

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 20, 2008**

Members Present:

Michael Gallagher
Paul Klein
Edward Hardemon
Helen Dutmer
George Alejos
Mike Villyard
Gene Camargo
Maria Cruz
Mimi Moffat

Staff:

Fernando De Leon, P.E. Assistant Director
Rudy Niño, Senior Planner
Jacob Floyd, Planner
Paul Wendland, City Attorney
Jacob Floyd, Planner

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.

Mr. Klein made a motion to continue cases A-08-081 and A-08-099 to the November 3, 2008 Board of Adjustment meeting at the request of the applicants. Mr. Hardemon seconded the motion and members voted in the affirmative.

Ms. Dutmer made a motion to continue case A-08-101 to the November 3, 2008 Board of Adjustment meeting at the request of the applicant. Mr. Camargo seconded the motion and members voted in the affirmative.

Mr. Camargo made a motion to move case A-08-102 to the end of the agenda.

CASE NO. A-08-106

Applicant = Luis Elizardo
Lot 97, Block 2, NCB 15972
8715 Five Palms Drive
Zoned: "R-6" Residential Single-Family District

The applicant is requesting for a Special Exception to continue to operate a one (1)-operator beauty shop in a residential area.

Jacob Floyd, Planner, presented background and staff's recommendation of approval on this case. He indicated 33 notices were mailed, none were returned in favor and none were returned

in opposition and no response from Hidden Cove – Indian Creek Southwest Neighborhood Association.

Luis E. Elizardo, applicant, stated he has not received any complaints from any neighbors in the three years of business. He also stated it is just a little business that they have which gives them an opportunity to spend more time with his daughter.

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-08-106 closed.

MOTION

A motion was made by **Mr. Klein**. Re Appeal Case No. **A-08-106**, variance application of **Luis E. Elizardo**, it is a **Special Exception to continue to operate a one (1)-operator beauty shop in a residential area**, the legal description is **Lot 97, Block 2, NCB 15972**, physical address is **8715 Five Palms Drive**, the zoning is **“R-6” Residential Single-Family District**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-106**, 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 **Chapter 35 does allow one-operator beauty shops in residential areas**. The public welfare and convenience will be substantially served in that **this an existing business that is reapplying for continued business in this neighborhood. They have seen success with their venture and have no negative or code compliance reports on file**. The neighboring property will not substantially injured by such proposed use in that **this beauty shop has operated previously with no complaints from the neighborhood**. 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 **thirty-three notices were mailed, none were returned in either opposition nor in favor. This indicates that the business is operating very quietly in this particular area not raising any eyebrows**. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **both Chapter 35 of the UDC and the zoning code allow one-operator beauty shops in residential areas**. Further place the following optional conditions: ~~that the hours of operation for this particular two-year period that the special exception is~~ for two years, that the hours of operation proposed are Monday, Tuesday, Thursday, Friday from 12 noon to 7 p.m., on Saturdays from 11 a.m. to 6 p.m., and the business will closed on Sundays and Wednesdays. The total proposed hours of operation per week is 35 hours. The motion seconded by Ms. Cruz.

AYES: Klein, Cruz, Alejos, Camargo, Moffat, Villyard, Dutmer, Hardemon, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

Mr. Klein made a motion to move Case A-08-107 to the end of the agenda and all members voted in the affirmative.

CASE NO. A-08-108

Applicant – Villa Park Architecture
Lot 41, Block 1, NCB 14592
11303 O'Connor
Zoned: "C-3 IH-1" General Commercial Northeast Gateway Corridor Overlay District

The applicant is requesting for a 15-foot variance from the requirement that a minimum 30-foot rear setback be maintained in "C-3" zoning districts when abutting residential uses or zoning districts, in order to erect a structure 15 feet from the rear property line.

Jacob Floyd, Planner, presented background and staff's recommendation of approval of this variance. He indicated that there were 12 notices mailed, 1 was returned in favor and none were returned in opposition.

Mark Nevel, applicant, stated the reason for this request the rear residential zoning. He also stated no residential uses would be impacted by this variance. He further stated

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-08-108 closed.

MOTION

A motion was made by Mr. Camargo. I would move that in Case No A-08-108, the request by the applicant Villa Park Architecture, grant a variance to the requested rear yard setback that being a 15-foot variance from the requirement of a 30-foot rear yard setback that should be maintained in a "C-3" zoning classifications, the property under consideration is Lot 41, Block 1, NCB 14592, address as 11303 O'Connor. Specifically we find that such variance will not be contrary to the public interest in respect that of notices that were mailed to the adjacent property owners none were returned in opposition. Such variance will not alter the overall appearance of the general area. Such variance will not authorize the operation of a use other than those uses that are allowed within the zoning classification as I mentioned earlier the property is zoned a "C-3" General Commercial and the use being proposed is one allowed in that classification. Such variance will not substantially or permanently injure the district in which that variance is sought in that the variance will not have a negative impact on the surrounding area. Such variance will not alter the essential character of the districts in which the variance is sought in that the proposed structure is in keeping with the commercial development that surrounds the subject property. Such variance will be in harmony with the spirit and purpose of this chapter in that the proposed construction as outlined will maintain

the quality of the development that we have as this major intersection. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **specifically has been shown by the applicant and staff that the property that abuts the property in question to the southwest where the variance is being requested is a fairly wide utility easement and therefore will not have any negative impact on any residential development.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **the proposed development is in keeping with development that we have adjacent to this property and across the street.** The variance will not adversely affect the public health, safety or welfare of the public in that **permits will be taken for the development of this property and proper inspections will be made to ensure compliance with city codes.** The motion seconded by Ms. Moffat.

AYES: Camargo, Moffat, Alejos, Cruz, Villyard, Hardemon, Dutmer, Klein, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-110

Applicant – Juan P. Chapa
 The northeast irregular 87.89 feet of Lot 1 and all of Lots 2 and 3, NCB 7780
 4606 South Flores Street
 Zoned: “C-3 NA” General Commercial Nonalcoholic Sales District

The applicant is requesting a 25-foot, 3-inch variance from the requirement that a minimum 30-foot rear setback be maintained in “C-3” zoning districts when abutting residential uses or zoning districts, in order to keep an existing structure 4 feet, 9 inches from the rear property line.

The applicant has requested to continue this case until the next regularly scheduled meeting which is November 3, 2008.

Mr. Klein made a motion to continue this case to the next regularly scheduled meeting to be on November 3, 2008 at the applicant’s request. Mr. Hardemon seconded the motion and all members voted in the affirmative

CASE NO. A-08-102

Applicant – Alice M. Martinez
 Lots 31 thru 40, Block 7, NCB 1064
 1305, 1311, and 1315 East Mulberry
 Zoned: “MF-33 NCD-6” Multi-Family Mahncke Park Neighborhood Conservation District

The applicant is requesting for a 2-foot, 6-inch variance from the requirement that front yard fences not exceed 42 inches (3 feet, 6 inches) in height, in order to erect a front yard fence 6 feet in height..

Jacob Floyd, Planner, presented background and staff's recommendation of denial of this variance. He indicated that there were 27 notices mailed, none were returned in favor and 1 was returned in opposition and 1 was returned with no response and no response from Mahncke Park Neighborhood Association

Alice M. Martinez, applicant, stated the reason for this request is for the safety of her tenants. She also stated within days of closing they had a burglary and assault to one of the tenants. She further stated Mulberry is a dangerous and rough street. They have also had graffiti and continuous vehicle break-ins. She further stated the fence would not be in obstruction for any line of sight.

The following citizens appeared to speak:

William Woffard, 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-08-102 closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that in Case No **A-08-102**, the applicant being **Alice M. Martinez**, on property known as **1305, 1311, and 1315 East Mulberry Avenue**, also known as **Lots 31 thru 40, Block 7, NCB 1064**, that this board grant a variance to the requested **2-foot 6-inch request from the requirement that front yard fences not exceed 42 inches in height, in order to erect an open 6-foot front yard fence within the front setback**. Specifically we find that such variance will not be contrary to the public interest in that **of the notices mailed to the surrounding property owners there was no notice returned in opposition and there was no comment either for or against from the Mahncke Park Neighborhood Association either**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **there are uses on this property that are consistent with the zoning classification that this property currently enjoys**. Such variance will not substantially or permanently injure the district in which that variance is sought in that **the proposed construction within the front setback and on the remainder of the property is consistent with other fencing that occurs in the immediate area of the property owner discussion today**. Such variance will not alter the essential character of the districts in which the variance is sought in that **pretty much for the same reasons of the first findings that directly across the street there is similar fencing and other apartment complexes in the area that have fencing similar to what is being requested by the applicant**. Such variance will be in harmony with the spirit and purpose of this chapter in that **the proposed construction of this fence will hopefully alter some of the crime that has occurred on this particular property**. Evidence of the crimes that have occurred have been presented as part of the applicant's

presentation to show the crime that is occurring on the property. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located in that **I don't know if this is unique to this particular property but just based on the number of crimes that have been shown in the information that has submitted it appears to be unusually high and the applicants have indicated that they have taken many measures to slow that crime down by clearing brush and erecting lighting and one of the applicant's representative indicated that is had some effect. It has not been sufficient to quell the crime in this particular complex.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **this will not weaken the overall zoning plan that has been adopted for this property.** The variance will not adversely affect the public health, safety or welfare of the public **in fact it is felt by the applicants that the safety of the area will be improved by the erection of the 6-foot wrought iron fence totally around the property in question.** The motion seconded by **Ms. Dutmer.**

AYES: Camargo, Dutmer, Cruz, Alejos, Villyard, Hardemon, Klein, Gallagher
NAY: Moffat

THE VARIANCE WAS NOT GRANTED.



Board members took a 10 minute recess.



CASE NO. A-08-107

Applicant – Frances Hernandez
 The North 132 feet of Lot 9, Block 13, NCB 7545
 122 West Emerson
 Zoned: "R-6" Residential Single-Family District

The applicant is requesting a 6-foot variance from the requirement that a minimum 20-foot rear setback be maintained in "R-4" zoning districts, in order to erect a structure 8 feet from the rear property line.

Mr. Alejos made a motion to postpone this case to the next regularly scheduled meeting to be held on November 3, 2008 due to the applicant not being present. Ms. Dutmer seconded the motion and all members voted in the affirmative



Approval of the Minutes

All members voted in the affirmative to approve the October 6, 2008 minutes.



There being no further discussion, meeting adjourned at 2:54 p.m.

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

DATE: Nov 3, 2008

ATTESTED BY: Christopher J. Looney DATE: 11-12-08
Christopher J. Looney
Development Services, Planning Manager