

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
August 18, 2014**

Members Present:

Andrew Ozuna
Mary Rogers
Frank Quijano
Gabriel Velasquez
George Britton
Maria Cruz
Jesse Zuniga
John Kuderer
Gene Camargo
Paul Klein
Harold Atkinson

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Senior Planner
Paul Wendland, City Attorney

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Andrew Ozuna, Chair, called the meeting to order and called roll of the applicants for each case.

CASE NO. A-14-085

Applicant – Kim Davenport
East ½ of Lot 20, NCB 12061
1703 Blue Crest Lane
Zoned: “RE AHOD” Residential Estate Airport Hazard Overlay District

The applicant is requesting 1) an 847 square-foot variance from the 653 square-foot maximum floor area to allow an accessory detached dwelling unit 1500 square-feet in area; and 2) a request for a variance to allow three (3) bedrooms in an accessory detached dwelling unit; the maximum number of bedrooms allowed by code is one (1) bedroom.

Tony Felts, Senior Planner, presented background and staff’s recommendation of denial of the requested variances. He indicated 21 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Arboretum Neighborhood Association.

Kim Davenport, applicant, stated the proposed dwelling would provide a home to her elderly parents. She also stated this is not a monetary investment but this would be as a personal investment. She further stated her elderly father requires twenty-four hour care by a caregiver and his existing home is not suitable for the caregiver.

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-14-085 closed.

MOTION

A motion was made by Ms. Rogers. “Re Appeal No. A-14-085, variance application for 1) **an 847 square-foot variance from the 653 square-foot maximum floor area to allow an accessory detached dwelling unit 1500 square-feet in area; and 2) a request for a variance to allow three (3) bedrooms in an accessory detached dwelling unit; the maximum number of bedrooms allowed by code is one (1) bedroom**, subject property description the **East ½ of Lot 20, NCB 12061, situated at 1703 Blue Crest Lane**, applicant being **Kim Davenport**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-085**, 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 **this detached accessory dwelling would be located on an approximately two acre lot, which provides sufficient area for the two dwellings and one of particular size. There would no one on either side of them that would be affected in any negative or in the area.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **this is case where a couple are providing for parents which is a very good thing in this day and age where we see so many people that are not caring for the elderly. Rather than send them off to a home somewhere, they would be within the specific care of this couple. To me that would be a hardship to have to send the parents to an assisted living or another facility.** The spirit of the ordinance is observed and substantial justice is done in that **what better justice than to have your parents on the property with you than and any assisted living facility would allow two bedrooms when there is a couple there present.** 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 **another dwelling on this property is authorized. It’s merely the size of it that has come into question. So it would not be of any other use than what they intend to use it for.** 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 such a large lot and lots in that they are so large that there would be no injury to adjoining properties. Also, there was no opposition to this and the zoning is unchanged with this.** 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 circumstances are that a dwelling that would accommodate this couple and allow the mother to go on with her lifestyle and be comfortable would be a very good thing here. I see a one bedroom little house cramped quarters for a couple who has had a nice home. Mr. and Mrs. Davenport are willing to help their parents have a comfortable home. I just think that would be a very good thing and satisfy this.”** The motion was seconded by Mr. Klein.

AYES: Rogers, Klein, Atkinson, Cruz, Britton, Kuderer, Ozuna
NAYS: Camargo, Zuniga, Velasquez, Quijano

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-14-086

Applicant – Thomas Kinderknecht
Lot 21, Block 79, NCB 15850
319 Cypressgarden Drive
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 1-foot variance from the minimum 3-foot side yard setback to allow a shed with an eave overhang 2 feet from the property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 38 notices were mailed, 2 were returned in favor and one was returned in opposition and the Heritage Neighborhood Association is in opposition.

Thomas Kinderknecht, applicant, stated he replaced the existing shed to match the house. He also stated removing one of the eaves would make the shed look odd. He further stated because of the topography water runoff from the shed would go into his property and he would not need gutters on the shed.

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-14-086 closed.

MOTION

A motion was made by **Mr. Camargo**. “I would move that in Case No **A-14-086**, the request of **Thomas Kinderknecht, 319 Cypressgarden Drive**, legally described as **Lot 21, Block 79, NCB 15850**, be granted his request for a minimum **1-foot variance from the minimum 3-foot side yard setback to allow a shed with an eave overhang 2 feet from the property line**. Specifically, we find that such variance will not be contrary to the public interest in that **even though there was a request for a notice from the surrounding property owners, the one notice that was returned in opposition is somewhat two lots removed from the subject property. Although the registered neighborhood association returned a notice in opposition, the rationale for the opposition in this member’s opinion did not necessarily address the variance request that we had before us.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it has been very clearly shown and pointed out by the applicant that eliminating the eave overhang on one particular side would really distract from the appearance of the structure from the streetscape. I would point out that this particular point in the finding of fact that some**

years ago, probably before staff, accessory buildings were permitted with a three foot setback with an overhang. Therefore that which is before us is not unusual in many parts of the city. It wasn't until the last fifteen or so years that the ordinances have been amended to require the no overhang with a three foot setback. The spirit of the ordinance is observed and substantial justice is done in that **the overall appearance of the structure that has been constructed is not in any manner take away from the appearance of the neighborhood.** 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 **accessory structures are permitted within this zoning classification.** My greatest concern is really the separation between the accessory building and the main structure but I would assume that **during the permitting process that any fire codes requirements to the address the safety and protection of adjacent property and the subject property will be addressed.** 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 **had he applied for a permit, he would have been advised accordingly at that time and not have to go through the expense of having to file a request from this board.** So for those reasons, I would recommend approval of the variance." The motion was seconded by Mr. Kuderer.

AYES: Camargo, Kuderer, Atkinson, Rogers, Zuniga, Quijano, Cruz, Velasquez, Britton, Ozuna

NAYS: Klein

THE VARIANCE WAS GRANTED.

CASE NO. A-14-087

Applicant – MTR Engineers, LLC (Greg Senulis)

Lot 32, Block A, NCB 8695

1327 Austin Highway

Zoned: "C-2 MC-3 AHOD" Commercial Austin Hwy/Harry Wurzbach Metropolitan Corridor Airport Hazard Overlay District

The applicant is requesting a variance from Section 35-339.01 of the UDC and Sections A.1., B.1., J.9., and M.4. of the adopted "MC-3" Austin Hwy/Harry Wurzbach Metropolitan Corridor Design Standards Manual for 1) a request for a 6-foot variance from the maximum 40-foot setback in the "MC-3" corridor to allow a structure to be setback 46 feet from the property line; 2) a 4-foot variance from the required 15-foot front bufferyard to allow a reduction of a portion of the required bufferyard to 11 feet, 3) a request for a 2-foot variance from the required 10-foot side bufferyard to allow a reduction of a portion of the required bufferyard to 8 feet; 4) a 10-foot variance from the 20-foot setback adjacent to residentially-zoned properties to allow a dumpster 10 feet from a residentially-zoned property; and 5) a 299 square foot variance from the 389 square feet of required parking lot landscaping to reduce to amount of required parking lot landscaping to 90 square feet.

Tony Felts, Senior Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 8 notices were mailed, 2 were returned in favor and none were returned in opposition.

Greg Senulis, applicant, stated TxDot only allows one curb cut for two businesses. He also stated the variance would allow for the dumpster to be placed in the back of the business. He further stated there will be landscaping around the dumpster to block it. If the property did not have the overlay, a variance would not be needed.

The following citizens appeared to speak:

Nancy Dugger, 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-14-087 closed.

MOTION

A motion was made by **Mr. Camargo**. "Re Appeal No. **A-14-087**, the request of **MTR Engineers, LLC**, at property known as **1327 Austin Highway**, legally described as **Lot 32, Block A, NCB 8695**, variance request for a request for a 6-foot variance from the maximum 40-foot setback in the "MC-3" corridor to allow a structure to be setback 46 feet from the property line, a 4-foot variance from the required 15-foot front bufferyard to allow a reduction of a portion of the required bufferyard to 11 feet, a request for a 2-foot variance from the required 10-foot side bufferyard to allow a reduction of a portion of the required bufferyard to 8 feet, and a 299 square foot variance from the 389 square feet of required parking lot landscaping to reduce to amount of required parking lot landscaping to 90 square feet. Specifically, we find that such variance will not be contrary to the public interest in that **there was no opposition registered to the request. In fact we had a neighboring property owner appear before the board to recommend approval of the request.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **that due to the shared driveway that is required by the Texas highway department, it has required certain challenging conditions to be applied to this property in addition to the fact that there is an overlay district that is applied to this property that requires more extensive landscaping and setbacks that is normally required on properties that are not covered by that overlay.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed by granting the variance as the applicant has depicted and indicated that landscaping above and beyond that what is required by the unified development code.** 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 not permitted on the "C-2".** **The proposed use is that of a restaurant which is a permitted use within that zoning 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 requested variances are unlikely to injure the appropriate use of the adjacent properties and given essential landscaping that is provided will provide a very much**

improvement to this area of Austin Highway. 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 applicant has indicated that the unique circumstances in his opinion is the fact that in redevelopment properties along Austin Highway the Texas Highway Department is requiring shared parking which is a very great idea. I've seen it in operation on various parts of the city and it is certainly lessens the congestion on major thoroughfares. I think that the is being one of the unique circumstances that places the applicants and designers of the property to have to come before this board today to request variances and staff has recommended approval of the request.**" The motion was seconded by Ms. Cruz.

AYES: Camargo, Cruz, Rogers, Atkinson, Quijano, Kuderer, Klein, Zuniga, Velasquez, Britton, Ozuna

NAYS: None

THE VARIANCE WAS GRANTED.

MOTION

A motion was made by **Mr. Camargo.** "Re Appeal No. **A-14-087**, the applicant is **MTR Engineers, LLC**, location **1327 Austin Highway**, description is **Lot 32, Block A, NCB 8695**, this is an application request for a **10-foot variance from the 20-foot setback adjacent to residentially-zoned properties to allow a dumpster 10 feet from a residentially-zoned property.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-14-087**, 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 **no opposition has been voiced.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the dumpster issue is solely caused by the adoptive NC-3 Austin Highway/Harry Wurzbach Metropolitan Corridor design standards which go over and beyond those requirements for dumpster locations located in the Unified Development Code.** The spirit of the ordinance is observed and substantial justice is done in that **the separation of 20-feet is not required per UDC and it applies exclusively to this overlay district and is provided a significant hardship on a small piece of property which additionally is another hardship having to share a driveway based on requirements of TxDot which have come into play on this property.** 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 **if the variance is granted the property will remain zoned "C-2 MC-3 AHOD" Commercial Austin Hwy/Harry Wurzbach Metropolitan Corridor Airport Hazard Overlay 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 **were this property not included in the overlay zone, the dumpster**

location as proposed could be located closer than it is currently proposed. In this particular instance the owner is actually exceeding the minimum requirements of the UDC. 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 is caused by the overlay district requirements which are imposed in broad scale across all properties regardless of size, geometric configuration, and usage.**” The motion was seconded by Mr. Quijano.

AYES: Klein, Velasquez, Kuderer, Camargo, Rogers, Zuniga, Britton, Quijano, Atkinson, Cruz, Ozuna

NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The August 4, 2014 minutes were approved with all members voting in the affirmative
