

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
November 18, 2013**

Members Present:

Michael Gallagher
Frank Quijano
Helen Dutmer
George Britton
Jesse Zuniga
Mary Rogers
John Kuderer
Gene Camargo
Maria Cruz
Henry Rodriguez

Staff:

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-13-091

Applicant – Sherry Chaudhry.
Lot 33, Block 1, NCB 17035
200 Bluffknoll

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

The applicant is requesting 1) a 3-foot variance from the 3-foot maximum height for a solid screen fence to allow a 6-foot wall in the front yard and 2) a 5-foot variance from the 4-foot maximum height for a predominately open fence as described in Section 35-514 (d) to allow a 9-foot high gate in the front yard.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 14 notices were mailed, 2 were returned in favor and 5 were returned in opposition.

Sherry Chaudhry, applicant, stated she has hired a professional architect to design some sort of elevation that would be complimentary to the neighborhood and improve the value. She also stated she was advised to lower the height from 10-foot to 9-foot by the architectural committee

for the Homeowners Association. She further stated there all several houses in the neighborhood that have 9-foot iron fences.

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-13-091 closed.

MOTION

A motion was made by Ms. Rogers. "Re Appeal No. A-13-091, variance application for 1) a 3-foot variance from the 3-foot maximum height for a solid screen fence to allow a 6-foot wall in the front yard and 2) a 5-foot variance from the 4-foot maximum height for a predominately open fence as described in Section 35-514 (d) to allow a 9-foot high gate in the front yard, applicant being Sherry Chaudhry, subject property description Lot 33, Block 1, NCB 17035, situated at 200 Bluffknoll. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-13-091, 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. Front yard fencing regulations are adopted to encourage a sense of community, connecting the view between the public street and the interior living space. Because the first floor of the house is partially below grade, the height of this wall does not significantly reduce the shared views. 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 Section 35-514 (d) 1 states that the height shall be the vertical distance measured from the lowest adjacent ground level (either inside or outside the fence) to the top of the tallest element of the fence material. This literal enforcement prevents the applicant from installing any fencing along this sunken courtyard. The Board must determine if literal enforcement of the ordinance results in an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that the ordinance as contrasted with the "strict letter" of the law for each unique case. In this case, the applicant asserts the spirit of the ordinance is the height of wall visible to the public, rather than the height measured from inside the gate. In addition, the applicant determined that a dominant entry feature was required to direct a visitor toward the hidden front door. The Board must determine if the proposed wall and gate observe the spirit. 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 for the subject property for any other reason than those specifically permitted in the "R-6 AHOD MLOD" 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 proposed architectural solution seems to compliment the character of this district as shown by examples submitted by the applicant and as designed as a reputable architect. Decorative masonry walls seem to be a repeating

theme in this upscale established neighborhood. The variance will not injure the adjacent property or alter the 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 unique circumstance existing on the property is the hidden front door accessed from the sunken courtyard. The applicant is seeking relief from specific regulations in order to direct visitors to the front entrance of the home.**” The motion was seconded by Mr. Rodriguez.

AYES: Rogers, Rodriguez, Britton, Camargo, Cruz, Kuderer, Quijano, Zuniga, Britton, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-14-004

Applicant – Jesus Alvarado
Lot 2, Block 8, NCB 16059
13715 Brook Hollow Boulevard
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 12-foot variance from the required 15-foot rear yard setback on an irregularly shaped lot to allow a structure 3 feet from the rear property line.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 30 notices were mailed, 4 were returned in favor and none were returned in opposition and no response from the North Central Thousand Oaks Neighborhood Association. He clarified that the property owner would be required to submit a letter from the utility company allowing construction into their easement as well as require the use of non-combustible materials or fire retardant treated wood for the covered deck during the building permit process.

Jesus Alvarado, applicant, stated he was not aware about the utilities in the rear yard when he purchased the property. He also stated the several neighbors are in favor of the construction patio since it will improve the characteristic of the neighborhood. He further stated when he was informed about easements when he obtained his permit to start construction.

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-14-004 closed.

MOTION

A motion was made by **Mr. Camargo**. “Re Appeal No. **A-14-004**, applicant being **Jesus Alvarado**, who is requesting a **12-foot variance from the required 15-foot rear yard setback on an irregularly shaped lot to allow a structure to be constructed 3 feet from the rear property line, my motion for approval is for an open structure to be constructed within the requested setback** subject property description **Lot 25, Block 8, NCB 16059**, situated at **13715 Brook Hollow Boulevard**, variance application for a. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-091**, 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 **based on the mailings that were given to the surrounding property owners none were returned in opposition, four were returned in favor**. Due to special conditions, a literal enforcement of the ordinance creates a hardship on the property in that **the purpose of the rear yard is to provide light, air, and space for the enjoyment of the home. It is felt because of the irregularly shape of this lot that the sufficient area to the east is provided on this property that would meet that requirement of a zoning regulation**. The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is not being violated in that the property was constructed already as a nonconforming structure on an existing easement that exists on the subdivision plat**. 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 other than that of a single family residences which is what the property is zoned**. 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 property to the rear that would be most affected in accordance with the aerial photo has a substantial setback from this property with a lot of vegetation to provide privacy to the adjacent property owner**. 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 **being the very unusual irregular shape of the lot for a home of this size and for those reason I feel that the variance should be approved**.” The motion was seconded by **Mr. Kuderer**

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

NAYS: None

THE VARIANCE WAS GRANTED.



CASE NO. A-14-005

Applicant – Five Star Development
A portion of Lot 1, Block 3, NCB 16161
13201 Blanco Road
Zoned: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting a 10-foot variance from the 15-foot required “Type B” Bufferyard along a portion of Wurzbach Parkway to allow a bufferyard of 5 feet in width along a portion of Wurzbach Parkway.

Tony Felts, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 5 notices were mailed, one was returned in favor and none were returned in opposition.

Patrick Christensen, representative, stated the contractors tried to configure the property in every possible without having to request a variance. He also stated this property was platted back in the 60s before the construction of Wurzbach Parkway and the park. Around 2007 TxDoT acquired part of the property for the construction of Wurzbach Parkway. The property owner dedicated two acres of the property to the park for parking issues. He further stated the landscaping is not visible from Wurzbach Parkway or if you are coming North on Blanco.

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-14-005 closed.

MOTION

A motion was made by **Mr. Camargo**. “In Case **A-14-005**, applicant being **Five Star Development**, on property located at **13201 Blanco Road**, also legally described as a **portion of Lot 1, Block 3, NCB 16161**, I move that we grant a **10-foot variance from the 15-foot required “Type B” Bufferyard required along a portion of Wurzbach Parkway to allow a bufferyard of 5 feet in width along a portion of Wurzbach Parkway in accordance with the site plan that was given to us today**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-005**, 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 **there were no notices returned in opposition from the owners within the 200 foot radius of the subject property**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **this is a very irregularly shaped lot for which right of way dedication has been requested after the subdivision plat had been approved that has created this situation on the applicant for development of the property**. The spirit of the ordinance is observed and substantial justice is done in that **the developers of**

this property are providing the required bufferyard along the major portion of Wurzbach Parkway. It has been stated by the applicant’s representative that there is limited view of the buffer area from certain angles on both Blanco and Wurzbach Parkway. The request that is being made is a very small seven hundred twenty something square feet of the total buffer area that is being requested a variance on. 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 which is currently zoned a “C-2” Commercial will be used in accordance with the uses permitted within that zoning regulation. Such variance will not substantially injure the appropriate use of adjacent conforming property which happens to be owned by the developers of this property for future reuse. 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 those being pointed out earlier the irregular shape of the lot which is caused by the major arterials that abut this property.” The motion was seconded by Mr. Quijano.

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

NAYS: None

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-13-076

Applicant – Luis R Garcia Jr.
 Lot 13 & W .5 feet of Lot 12, NCB 6829
 2142 W Magnolia
 Zoned: “R-6 H AHOD” Residential Single-Family, Historic, Airport Hazard Overlay District

The applicant is appealing the Historic Preservation Officer’s decision to deny his application for a Certificate of Appropriateness for a retaining wall. The retaining wall was partially constructed without a certificate of appropriateness.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of the Board to discuss HDRC recommendation with OHP staff. He indicated 26 notices were mailed, 4 were returned in favor and none were returned in opposition and no response from the Jefferson/Woodlawn Neighborhood Association.

Adriana Ziga, Planner, Office of Historic Preservation, presented the HDRC review and denial of the Certificate of Appropriateness request and the findings of fact.

Luis Garcia, applicant, stated the retaining wall would diminish the amount of mud that is brought into the home when it rains. He also stated there are several other retaining walls in the neighborhood.

No citizens appeared to speak.

Sue Araujo, citizen, spoke in favor.

Irma Medrano, citizen, spoke in favor.

Anita De La Rosa, citizen, spoke in favor.

Jay Jacobson, 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-13-076 closed.

MOTION

A motion was made by **Mr. Camargo**. "I would move that in Case **A-13-076**, the request of the applicant being **Luis Garcia, Jr.**, on property located at **2142 W Magnolia**, on property legally described as **Lot 13 & W .5 feet of Lot 12, NCB 6829**. **I move that this Board of Adjustment overturn the decision of Historic Preservation Officer not to issue a Certificate of Appropriateness or the property that was before mentioned. In addition to overruling the decision of the Historic Preservation Officer, that is not present, I also recommend that the certificate of appropriateness be issued to the applicant. I think that it has been very clearly shown here that the proposal of Mr. Garcia in this particular case is very much in line with the aesthetics and development that has occurred in this block and many other blocks in this particular area. I think it is so unfortunate that we have a recommending body, the HDRC, that recommends to the HPO who then responds to the City Manager that on something that is obvious has to come to the Board where a citizen has to pay fee of six hundred dollars. The applicant's proposal is certainly in keeping with the surrounding area and as pointed out by the individual neighbor that appeared, this area did not come into the Historic Designation up until the last three or four years. The motion was seconded by Mr. Britton.**

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

NAYS: None

THE MOTION PASSES.

CASE NO. A-13-079

Applicant – Jay & Jennifer Jacobson
Lot 18 & W. 20 feet of Lot 17, NCB 6829
2210 W Magnolia
Zoned: “R-6 H AHOD” Residential Single-Family, Historic, Airport Hazard Overlay District

The applicant is appealing the Historic Preservation Officer’s decision to deny his application for a Certificate of Appropriateness for a retaining wall.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation that the Board discuss HDRC recommendation with OHP Staff. She indicated 27 notices were mailed, 4 were returned in favor and 2 were returned in opposition and no response from the Jefferson/Woodlawn Neighborhood Association.

Adriana Ziga, Planner, Office of Historic Preservation, presented the HDRC review and denial of the Certificate of Appropriateness request and the findings of fact.

Jay Jacobson, applicant, stated he and his wife are retired military and he is partially disabled. He also stated she has to mow the lawn and the front slope is dangerous to mow because of the slope. He further stated the slope is sixty-three degrees. There are several yards with retaining walls due to the slope on their property.

The following citizens appeared to speak:

Sue Araujo, citizen, spoke in favor.

Luis Garcia, 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-13-079 closed.

MOTION

A motion was made by **Mr. Camargo**. “I would move that in Case A-13-079, the request of **Jay & Jennifer Jacobson**, on property known as **2210 W Magnolia**, also legally described as **Lot 18 & W. 20 feet of Lot 17, NCB 6829**, be granted the request that the **Board of Adjustment** overturn the decision of the **Historic Preservation Officer** and to issue a **Certificate of Appropriateness** on the property that was previously described. Again it has clearly been shown by the applicant’s that their proposal to construct retaining walls on their property is a necessity because it is in fact dangerous to try to mow property at an angle. It has been shown on these photographs. Secondly that their proposal to construct these retaining walls is in keeping with the trend, design in this particular block in this area where the front lawns very much exceed the height of the street that is below their property. The lack of a retaining wall creates problems with the maintenance of that particular slope. Specifically as far as erosion is concerned and that secondly a building permit per say is not

required for the construction of a retaining wall of this height. It is a certificate of appropriateness that is required. I'm concerned whether the property owners that live in these areas are aware of that." The motion was seconded by Ms. Rogers.

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

NAYS: None

THE MOTION PASSES.

Approval of the Minutes

The November 4, 2013 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 3:45 pm.

APPROVED BY: Michael Gallagher OR _____
Michael Gallagher, Chairman Andrew Ozuna, Vice-Chair

DATE: 12-2-13

ATTESTED BY: JFT DATE: 12-3-13
Executive Secretary