applicant to be shown untrue. We have support from the neighboring property owner to the east and the neighborhood is such that these type of garages are prevalent to the neighborhood**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has presented evidence before us about medical conditions that her husband and herself have in that financial hardship necessarily in remedying the situation would be difficult for the applicant**. The spirit of the ordinance is observed and substantial justice is done in that **again the garages are predominantly in the neighborhood and it is a use that is coherent with the neighborhood plan**. 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-6" Residential Single-Family zoning is to remain, there are no proposed modifications to the zoning or use of the 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 **any work to be done for the garage needing to the carport to remain, they will have to comply with all city building codes and permits and requirements**. 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 carport was built by a contractor who the applicant thought had pulled the necessary permits which was not the case and any remedy of the situation would be undo hardship to the applicant.** The motion seconded by Ms. Rogers.

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

THE VARIANCE WAS GRANTED.

Board members took a 10-minute recess.

CASE NO. A-09-024

Applicant –James Hetherington
Lots 6 and 7, Block 4A, NCB 486
1713 and 1719 North Pine Street
Zoned: “MF-33” Multi-Family District and “C-2” Commercial District

The applicant is requesting a Special Exception to relocate three residential structures from 2432 South Loop 410 West to 1713 and 1719 North Pine Street.

Michael Farber, Planner, presented background and staff’s recommendation of approval of this variance. He indicated that there were 35 notices were mailed, 4 were returned in favor and 4 were returned in opposition and Government Hill Alliance is in support.

James Hetherington, applicant, stated he intends to build a studio on the property because he is a sculptor. He also stated he wants one of the houses to be his residence and rent out the other two structures which will help defray the mortgage. He hopes to be a contributing member to the community.

The following citizens appeared to speak:

Rebecca Paskos, Planner, spoke in opposition.

John Baker, citizen, spoke in opposition.

Marlene Hawkins, 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-09-024 closed.

MOTION

A motion was made by **Ms. Victor**. Regarding Case No. **A-09-024**, application for **1713 and 1719 North Pine Street Lots 6 and 7, Block 4A, NCB 486**, applicant is **James Hetherington**, I move that the Board of Adjustment grant the applicant's request regarding Appeal **A-09-024**, 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 zoning currently allows for a much denser use in a commercial space and if the proposed homes are moved into this space it will actually cut down on neighborhood density instead of making it more dense**. The public welfare and convenience will be substantially served in that **the neighborhood continue to have the same style of single-family homes and will not have very large apartment buildings or a commercial space that would be less appealing to the neighborhood**. The neighboring property will not be substantially injured by such proposed use in that **the zoning does allow for much denser application so having two homes instead of fifteen units will make the neighborhood much stricter to other homes in the area**. 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 homes come from this neighborhood**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **it will be single family homes on a lot that will allow for much heavier density housing**. Each house must be in comparable in size, in quality of construction, and in condition to the average of the other houses in the area. The motion seconded by **Mr. Hardemon**.

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

NAY: Rogers

THE VARIANCE WAS GRANTED.

CASE NO. A-09-026

Applicant – Anthony Qwik

The east 50 feet of the south 198 feet of Lot P-28, east 198 feet of Lot P-28A and P-29B, NCB 15684

10803 Perrin Beitel

Zoned: "C-3 NA" General Commercial Non-Alcoholic Sales District and "I-1" General Industrial District

The applicant is requesting **1) a 2-foot 10-inch variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, in order to keep a 6-foot 10-inch tall fence on the east property line, 2) a 2-foot 10-inch variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, in order to keep a 6-foot 10-inch tall fence on the north property line from the northeast corner to a point 53 feet west of the northeast corner, 3) an 8-foot variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, in order to keep a 12-foot tall fence on the north property line from a point 53 feet**

west of the northeast corner to a point 110 feet west of the northeast corner, 4) a 6-foot variance from the requirement that fences in side and rear yards not exceed 6 feet in height, in order to keep a 12-foot tall fence on the north property line from a point 110 feet west of the northeast corner to the western terminus of the north property line, and 5) a 2-foot variance from the requirement that fences in side and rear yards not exceed 6 feet in height, in order to keep an 8-foot tall fence on the west and northwest property lines.

Jacob Floyd, Planner, presented background and staff's recommendation of approval of this variance. He indicated that there were 11 notices mailed, none were returned in favor and none were returned in opposition and no official response from the Hills of Park North Neighborhood Association.

Anthony Qwik, applicant, stated the reason for the requests is for safety of the vehicles. There have been numerous break-ins where they cut the chain link fence. He also stated the fence was already there when he bought the property and he moved it in the front 10-foot towards the property line and he moved the back chain link fence to the property line. On the front he took off 4-feet from the chain link and added 4-feet of wrought iron which makes is an 8-foot fence which is allowed in an industrial zoning. He further stated he did not get a permit because he didn't think he needed one since there was an existing fence.

No citizens 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-09-026 closed.

MOTION

A motion was made by **Mr. Klein**. Re Appeal Case No **A-09-026**, variance application for property commonly known as **10803 Perrin Beitel**, subject property is described as the **east 50 feet of the south 198 feet of Lot P-28, east 198 feet of Lot P-28A and P-29B, NCB 15684**, property is zoned "**C-3 NA**" **General Commercial Non-Alcoholic Sales District** and "**I-1**" **General Industrial District**, the applicant is **Anthony Qwik**, the variances requested are a total of five 1) a **2-foot, 10-inch variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, in order to keep a 6-foot 10-inch tall fence on the east property line**, variance request 2) a **2-foot 10-inch variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, in order to keep a 6-foot 10-inch tall fence on the north property line from the northeast corner to a point 53 feet west of the northeast corner**, variance request 3) an **8-foot variance from the requirement that predominantly open front yard fences not exceed 4 feet in height, in order to keep a 12-foot tall fence on the north property line from a point 53 feet west of the northeast corner to a point 110 feet west of the northeast corner**, variance request 4) a **6-foot variance from the requirement that fences in side and rear yards not exceed 6 feet in height, in order to keep a 12-foot tall fence on the north property line from a point 110 feet west of the northeast corner to the western terminus of the north property line**, and variance request 5) a **2-foot variance from the requirement that fences in side and rear yards not exceed 6 feet in height, in order to keep an 8-foot tall fence on the west and northwest property lines**.

I move that the Board of Adjustment grant the applicant's request regarding this appeal, for variances 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 **these fences as requested through these variances would safeguard the property for the business intended by the applicant.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **in certain locations along the northern property lines grade variations do affect the height and do require that a 12-foot fence be installed.** The spirit of the ordinance is observed and substantial justice is done in that **the Unified Development Code does allow in certain instances where substantiation is provided that the variance procedure can be used for properties of this sort.** 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 property is zoned "C-3 NA" General Commercial Non-Alcoholic Sales District and "I-1" General Industrial District and the applicant has applied for permits which will validate the uses that are allowed by zoning.** 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 **this area is commercial in nature.** 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 owner has purchased this property in the interest of creating a business that will contribute to the economy of San Antonio, requires the fences requested by these five variances for security of the property and premises.** The motion seconded by Mr. Villyard.

AYES: Rogers, Ozuna, Britton, Victor, Dutmer, Gallagher

NAY: Klein, Villyard, Moffat, Hardemon

THE VARIANCE WAS NOT GRANTED.

Sign Master Plan No. 09-001

Arturo Elizondo, Sign Inspector, briefed Board Members on Sign Master Plan for Walnut Hills Apartments, located at Babcock and Medical Drive.

Mr. Klein made a motion to approve **Sign Master Plan No. 09-001** and was seconded by **Ms. Dutmer** and all members voted in the affirmative.

Approval of the Minutes

The February 23, 2009 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 4:22 p.m.

APPROVED BY: Michael R. Gallagher OR 3-16-09
Michael Gallagher, Chairman Paul Klein, Vice-Chair

DATE: 3-16-09

ATTESTED BY: [Signature] DATE: 3-17-09
Executive Secretary