BOARD OF ADJUSTMENT
OFFICIAL MINUTES
May 4, 2009

Members Present:

Michael Gallagher
Paul Klein
Liz Victor
Helen Dutmer
George Britton, Jr,
George Alejos
Mary Rogers
Mike Villyard
Gene Camargo
Maria Cruz
Mimi Moffat

Staff:

Fernando De León, 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-09-043 cont.

Applicant – Esther Ponce
Lot 24, Block 15, NCB 12485
4027 Fawnridge Drive
Zoned: "R-5" Residential Single-Family District

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

Jacob Floyd, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 16 notices were mailed, 1 was returned in favor and 7 were returned in opposition and the Oak Hills Citizens Association is in favor.

Esther Ponce, applicant, stated she has been operating for the last seven years and she does not do more than twenty hours a week. Her neighbors were not aware of the salon because she does not have any advertising that she has a salon. She also stated she wanted to continue to serve previous customers. She use to work in a salon and several of her customers who became good friends with her requested she continue to do their hair after she stopped working at the salon due to her mother being a wheelchair and needing fulltime car. She did get support from her

neighborhood association and some of the neighbors had concerns due to them thinking it was a rezoning and their property would devalue.

The following citizens appeared to speak:

Kenneth McLeod, citizen, spoke in opposition.

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-09-043 cont. closed.

MOTION

A motion was made by **Ms. Rogers to continue this case to the next regularly scheduled meeting on June 1, 2008.** The motion seconded by **Mr. Villyard.**

AYES: Rogers, Villyard, Alejos, Britton, Dutmer, Hardemon, Victor, Moffat, Camargo, Klein, Gallagher
NAY: None

THE CONTINUANCE WAS GRANTED.

CASE NO. A-09-048

Applicant – Robert W. Ritchie
Lot 27, NCB 11924
1527 Nacogdoches Road
Zoned: "NP-8" Neighborhood Preservation District

The applicant is requesting **1)** a two (2) foot variance from the requirement that open fences not exceed a height of six (6) feet may be constructed on a vacant lot, in order to keep a solid-screen fence at a height of 8 feet, and **2)** a complete variance from the requirement that at such time that a house or other structure is constructed on the lot, that portion of the fence constructed in the front yard of the house or structure shall be removed or reduced in height to a maximum of three (3) feet in height for a solid screen fence, in order to keep an eight (8) foot tall solid-screen fence.

Michael Farber, Planner, presented background and staff's recommendation of denial of the requested variances. He indicated that there were 30 notices mailed, 4 were returned in favor and 1 was returned in opposition and the Oak Park-Northwood Neighborhood Association is in favor.

Ward Richter, representative, stated his client has this lot on a major thoroughfare with a lot pedestrian traffic. He also stated the construction of the fence was the same pattern of the neighbor and for security since he is away out of the country at times. His client put up the fence not realizing he needed to get a permit. He further stated his client foresees to build a residence in the future.

Robert Ritchie, applicant, stated he bought this property about two years ago. He also stated he bought the property from the church and it had existing fences on both sides and he improved on side of the fence. He thought the permit he obtained was inclusive of the entryway. He further stated the fence was constructed at the same time of the pouring of the approach and none of the city inspectors informed about the height of the fence.

The following citizens appeared to speak:

Boyd Newby, citizen, spoke in favor.

Richard Coleman, citizen, spoke in favor.

Judy Newby, citizen, spoke in favor.

MOTION

A motion was made by **Mr. Camargo.** I would like to move that in Case No **A-09-048,** the request of **Robert W. Ritchie,** on property known as **Lot 27, NCB 11924,** also known as **1527 Nacogdoches Road,** be granted a variance as follows that a **1) a two (2) variance from the requirement that open fences not exceeding a height of six (6) feet may be constructed on a vacant lot, in order to keep a solid-screen fence at a height of 8 feet** and **2) a complete variance from the requirement that at such time that a house or other structure is constructed on the lot, that portion of the fence constructed in the front yard of the house or structure shall be removed or reduced in height to a maximum of three (3) feet in height for a solid fence, in order to keep an eight (8) foot tall solid-screen fence, very lengthy description but we need to keep in mind that which is shown on the site plan and the motion for approval is for keeping or constructing a solid screen fence in accordance with the applicants site plan so there is no confusion that we are not speaking of an 8-foot fence totally across Nacogdoches Road.** Specifically, we find that such variance will not be contrary to the public interest in that **the immediately adjacent property owner has indicated a favorable response to the request, the opposition as noted on this screen before us is some 200 feet to the North and across a residential street that intersects Nacogdoches Road.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **Nacogdoches Road which is a narrow major thoroughfare that carries a considerable amount of traffic poses a situation on a piece of property to be used for residential without solid fencing would create a noise and appearance nuisance to any residential development that occurs onto this lot that actually fronts off to Nacogdoches Road.** The spirit of the ordinance is observed and substantial justice is done in that **this fence which has already been constructed is an extension of a fence that already existed to the Northeast of the subject property and again I would point out that this is a 6-foot solid screen fence with 7.5 inch height columns intercepting this solid screen fencing.** 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 **this is fencing that is being provided surrounding a single-family zoned piece of property on which a single-family residence is proposed to be constructed which is allowed on this classification.** 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 land use to the southeast or to the southwest of the property in question is that of a non single-family residential use and the property to the northeast of the property and abutting the subject property the owners have indicated a favorable response to the request of the applicant.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and 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 **in my opinion the unique circumstances are the fact that we have a single-family property fronting onto this major narrow thoroughfare and that in itself creates a situation that certain allowances should be made for the construction of solid fencing on this property.** The motion seconded by **Ms. Rogers.**

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

THE VARIANCE WAS NOT GRANTED.

Board members took a 10-minute recess.

CASE NO. A-09-049

Applicant – Concepcion Robles
40 and the West 16.2 feet of Lot 41, NCB 2585
341 Lone Star Blvd.
Zoned: "R-6" Residential Single-Family District

The applicant is requesting a special exception to allow a 6-foot tall ornamental-iron front-yard fence.

Jacob Floyd, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated that there were 24 notices mailed, 4 were returned in favor and 4 were returned in opposition.

Aide Luna, representative, stated her parents constructed the fence 12 years ago for security reasons. They were burglarized about five or six times and her father was assaulted with a brick by a neighbor. She also stated the type of fence was decided on because they wanted to enhance the appearance of the neighborhood. The fence helps keep the grandchildren in the yard protected from the traffic coming down the street from teachers and parents from the high school and elementary academy down the street.

The following citizens appeared to speak:

Carlos Morales, citizen, spoke in opposition.

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-09-049 closed.

MOTION

A motion was made by **Mr. Alejos.** In the matter regarding Appeal No **A-09-049,** application for **special exception to allow a 6-foot tall ornamental-iron front-yard fence,** subject property described as **40 and the West 16.2 feet of Lot 41, NCB 2585,** known as **341 Lone Star Boulevard.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-09-049,** application for a Special Exception for the subject property as described above, because the testimony and evidence presented to us show that we have determined that this Special Exception meets the requirements listed in UDC 35-399.04. 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 fence will not create any hazards in the area.** The public welfare and convenience will be substantially served in that **a service will be provided, mainly security, that is desperately needed in the area and furthermore it appears that the existing fence meets all of the criteria required for the special exception.** The neighboring property will not be substantially injured by such proposed use in that **a number of similar fences can be found throughout 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 **it appears that the granting of this special exception will not alter the character of the neighborhood.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the fence would not impose a hardship to neighboring properties and the fence appears to meet all the limitations, conditions, and restrictions set forth in section 35-399.04 of the UDC. And finally the fence unlike a corner lot is located within a city block and does appear to affect the clear vision area intersection sight distance. As testimony presented today further indicates the fence has been in place for over 13 years.** The motion seconded by **Mr. Hardemon.**

AYES: Alejos, Hardemon, Villyard, Britton, Camargo, Victor, Rogers, Dutmer, Moffat, Klein, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-09-052

Applicant – Jeremy Tietze
Lot 1, Block 24, NCB 10071
202 Rilla Vista
Zoned: "R-5" 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-5" zoning districts, in order to construct an addition to the west side property line.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated that there were 15 notices were mailed, 4 were returned in favor and none were returned in opposition and no response from the Shearer Hills/Ridgeview Neighborhood Association is in favor.

Jeremy Tietze, applicant, stated he bought the house over a year and is planning to stay at this area for a long time. He is planning to get married and have children so he wants to make a room addition to the house to make a little bigger. He also stated that he is converting the existing garage into a master bathroom because of the location of the sewer and water lines. He did not want to construct a detach garage because there were none in the neighborhood. If he did any addition in the backyard he would be building over the city gas and water lines and he also wants to save some trees. He further stated several of his neighbors are in support and excited to see the improvements of his house.

The following citizens appeared to speak:

Connie Boyle, 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-09-052 closed.

MOTION

A motion was made by **Mr. Klein.** Re Appeal No. **A-09-052,** this is a variance application for **a complete variance from the requirement that a minimum 5-foot side setback be maintained in "R-5" zoning districts, in order to construct an addition to the west side property line,** subject property described as **Lot 1, Block 24, NCB 10071,** the address is **2023 Rilla Vista,** the zoning is **"R-5" Residential Single-Family,** the owner and applicant is **Jeremy Tietze.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-09-052,** 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 **notifications sent indicate no opposition to this particular case and the Shearer Hills/Ridgeview Neighborhood Association has voiced their support for this application variance request.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **specific geographic or topographic features of this site merit the variance request in that the location of the proposed building addition would save a major tree for the enjoyment of the neighborhood and for the homeowner. Additionally the proposed addition is adjacent to a dedicated dead end street which terminates at Olmos Basin Park and so this would not present a visual or safety hazard with respect to traffic.** The spirit of the ordinance is observed and substantial justice is done in that **the Unified Development Code does allow the Board of Adjustment to hear cases of this type, take testimony, and make an appropriate action.** 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 "R-5" Residential Single-Family property and that the proposed addition is harmonious with the existing 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 **the proposed addition is as previously mentioned adjoining a dedicated dead end street that terminates into an alley and further leads to Olmos Basin Park and that the neighbors in the immediate area have voiced their strong support for this particular variance request.** 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 which the property is located in that **the applicant has indicated that specifically his proposed building addition site has taken into account existing city public service utilities, mainly gas and electric, which perclude other building options on this site. Additionally the project will be submitted for building permits with respect to compliance with city codes. Inspections will be done and in this motion maker's mind there will be not be a traffic or safety hazard created.** The motion seconded by **Ms. Dutmer.**

AYES: Klein, Dutmer, Moffat, Alejos, Rogers, Britton, Camargo, Hardemon, Villyard, Victor, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-09-054

Applicant – Mario Garza
Lot 96, Block 1, NCB 16334
19411 Settlers Creek
Zoned: "PUD R-6 ERZD MLOD-1" Residential Single-Family Planned Unit Development Edwards Recharge Zone Camp Bullis Military Lighting Overlay Zoning District

The applicant is requesting a special exception to allow a 6-foot tall ornamental-iron front-yard fence.

Jacob Floyd, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated that there were 9 notices mailed, 1 was returned in favor and none were returned in opposition and no response from Greystone Country Estates Property Owners Association.

Mario Garza, representative, stated the applicant wants the 6-foot fence for security since he goes out of town and he wants the same type of fence as other houses in the area. He also stated the fence will be the same all around the house.

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-09-054 closed.

MOTION

A motion was made by **Mr. Villard.** Re Appeal No **A-09-054,** application for **a special exception to allow a 6-foot tall ornamental-iron front-yard fence,** subject property known as **Lot 96, Block 1, NCB 16334,** the address being **19411 Settlers Creek,** the applicant is **Mario Garza,** representing the owner **A.D.V. Trust** appears before us. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-09-054,** 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 requirement listed in UDC 35-399.04. Specifically we find that the following conditions have been satisfied. **The special exception will be in harmony with the spirit and the chapter and the public welfare will be substantially served.** The neighboring property will not be substantially injured **because the applicant has agreed to construct the fence to meet all of the limitations, conditions, and restrictions set forth in section 35-399.04 of the UDC. A copy of the application indicating this has been furnished in the packet.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district **because this conditions have been met.** The motion seconded by **Ms. Dutmer.**

AYES: Villyard, Dutmer, Moffat, Alejos, Rogers, Britton, Camargo, Hardemon, Klein, Victor, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The April 20, 2009 minutes were approved with all members voting in the affirmative and Ms. Moffat abstaining.

There being no further discussion, meeting adjourned at 3:47 p.m.

APPROVED BY: _____ OR _____
Michael Gallagher, Chairman Paul Klein, Vice-Chair

DATE: May 18, 2009

ATTESTED BY: _____ DATE: 5/21/09
Executive Secretary