

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 29, 2012**

Members Present:

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

Staff:

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.

CASE NO. A-12-093

Applicant – Pape-Dawson Engineers
Lot 3, Block 33, NCB 19219
20718 Stone Oak Parkway
Zoned: “C-2 MLOD” Commercial Edwards Recharge Military Lighting

The applicant is requesting a 4-foot variance from the 4-foot maximum fence height for a predominantly open fence in a commercial front yard to allow an 8-foot predominantly open fence around a courtyard in the front yard of a Nursing Facility.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 20 notices were mailed, 2 were returned in favor and none were returned in opposition.

Matt Johnson, representative, stated this is an Alzheimer’s facility. He also stated the patients are allowed in the courtyard for therapy. He further stated the fence would provide security to the Alzheimer patients.

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-12-093 closed.

MOTION

A motion was made by **Ms. Rogers**. Re Appeal No. **A-12-093**, application for a **4-foot variance from the 4-foot maximum height to allow an 8-foot fence around a courtyard in the front yard of a Nursing Facility**, subject property is **20718 Stone Oak Parkway**, legal description **Lot 3, Block 33, NCB 19219**, applicant **Pape-Dawson Engineers**. I move that the Board of Adjustment grant the applicant's request as so stated, 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 the welfare of the public at large. The public in the vicinity of this proposed facility will not be negatively impacted by this requested fence height. Stone Oak Parkway in this section carries approximately 20,000 vehicle trips each day. The fence itself is setback 25-feet from the front property line is designed to be predominantly open wrought with brick columns and existing trees will be preserved inside and around the exterior of the proposed courtyard.** Due to special conditions, a literal enforcement of the ordinance would not result in unnecessary hardship in that **a literal enforcement of the ordinance would require that the applicant relocate the courtyard toward the rear of the site on a slope surrounded by fencing 6-feet in height. The impact of these changes creates an unnecessary hardship. The safety and security of patients afflicted with this debilitating disease is imperative. Equally important is the goal of creating a peaceful environment for their daily enjoyment of these people living there. The proposed design sets the building back nearly 100 feet, with the flat wooded portion of the lot improved as the exterior living space. This layout uses the site attributes to their fullest. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance is represented by its equal application to all citizens. In some cases, unique property-related characteristics warrant flexibility to the regulations. For this property, the topography necessitates the outdoor living area be located toward the front of the parcel, rather than the rear yard where fencing regulations are more permissive. In addition, the specific target population requires enhanced security precautions.** 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 C-2 ERZD 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 property is zoned for commercial uses, which typically include a building and surrounding parking areas. In this case, the applicant is requesting approval to construct an 8-foot wrought iron fence with brick columns in the front yard. The fencing is set back 25-feet from the property line and will enclose an area approximately 2,000 square feet. Several trees on the property will be preserved, softening the potential visual impact of the requested additional fence height. The site plan will be different from those of the typical neighboring commercial parcels,**

but will enhance the character of the 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 **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the C-2 ERZD MLOD zoning district.** The motion was seconded by **Mr. Rodriguez.**

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-094

Applicant – Trinity University
Lot 7 and the East 50 feet of Lot 6, Block 2, NCB 6581
151 Oakmont Court
Zoned: “R-5 H AHOD” Residential Single-Family Historic Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the 6-foot maximum fence height to allow an 8-foot high solid wood fence in the side yard.

Tony Felts, Planner, presented background and staff’s recommendation of approval. He indicated 14 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Monte Vista Neighborhood Association

Randy Creech, representative, stated the fence would provide privacy for the owner since the owner has a pool in her backyard. He also stated the Historic Design and Review Committee has approved the construction of the fence.

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-12-094 closed.

MOTION

A motion was made **Mr. Quijano**. Re Appeal No. **A-12-094**, variance application for a **request for a 2-foot variance from the 6-foot maximum fence height restriction to allow an 8-foot privacy fence in the front yard**, subject property description is **Lot 7 and the East 50 feet of Lot 6, Block 2, NCB 6581**, situated at **151 Oakmont Court**, the applicant is **Trinity University**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-12-094**, 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 UDC contemplates that higher fences are sometimes necessary in order to allow for adequate buffering of uses. In this case, the allowed fence height of 6 feet could be considered inadequate because of privacy concerns from the adjacent university land use.** 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 because of the absence of any buffering between the residential use of the subject property and the use of the adjacent property as a university.** The spirit of the ordinance is observed and substantial justice is done in that **the higher fences may be necessary in order to preserve privacy and quality of life. In this case, the intense use of a university versus the use as a single-family residence warrants the provision of a higher fence to separate the uses. As such, the spirit of the ordinance will be observed and substantial justice will be done.** 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-5 H AHOD" single-family residential 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 requested variance will not substantially injure the adjacent property, but rather the requested variance will potentially enhance both properties.** 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 the land use of the adjacent property, and was not created by the owner.** The motion was seconded by Ms. Dutmer.

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-095

Applicant – Lisa Pena
East 100 feet of Lot 7, Block 3, NCB 6816
456 East Rosewood Avenue
Zoned: "R-5 H AHOD" Residential Single-Family Historic Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the 6-foot maximum fence height restriction to allow an 8-foot privacy fence in the side yard

Tony Felts, Planner, presented background and staff's recommendation of approval. He indicated 14 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Monte Vista Neighborhood Association is in support.

Randy Creech, representative, stated the fence would provide privacy for the owner since the owner has a pool in her backyard. He also stated the Historic Design and Review Committee has approved the construction of the fence.

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-12-090 closed.

MOTION

A motion was made **Mr. Rodriguez**. Re Appeal No. **A-12-095**, applicant **Lisa Pena**, owner **Carlos and Lisa Pena, 456 East Rosewood Avenue**, legal description is the **East 100 feet of Lot 7, Block 3, NCB 6816**, zoning is "**R-5 H AHOD**" **Residential Single-Family Historic Airport Hazard Overlay District**, the request is for a **2-foot variance from the 6-foot maximum fence height restrictions to allow an 8-foot privacy fence in the side yard**. I move that the Board of Adjustment grant the applicant's request as described above, 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 UDC contemplates that higher fences are sometimes necessary in order to allow for adequate buffering of uses.** 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 because of the absence of any buffering between the residential use of the subject property and the use of the adjacent property as a university.** The spirit of the ordinance is observed and substantial justice is done in that **the UDC contemplates that under some specific conditions, higher fences may be necessary in order to preserve privacy and quality of life. In this case, the intense use of a university versus the use as a single-family residence warrants the provision of a higher fence to separate the uses.** 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-5 H AHOD" (Single-Family Residential) 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 **he requested variance will not substantially injure the adjacent property, but rather the requested variance will potentially enhance both properties.** 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 the land use of the adjacent property, and was not created by the owner.** The motion was seconded by **Mr. Hardemon.**

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-096

Applicant – Stephen G Cook Engineering

Lot 17, Block 74, NCB 16334

1522 Melanie Circle

Zoned: “PUD ERZD MLOD” Planned Unit Development Edwards Recharge Zone Military Lighting Overlay District

The applicant is requesting **1) a 5-inch variance from the required 5-foot maintenance easement for a zero lot line subdivision to allow an encroachment of 5 inches into the easement and 2) a 1-foot, 3-inch variance from the required 20-foot front setback for a garage to allow a garage 18-foot 9-inches from the front property line.**

Tony Felts, Planner, presented background and staff’s recommendation of approval. He indicated 18 notices were mailed, 13 were returned in favor and none were returned in opposition and the Gardens at Greystone – ACC is in favor.

Fay Valdez, representative, stated the corner of the property is the only part that is encroaching.

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-12-096 closed.

MOTION

A motion was made **Mr. Ozuna.** Re Appeal No. **A-12-096**, variance application for **1522 Melanie Circle**, subject property is **Lot 17, Block 74, NCB 16334**, again situated at **1522 Melanie Circle**, the applicant is **Stephen G. Cook Engineering** for the owner **Sandra Patricia Gomez**, the requested variance is for **1) a 5-inch variance from the required 5-foot maintenance easement for a zero lot line subdivision to allow an encroachment of 5 inches into the easement and 2) a 1-foot, 3-inch variance from the required 20-foot front setback for a garage to allow a garage 18-feet, 9-inches from the front property line.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-12-096**, 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 requirement for a maintenance easement is meant to allow adjacent property owners whose homes are placed on the lot line to access the structures for maintenance, repairs, and public safety. The five-inch encroachment into the property for a corner of the property will not impede the ability for the adjoining owner to maintain the property.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **as the dwelling has already been constructed and received final city approvals, and the encroachments are relatively minute, a literal enforcement of the ordinance would result in an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed as both encroachments are minute, and the remaining open space is sufficient to accomplish the goals of the ordinance which is to maintain the adjoining properties exterior.** 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 "PUD ERZD MLOD" PUD 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 as there is still ample room for the adjacent zero lot line dwelling's owner to access the structure for maintenance purposes and there is sufficient room in the driveway for a parked vehicle without blocking the sidewalk.** 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 a surveying error, and was not created by the owner.** The motion was seconded by Ms. Dutmer

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-097

Applicant – Sonia & Paul Venema
Lo 31, Block 11, NCB 18631
4115 Timber Hill Drive
Zoned: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay

The applicant is requesting an 18-inch variance from the 6-foot maximum fence height to maintain a 7-foot 6-inch fence in the side and rear yards

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval. She indicated 17 notices were mailed, one was returned in favor and one was returned in opposition.

Paul Venema, applicant, stated the lattice improves the ecstastic of the back yard. He also stated the fence would allow for privacy.

No citizens appeared to speak.

Sonia Venema, 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-12-097 closed.

MOTION

A motion was made **Mr. Rodriguez**. Re Appeal No. A-12-097, applicant **Sonia and Paul Venema, 4115 Timber Hill Drive, legal description Lot 31, Block 1, NCB 18631, zoning is "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District**, the applicant requests a **1-foot 6-inch variance from the 6-foot maximum height to allow a 7-foot 6-inch fence around the side and rear yards of their home**. I move that the Board of Adjustment grant the applicant's request, 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. In this case, the fence is a fairly isolated feature not visible from the public street. Only the three surrounding property owners have any knowledge or exposure to the addition of lattice on the top of the fence.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant asserts that they need the additional height, especially along their west property line, because of the grade change between the two abutting lots. To make the fencing design cohesive, they had the lattice installed around the entire perimeter. The lattice allows light and air flow, reducing the potential adverse impact of the additional height.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is represented by its equal application to all citizens. The ordinance limits personal freedoms and property rights, but with fairness. In some cases, unique property-related characteristics warrant flexibility to the regulations in order to provide a similar level of protection afforded to the general public.** 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 (Residential Single-Family) 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 Board of Adjustment is routinely asked to consider variances to the fence height restriction. In some cases, the requested fence height would create a significant change in the character of the**

neighborhood. In other cases, the requested fencing has been installed for years. In this case, the fence is hidden from public view between properties with an elevation difference. 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 requested variance would provide a similar level of privacy between abutting rear yards of identical elevation. This is the typical property-related hardship that warrants consideration for a variance. It is not self-imposed or financial in nature.** The motion was seconded by **Mr. Hardemon.**

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

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-098

Applicant – Color Printing & Sign

Lot 45, Block 9, NCB 7375

3000 Tampico Street

Zoned: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay

The applicant is requesting **1)** a 4-foot variance from the 8-foot maximum sign height in a residential district to allow two 12-foot tall free-standing signs and **2)** a 12-square foot variance from the 36 square foot maximum sign area to allow a 48 square foot free-standing digital sign for a school in a residential district.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval. She indicated 17 notices were mailed, one was returned in favor and one was returned in opposition.

George Marquis, representative, stated the pole was existing and the cabinet was refaced. He also the height of the sign is a decent level. He further stated there will be only text on the LED board without any animation.

No citizens appeared to speak.

Christine Bononcini, 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-12-098 closed.

MOTION

A motion was made **Mr. Ozuna**. Re Appeal No. **A-12-098**, variance application for **3000 Tampico Street**, subject property is **Lot 45, Block 9, NCB 7375**, situated again **3000 Tampico Street**, the applicant is **Color Printing & Sign**, the owner being **SAISD**, the variance request is for **1) a 4-foot variance from the 8-foot maximum sign height in a residential district to allow two 12-foot tall free-standing signs and 2) a 12-square foot variance from the 36-square foot maximum sign area to allow a 48-square foot free-standing digital sign for a school in a residential district**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-098**, 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 **as it relates to the sign** and Section 28-247 of Chapter 28: Signs and Billboards of the City Code, the applicant has demonstrated 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. **According to the submitted application and discussions with the applicant, the variance is necessary because strict enforcement prohibits the school district from safely and confidently constructing the sign. The school population of teenagers, associated with the specific location, increases the chances that the sign will be vandalized, perhaps even unintended harm by a prank. In addition, the increase in height is necessary to improve the visibility of the sign. Parents have come to rely on these types of school signs to inform and remind them about school pictures, school holidays, early dismissals and parent/teacher conferences. After seeking one or more of the findings set forth, the Board finds that the applicant asserts that similar variances were approved for other schools during this past year, each wanting higher than the 8-foot limitation and each with the same concern about vandalism. The frequency of this type of inquiry and application is indicative of a common need rather than a special privilege. Granting the variance will not have a substantially adverse impact on neighboring properties. Granting the variance will not adversely impact the neighboring properties. The homes within the neighborhood have co-existed with the school since its inception. Property owners living around a school have a series of unique impacts created by a neighborhood school, such as the daily traffic congestion during the morning hour and the afternoon dismissal. The applicant asserts that many nearby residents do not have internet access and rely on the school's sign for information about school and community events. In addition, the applicant has agreed to put the sign on an automatic timer so that it is dark after hours. The owner most affected by the sign is in support of the variance. Granting the variance will not substantially conflict with the stated purposes of this article. The decided legislative purpose of the adopted sign regulations is to limit signs in residential neighborhoods to 8-feet in height. The legislative body also limits the list of non-residential uses permitted in residential zones to day care centers, schools, churches, recreation centers, and some types of care facilities. Digital displays are permitted for these uses with design limitations to protect the neighborhood from excessive light. In specific cases, relief from the height provision may be warranted.** The motion was seconded by **Mr. Rodriguez**

**AYES: Ozuna, Rodriguez, Hardemon, Camargo, Quijano, Rogers, Dutmer, Britton, Cruz,
Gallagher**

NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The October 29, 2012 minutes were approved with all members voting in affirmative

There being no further discussion, meeting adjourned at 2:22 pm.

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

DATE: 12-10-12

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