

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 8, 2012**

Members Present:

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

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.

Ms. Cruz arrived at 1:05 p.m.

CASE NO. A-12-088

Applicant – Mark Becker
Lot 44, Block 1, NCB 15924
12406 Alexandria Drive
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 3-foot variance from the 3-foot maximum fence height restriction to maintain an existing 6-foot privacy fence in the front yard.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 27 notices were mailed, 2 were returned in favor and 3 were returned in opposition and no response from the Valley Forge Resident’s Neighborhood Association.

Mark Becker, applicant, stated he was told he could have the 4-foot wooden fence when he obtained his permit. He also stated staff at Development Services instructed him to have gaps on the fence so it would be considered a privacy fence. He spoke to the senior building inspector

and was instructed to backfill the fence. He further stated there is a 4-foot slope from the neighbor's property and his property. There is a halfway house across the street from his property and this fence would allow for his safety and security.

The following citizens appeared to speak:

Richard Zike, 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-12-088 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No. **A-12-088**, variance application for **12406 Alexandria Drive**, subject property is **Lot 44, Block 1, NCB 15924**, situated again at **12406 Alexandria Drive**, the applicant being **Mark Becker**, the variance request is for a **3-foot variance from the 3-foot maximum fence height restriction to maintain an existing 6-foot privacy fence in the front yard**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-088**, 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 **fence height regulations are designed to promote orderly development, reduce visual distraction, and create a sense of community, especially in neighborhoods. The fence does not cause a visual obstruction for adjacent property owners; however, this is the only front yard fence on this street. In addition, we have no opposition reported from the homeowners association, twenty-seven notices were mailed out and twenty-two were not returned, so the proponderous of the community supports the variance is not 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 may result in an unnecessary hardship, namely that the applicant has already constructed the fence after being given erroneous advice from Development Services.** The spirit of the ordinance is observed and substantial justice is done in that **the ordinance only provides for higher front yard fencing under very limited circumstances. Substantial justice will be done to the applicant by granting the variance because the applicant relied in good faith that the information he received from Development Services was accurate.** 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 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 requested variance will not substantially injure the adjacent property, but rather the variance has the potential to alter the essential character of the district because there are no other front yard fences on this street. There is concern that allowing this higher fence may cause a precedent within the neighborhood, and other front yard**

fences may be erected, however, that condition is overturned or set aside by the fact that the applicant received erroneous information from the Development Services and acted on that to build the fence. 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 receiving erroneous compliance information from permit staffers and, as such, this situation was not created by the owner. The motion was seconded by Mr. Zuniga.

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

NAYS: Gallagher

THE VARIANCE WAS GRANTED.

CASE NO. A-12-089

Applicant – Hilario Hernandez
Lots 30 & 31, Block 2, NCB 110417
1623 Santa Rita Street
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 2-foot 8-inch variance from the 6-foot maximum fence height to allow an 8-foot 8-inch perimeter fence around the side and rear property lines.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of denial. She indicated 41 notices were mailed, 3 were returned in favor and one was returned in opposition.

Hilario Hernandez, applicant, stated the purpose of this fence is for security and safety. He also stated he had a tin fence that existed for many years and feels he should have never been told to bring it down.

The following citizens appeared to speak.

Olga Martinez, 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-12-082 closed.

MOTION

A motion was made **Mr. Camargo**. I would move that in Case No. **A-12-089**, the applicant being **Hilario Hernandez**, on property located at **1623 Santa Rita Street**, also legally known as **Lots 30 & 31, Block 2, NCB 11047**, be granted a **2-foot 8-inch variance from the 6-foot maximum height restriction to allow an 8-foot 8-inch fence around the side and rear**

perimeter of the perimeter. Specifically, we find that such variance will not be contrary to the public interest in that **fence height regulations are designed to promote orderly development, reduce visual distraction, and create a sense of community.** While the restriction on this location where this fence is at 6-feet, I feel that the 8-foot 8-inch request by the applicant certainly will promote the development, reduce visibility, and create a sense of community in the neighborhood and that has been so stated by the neighborhood association president that spoke to us just a moment ago. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the requesting of the additional 2-foot 8-inch fencing will not be a detriment to the surrounding property.** It has been stated and has been felt that this would be an asset in creating a visual obstruction for the many vehicles that the gentleman possesses on his property that according to statements from staff are in legal assistance, that there are in running condition too. The spirit of the ordinance is observed and substantial justice is done in that **the requested variance will aid in the visual screening in this particular area.** 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 those permitted by the Single-Family Residential classification in that this is a single-family use.** 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 felt that the fencing is consistent with goals of the community and providing a nicer environment to the surrounding area.** 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 **it has been pointed that the individual is disabled and combined to a wheelchair and he needs the security that in his opinion would be affordable by an 8-foot 8-inch fence.** The motion was seconded by Mr. Hardemon.

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

NAYS: None

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-12-090

Applicant – Alpha Builders
Lot 20, Block 6, NCB 12227
438 Lanark Drive
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting 1) a 6-foot variance from the 8-foot maximum allowed height for a freestanding sign in a residential district and 2) a 12 square-foot variance from the 36 square-foot maximum allowed size for a sign in a residential district to allow a freestanding sign along a residential collector 14 feet in height and 48 square feet in area.

Tony Felts, Planner, presented background and staff’s recommendation of approval. He indicated 82 notices were mailed, one was returned in favor and none were returned in opposition and the General Krueger Neighborhood Association is in support.

Wes Putman, applicant, stated the school wants to move the sign to the other side because the current sign location does not have much traffic. The traffic that passes by is mainly the teachers. He also stated the PTA and students had a fundraiser to raise money for a new sign.

The following 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-12-090 closed.

MOTION

A motion was made **Mr. Ozuna**. Re Appeal No. **A-12-090**, variance application for **Alpha Builders**, with the owner being **Northeast Independent School District**, subject property is **Lot 20, Block 6, NCB 12227**, situated at **438 Lanark Drive**, the variance request is for a **1) a 6-foot variance from the 8-foot maximum allowed height for a freestanding sign in a residential district and 2) a 12 square foot variance from the 36 square foot maximum allowed size for a sign in a residential district to allow a freestanding sign along a residential collector street at 14-feet in height and 48 square feet in area** description applicant I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-12-090** application for a sign 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 the variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography. **The use of the site as a middle school presents unique challenges for signs with changeable copy. Historically, such signs have been the subject of pranks and increased vandalism; and this is, indeed, the concern of the applicant in this case. By elevating the sign, the applicant hopes to discourage acts that could damage the sign or reputation of the school district. Safety and security of the sign is directly related to adequacy, and thus the**

variance could be considered necessary. It should also be noted that the Board has approved two variances similar to this one just this last year, however, each application stands on its own. After seeking one or more of the findings set forth, the board finds that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated. **As stated above, the Board has approved two very similar variances earlier this year, Cases A-12-014 and A-12-060. As such, no special privilege would be granted by approval of the variance.** Granting the variance will not have a substantially adverse impact on neighboring properties. **The properties across Lanark Drive from the site are not developed as single-family uses. Currently, there is a large electrical substation and a drainage channel directly across the street and there is a church directly adjacent to the school on the same side of the street. To the west, the school is separated from single-family residences by a drainage easement and a street right-of-way. To the east, very tall high-tension power lines are located within the median of Lanark Drive which contributes to visual clutter much more than the proposed sign would be.** Granting the variance will not substantially conflict with the stated purposes of this article. **The requested variance does not conflict with the stated purposes of the sign ordinance, particularly relating to harmony of the site with the surrounding neighborhood and scale of the site.** The motion was seconded by Ms. Cruz.

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-092

Applicant – Alicia Pearl

Lot 16, NCB 11898

330 East Terra Alta

Zoned: “NP-10 AHOD” Neighborhood Preservation Airport Hazard Overlay District

The applicant is requesting **1)** a 14-foot 11-inch variance from the minimum 20-foot front setback and **2)** a 15-foot variance from the minimum 20-foot rear setback to allow a structure 5-feet 1-inch from the front property lien and 5-feet from the rear property line.

Tony Felts, Planner, presented background and staff’s recommendation of approval. He indicated 23 notices were mailed, none were returned in favor and one was returned in opposition and no response from the Oak Park – Northwood Neighborhood Association.

Daniel Vargas, representative, stated they are building a house for a civilian who was wounded in Afghanistan. He also stated this property would be convenient for doctor visits and privacy. It would allow him to be able to go outdoors. He further stated the family plans to be at this location for a long time.

The following citizens appeared to speak.

General Lee Cargen III, citizen, spoke in favor.

Glen Yale, 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-12-092 closed.

MOTION

A motion was made **Mr. Klein**. In Appeal No. **A-12-092**, this is a variance application involving two requests, **1) a 14-foot 11-inch variance from the minimum 20-foot front setback, and 2) a 15-foot variance from the minimum 20-foot rear yard setback both of which are to allow a structure 5-feet 1-inch from the front property line and 5-feet from the rear property line**, the subject property is described as **330 East Terra Alta Road**, the legal description more particularly is **Lot 16, NCB 11898**, zoning is **"NP-10 AHOD" Neighborhood Preservation Airport Hazard Overlay District**, the applicant is **Alicia Pearl**. I move that the Board of Adjustment grant the applicant's request regarding this case, 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 **this is an irregular shaped lot. Yard setbacks are designed to maintain orderly development by separating incompatible land uses and ensuring access, light, and air visibility. Neighborhood Preservation districts impose greater setbacks in order to preserve the look and feel of established large-lot subdivisions. In this case, the subject property cannot be seen from the street and is tucked away behind existing development on all sides. Five-foot setbacks are being preserved on all sides where a variance is a requested in order to maintain building separation distances required by the building code. In this particular case those 5-foot setbacks actually mirror what is commonly referred to as a side yard setback in a convention lot configuration. As such, the variance is not 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 result in an unnecessary hardship. The buildable area with the setbacks as currently understood or regulated by the Unified Development Code, result in a buildable area of only 40-foot wide. Due to the need for wider hallways, doorways, and bathrooms to accommodate the occupant, the dwelling must be much larger and wider than would normally be needed. Additionally, the proposed orientation of the home provides ample space along the western side yard to provide the occupants of the dwelling with a large outdoor, secluded open space. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance will be observed and substantial justice will be done by granting the variance because the home will not be able to be viewed from the street and will maintain at least a five-foot yard on the front and rear. Additionally, the site plan is provided to the board room indicates what might be considered a 36-foot rear yard setback or 36-foot setback to an adjoining property line. Because of the building's orientation and**

shape, ample open space will be preserved on the lot. 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 "NP-10 AHOD" (Neighborhood Preservation) zoning district.** The property will be used for residential purposes which is permitted. 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 requested variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district as the proposed dwelling cannot be seen from the street and would require adequate separations to meet applicable building codes and will be submitted to fully comply with all building code and drainage 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 plight of the owners is based on unique circumstances not created by them, namely the shape and orientation of the lot as this flag lot is unique within this district.** The motion was seconded by **Mr. Zuniga.**

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

NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The September 17, 2012 minutes were approved with all members voting in affirmative

Discussion of 2013 Public Hearing Calendar

Mr. Britton made a motion and **Mr. Ozuna** seconded the motion to approve option #2, which is the calendar for the first and third Monday of the month. All members voted in the affirmative.

There being no further discussion, meeting adjourned at 2:28 pm.

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

DATE: 10-29-12

ATTESTED BY: [Signature] DATE: 11-1-12
Executive Secretary