

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
July 1, 2013**

Members Present:

Michael Gallagher
Andrew Ozuna
Frank Quijano
Edward Hardemon
Helen Dutmer
George Britton
Jesse Zuniga
Mary Rogers
John Kuderer
Gene Carmargo
Maria Cruz

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.

CASE NO. A-13-052

Applicant – Dominica A Castillo.

Lot 1, NCB 751

721 West Cypress Street

Zoned: "I-1 AHOD" General Industrial Airport Hazard Overlay District

The applicant is requesting 1) a 23.5-foot variance from the 30-foot side yard setback requirement to allow a structure 6.5 feet from the property line; 2) an 18.5 foot variance from the 25-foot buffer yard requirement to allow a structure within 6.5 feet of the property line; and 3) a 0.96 feet from the property line.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variances. He indicated 16 notices were mailed, 4 were returned in favor and 3 were returned in opposition and no response from the Five Points Owners Neighborhood Association.

Dominica Castillo, applicant, stated they did not need a permit for the slab; however, they did need a permit to build the structure. She also stated they have been there for over twenty years and do not plan to go anywhere. She further stated they are also obtaining a fence permit with the building permit. They will continue to use the property as industrial use.

The following citizens appeared to speak.

Maria T Gomez, citizen, spoke in favor.

Robert Corbo, citizen, spoke in favor.

Ann Romero, citizen, spoke in opposition.

James and Edith Martin, 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-13-052 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-052**, variance application for **721 W Cypress Street**, subject property is **Lot 1, NCB 751**, situated again at **721 W Cypress**, applicant being **Dominica A. Castillo**, the variance request is for **1) a 23.5-foot variance from the 30-foot side yard setback requirement to allow a structure 6.5 feet from the property line; 2) an 18.5 foot variance from the 25-foot buffer yard requirement to allow a structure within 6.5 feet of the property line; and 3) a 0.96-foot variance from the 30 foot side yard setback requirement to allow a structure 29.04 feet from the property line**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-052**, 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 building setbacks are designed to maintain orderly and safe development, and ensure access to air and light. Setbacks, in combination with required buffer yards, are also used, to separate different intensity land uses. In this case, imposition of a 30-foot wide side setback and a 25-foot buffer yard from both the east and west sides of the lot would cause the lot to be unbuildable. As such, a reduction in the required setbacks and buffer yards is necessary and not contrary to the public interest. We have seen evidence that there will a 5-foot setback and a planting of buffer zone between the two uses and an opaque fence to separate the two property lines. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that imposition of the building setbacks and buffer yards as required by the UDC would render the lot unbuildable and could be considered an unnecessary hardship. The lot has been used over the past twenty or thirty years as provided by testimony to us today as an industrial use property. So the applicant is requesting continuance of the use. The spirit of the ordinance is observed and substantial justice is done in that the ordinance is designed to protect separate incompatible land uses with setbacks and buffer yards. The ordinance is not designed to deny a property owner the right to construct a building or have a conforming use on their property. As the setbacks and buffer yards would render the lot unbuildable, granting the variance will observe the spirit of the ordinance 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 "I-1" 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 variance, as presented, would not substantially injure the appropriate use of adjacent conforming properties as the applicant's proposed structure is light in intensity, and essentially will function as a carport.** 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 circumstances existing on the property are unique and were not created by the owner as the circumstances are a function of the lot's size and configuration.** The plot plan as submitted is part of the approval process." The motion was seconded by Mr. Camargo.

AYES: Ozuna, Camargo, Dutmer, Kuderer, Zuniga, Britton, Rogers

NAYS: Cruz, Quijano, Hardemon, Gallagher

Alternate Motion

Mr. Camargo made a motion to continue this case for various reasons. For one for the applicant to meet with staff to see what in fact is required, what they are allowed, and her design individual to offer suggestions on how she possibly could fit this structure on the property and for her to contact the neighbors and see what she could offer to try to appease their concerns. The motion was seconded by Mr. Ozuna.

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

NAYS: Quijano

THE MOTION PASSES.

Board members recessed for 10 minutes.

CASE NO. A-13-053

Applicant – Mark P. McAshan.
Lot 1, Block 2, NCB 13521
9002 Rock Cliff Road
Zoned: "R-5" Residential Single-Family District

The applicant is requesting a 1) a 5-foot variance from the 3-foot front yard fence height restriction to allow a fence 8 feet in height in the front yard; and 2) a 2-foot variance from the 6-foot side and rear yard fence height restriction in order to allow a fence 8 feet in height in the rear and a 6-foot side yard.

Tony Felts, Planner, presented background and staff's recommendation of partial approval of the requested variances. He indicated 15 notices were mailed, 2 were returned in favor and none were returned in opposition and no response from the Vance Jackson Neighborhood Inc. Neighborhood Association.

Mark McAshan, representative, stated the height of the fence on Vance Jackson is for privacy and to block out traffic. He also stated the fence would provide a canvassing background for the landscaping he is proposing on his property. He further stated his neighbors are not opposed to 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-13-053 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Appeal No. **A-13-053**, variance application for **Mark P. McAshan** subject property at **9002 Rock Cliff Road, Lot 1, Block 2, NCB 13521**, situated at **9002 Rock Cliff Road**, for applicant **Mark P. McAshan**, the request for an **8-foot fence in the front, side, and rear yards along Vance Jackson, 8-feet in the rear and side, and 6-feet in the front yard on the northeast portion**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-053**, 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 and wall height restrictions are put into place in order to provide orderly development and encourage a sense of community. The UDC does not contemplate that sometimes higher fences than that which are normally allowed are sometimes necessary in order to provide for security or reduce negative impacts from visual distractions or noise. In this case, the taller fence height would be allowed along Vance Jackson Road if the fence were being constructed on all lots in the subdivision bordering Vance Jackson. Vance Jackson is heavily traveled, and is designated as a Secondary Arterial street in the Major Thoroughfare Plan. Given this, and the property owner's desire to block noise from the road, as well as to increase safety due to the deer strikes, an 8-foot fence would not be contrary to the public interest. Regarding the request on the east side of the property, the portion of the fence in the side yard which blocks the view of the applicant's deck could be considered appropriate in order to allow additional privacy. However, the portion of the fence on the east side beyond the front façade of the house, considered by the UDC to be the front yard, as long as it is 6-foot in height would be considered appropriate. Due to**

special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant is requesting the additional height on the west side of the property in order to mitigate the negative aspects of the heavily traveled roadway adjacent to their property. A literal enforcement of the ordinance may not adequately protect the applicant's right of full enjoyment of their property. As such, a literal enforcement of the ordinance in this area would result in an unnecessary hardship. Similarly, privacy concerns due to the slope of the property in the side and rear yard on the east side of the property are such that a literal enforcement of the ordinance may not adequately protect the applicants.** The spirit of the ordinance is observed and substantial justice is done in that **because the UDC would allow an 8-foot fence if the fence were across all properties in the subdivision along Vance Jackson, the spirit of the ordinance will be observed and substantial justice done along the entire west side of the property. As previously stated, privacy concerns in the side and rear yard on the east side of the property as such that by granting the variance, the spirit of the ordinance will be observed and substantial justice 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" Residential Single-Family 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 variances on the west side of the property and in the rear and side yards on the east side of the property will not injure the appropriate use of adjacent conforming properties but rather the variance would likely have the effect of enhancing the quality of life for the applicant by reducing noise and negative aspects of the adjacent roadway, and providing privacy for the applicant.** 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 existing on the property are due to the site's proximity to Vance Jackson Road and the slope of the property and adjacent properties, as well as the land use to the rear of the property and were not created by the applicant.**" The motion was seconded by Mr. Hardemon.

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

NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The June 3, 2013 minutes were approved with all members voting in the affirmative.
