BOARD OF ADJUSTMENT
OFFICIAL MINUTES
March 18, 2013

Members Present:

Michael Gallagher
Andrew Ozuna
Helen Dutmer
George Britton
Brian Smith
Jesse Zuniga
Mary Rogers
Paul Klein
Henry Rodriguez
Harold Atkinson

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-13-025

Applicant – Mary Sramek
Lot 12, Block 8, NCB 19026
9146 Wild Trails Street
Zoned: "R-6" Residential Single-Family District

The applicant is requesting 1) a 3-foot rear yard setback variance to allow a structure 2-feet from the rear property line and 2) a 3-foot side yard setback variance to allow a structure 2-feet from the side property line.

Tony Felts, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 30 notices were mailed, 3 were returned in favor and none were returned in opposition.

Scott Sramek, representative, stated he was not aware of the side easement and similar structures have been erected in the neighborhood. He also stated a number of neighbors are in support. He further stated that if the variance were to be granted, he is willing to pay the cost of damages to the gazebo, in case the easement owners should need access. The gazebo does not have any electrical service.

Mary Sramek, applicant, stated the gazebo was started with off with a 4 X 4 wood buried to the ground. She also stated this started as a smaller structure. She further stated two more 4 X 4's were added to the pillars which are underground.

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-13-025 closed.

MOTION

A motion was made by **Mr. Ozuna**. Re Appeal No. **A-13-025**, variance application for **Mary Sramek**, subject property description is **Lot 12, Block 8, NCB 19026**, situated at **9146 Wild Trails Street**, the variance application request is for **1) a 3-foot rear yard setback variance to allow a structure 2 feet from the rear property line and 2) a 3-foot side yard setback variance to allow a structure 2 feet from the side property line.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-025**, 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 applicant has provided testimony to us today to show that the neighboring property owners were in agreement with what was constructed and there is no opposition from the surrounding property owners or any kind of neighborhood association to the improvements that the applicant constructed.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has gone through the considerable expense in constructing the gazebo and the literal enforcement of the ordinance will result in the applicant modifying or removing the structure which would be a hardship to the applicant.** The spirit of the ordinance is observed and substantial justice is done in that **the granting of the variance would provide some relief to the applicant who in good faith constructed the improvements and provided testimony to us today that any encroachment over the easement that would necessitate removal to access the utilities and easement would be a cost expense born by the applicant.** 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 existing zoning of "R-6" Residential would remain. There is no proposed amendment to the existing zoning of the property.** 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 **again the applicant provided testimony that there are similar gazebo type structures within the neighborhood. Further the adjoining property owners that would be most affected by the improvements that are constructed are in support of the improvements as constructed by 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 **again the applicant in good**

faith constructed the improvements and do not encumber the adjoining property owner's rights to enjoy the property The motion was seconded by **Ms. Rogers.**

AYES: Ozuna, Rogers, Klein, Dutmer, Britton, Zuniga, Rodriguez, Smith, Gallagher
NAYS: Atkinson

THE VARIANCE WAS GRANTED.

CASE NO. A-13-026

Applicant – Rosaura Carrizales
Lot 36, Block 1, NCB 8601
2135 Beechaven Drive
Zoned: "MF-33 AHOD" Multi-Family Airport Hazard Overlay District

The applicant is requesting a 10-inch side yard setback variance to allow a structure 4 feet 2-inches from the side property line.

Tony Felts, Planner, presented background and staff's recommendation of denial of the requested. He indicated 35 notices were mailed, 5 were returned in favor and none were returned in opposition.

Tony Recine, representative, stated the existing foundation is structurally sound and they would like to rebuild the structure on this foundation after the existing structure was destroyed in a fire. He also stated they originally wanted to put the exterior 5-feet away from the side property line but because it is an exterior wall it needs to rest upon the edge of the foundation. He further stated the owner is willing to build a one-hour fire rated wall.

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-13-026 closed.

MOTION

A motion was made by **Mr. Klein**. Re Appeal No. **A-13-026**, the applicant is **Rosaura Carrizales**, the location is **2135 Beechaven Drive**, the legal description is **Lot 36, Block 1, NCB 8601**, the zoning is **"MF-33 AHOD" Multi-Family Airport Hazard Overlay District**, the request is for a **10-inch side yard setback variance to allow a structure 4 feet 2 inches from the side property line**. I move that the Board of Adjustment grant the applicant's request in this case, 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 particular residence survived for an unknown number of years prior to the fire which totaled it in 2012. The**

applicant intends to rebuild on the existing slab and taking in at the same point the precautions prescribed by the unified development code related to fire related construction within proximity to a property line. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement would indicate that the existing slab be removed for the 10-inch encroachment that does include the entire extent of the slab itself. For this reason the literal enforcement is unnecessary and a little bit onerous and would be mitigated by the applicant's fire rated construction along the wall in question.** The spirit of the ordinance is observed and substantial justice is done in that **the Unified Development Code does allow fire-rated construction to supplant distance from the property line as indicated in this case.** 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 **it is residential and the zoning will not be changed if this variance request were to be approved.** 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 **again as mentioned previously the owner intends to rebuild in the same spot that the house occupied for a number of years prior to 2012 and that the fire-rated construction will be a part of the construction as well as the permitting process that will be reviewed by other city departments.** 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 **to my knowledge the owner did not construct the original slab with the 10-inch encroachment as indicated and thus the owner is not responsible for this encroachment.** The motion was seconded by **Mr. Rodriguez.**

AYES: Klein, Rodriguez, Dutmer, Britton, Atkinson, Zuniga, Rogers, Smith, Ozuna, Gallagher
NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-027

Applicant – Paul Covey
The northeast 99.93 feet of Lot 7, NCB 11961
8320 Gault Lane
Zoned: "MF-33 AHOD" Multi-Family Residential Airport Hazard Overlay District

The applicant is requesting a special exception for a non-commercial parking lot with 74 parking spaces.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested special exception. She indicated 11 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Oak Park/Northwood Neighborhood Association.

Paul Covey, applicant, stated this would parking for the personnel that have to park on the street. He also stated they meet the criteria for the special exception. He further stated they are surrounded by commercial property.

The following citizens appeared to speak:

Craig Howard, 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-13-027 closed.

MOTION

A motion was made **Ms. Rogers**. Re Appeal No. **A-13-027**, subject property the **northeast 99.93 feet of Lot 7, NCB 11961**, located at **8320 Gault Lane**, applicant being **Paul Covey.** I move that the Board of Adjustment grant the applicants request regarding this appeal, application for a Special Exception for the subject property 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 35-399.02. 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 **the UDC has established design requirements that when satisfied provide the process for review and approval of a special exception. The design requirements require a landscape buffer around the entire lot, limited hours, and a limited duration. The applicant has agreed to these provisions and as such, the special exception will be in harmony with the spirit and purpose of the regulations.** The public welfare and convenience will be substantially served in that **the owner of the medical research facility has identified a critical need for additional parking and a convenient adjacent location which could satisfy this need. The parking in itself would provide employees with more security and less damage to their vehicles and safety to the people traveling on Gault Lane. Rather than sell the parcel, the lot owner is electing to enter into this lease agreement.** The neighboring property will not be substantially injured by such proposed use in that **it is currently vacant, but could be improved with 62 dwelling units. The impact potential from the use allowed by right is far more intense than the impact of 74 parking stalls, presumably needed by the existing traffic to the research facility. Therefore, the neighboring properties will not be injured in this use.** 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 **the character of the district and the location is a mix of apartment buildings, office buildings and a convalescent care facility. Among these uses, the proposed parking will not alter the character, but instead solve an overflow parking problem that has negatively impacted the surrounding neighborhood and there is no negative information which has come forth in this case.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **this proposal is ideal for consideration for the requested special exception; it is not located in a single family residential zoning district as previous requests have been. Instead the property is located among a mixture of office, retail, and other high-density housing. According to the parcel's zoning, 62 dwelling units could be constructed here, creating 350**

vehicle trips each day. Comparing impacts between the potential use and the proposed use, the special exception will not weaken the purpose of the district or the regulations. The motion was seconded by **Ms. Dutmer.**

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

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-13-028

Applicant – Maria Castillo
Lots 45 & 46, Block 12, NCB 1787
907 W Kings Hwy
Zoned: **"R-6 NCD-5 AHOD" Residential Beacon Hill Neighborhood Conservation Airport Hazard Overlay, District.**

The applicant is requesting a 1-foot 4-inch variance from the minimum 3-foot side yard setback to allow an accessory structure without eaves within 1-foot 8-inches from the side property line.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 26 notices were mailed, 4 were returned in favor and none were returned in opposition.

Alicia Ortiz, applicant, stated the slab was on the property when it was purchased. She also stated there are sewage and water lines. She further stated they pulled the proper permits to start on the project and were informed after the construction that they needed a variance.

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-13-028 closed.

MOTION

A motion was made **Mr. Rodriguez**. In case **A-13-028,** the applicant **Maria Castillo**, at address **907 W Kings Hwy**, legal description **Lots 45 & 46, Block 12, NCB 1787**, which is zoned **"R-6 NCD-5 AHOD" Residential Beacon Hill Neighborhood Conservation Airport Hazard Overlay, District.** I move that the Board of Adjustment grant the applicant's request, 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 welfare of the public at large. The public interest is protected by minimum setbacks established to ensure adequate air, light and fire separation. There are construction methods that can be used to enhance the fire protection when these minimum setbacks have been compromised.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance would require that the applicant demolish the structure or at least remove enough of the exterior wall to provide the 3-foot setback. Unfortunately, the orientation of the structure includes this wall supporting the roof trusses, so the corrective construction would be challenging. Furthermore there is this old area, which I am very familiar with, has all kinds of situations the same as this one.** The spirit of the ordinance is observed and substantial justice is done in that **various zoning court cases have provided guidance as to the "spirit" of the ordinance as contrasted with the "strict letter" of the law. In observing the spirit, the Board is directed to weigh the competing interests of the property owner and the community. The community has a right to the prescribed setback and everyone is required to comply.** 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 what the code says.** 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 **accessory structures are very common in the surrounding neighborhood. Of the houses sharing this alley on this block, 22 of the 23 have accessory structures to be exact.** 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 property in question had an existing foundation built in this location. Property owners prefer using existing foundations. Though no site plan was scanned into the record, one can assume that the site plan showed adequate setback for these approvals to have been granted. Since the foundation had been there for some time, a large tree and she is respecting the tree ordinance.** The motion was seconded by **Mr. Zuniga.**

AYES: Rodriguez, Zuniga, Klein, Dutmer, Britton, Smith, Atkinson, Rogers, Ozuna, Gallagher
NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The March 4, 2013 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 2:49 pm.

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

DATE: 4-1-13

ATTESTED BY: _____ DATE: 4-2-13
Executive Secretary