

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
August 5, 2013**

Members Present:

Michael Gallagher
Andrew Ozuna
Frank Quijano
Helen Dutmer
George Britton
Brian Smith
Jesse Zuniga
Mary Rogers
John Kuderer
Paul Klein
Maria Cruz

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Planner
Paul Wendland, City Attorney
Andrew Perez, Sign Inspector

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-13-058

Applicant – Budget Signs, LTD
Lot 19, Block 1, NCB 15017
10815 IH 10 W
Zoned: “C-3” General Commercial

The applicant is requesting 1) a 28 square foot variance from the maximum 25% of allowable sign area to allow an electronic message center with 153 square feet of area and 2) two 60-foot variances from the minimum 200-foot spacing required between free-standing pole signs to allow three signs with 140 linear feet between them.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variances. She indicated 6 notices were mailed, 3 were returned in favor and none were returned in opposition.

Wes Putman, applicant, stated the current sign is being serviced on a weekly basis. He also stated the owner would like to update his and utilize the existing four signs.

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-13-058 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-058** variance application for **Bullish Resources, Inc.**, subject property is **Lot 19, Block 1, NCB 15017**, the address is **10815 IH 10 W**, the applicant being **Budget Signs, Ltd.**, the variance request is for **1) a 28 square foot variance from the maximum 25% of allowable sign area to allow an electronic message center with 153 square feet of area and 2) two 60-foot variances from the minimum 200-foot spacing required between free-standing pole signs to allow three signs with 140 linear feet between them**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-058**, 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, we find 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. **The applicant has provided testimony to us today regarding the location of the sign and its setback from the highway which necessitates the increase in size so that the sign could be readable from the highway and provides safety for the passer bys so that could read legibly the proposed sign**. A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. **The large site, with approximately 2,600 linear feet of frontage on both the freeway and a nearby commercial collector, could install 13 free-standing pole signs. With that many signs allowed by right, it is difficult to claim a hardship resulting from minimum spacing. Only four signs are allowed along the freeway frontage and each of these signs is already in place; three are the subjects of this variance. These three signs are already installed without the minimum spacing required. No changes are proposed for two of these three signs. The variances to reduce the minimum spacing, if granted, would simply make these three signs conforming**. Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated. **The applicant states that the variance for the enlarged digital sign does not provide a special privilege because the proposed overall sign is significantly smaller than the current ordinance allows. Regarding the spacing, each of the signs is existing and in the same location.**” The motion was seconded by **Mr. Quijano**.

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

NAYS: None

THE VARIANCES WERE GRANTED.

Mr. Gallagher departed the boardroom at 1:21 pm for purpose of recusal.

CASE NO. A-13-060

Applicant – Francisco J Morales
Lot 59, Block 38, NCB 16808
4311 Hilton Head
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting 1) a 5-foot variance from the 5-foot required side yard setback to allow a zero lot line dwelling and 2) a 4.9-foot variance from the 20-foot required rear yard setback to allow a dwelling 15.1 feet from the rear property line.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variances. He indicated 20 notices were mailed, 11 were returned in favor and none were returned in opposition and the Northern Hills Homeowners Association is in support

Steve Jones, owner, stated the homeowner was built in 1982 with a zero lot line. He also stated due to a fire, the house was demolished. They did obtain a permit for the demolition.

The following citizens appeared to speak:

Roger Martinez, representing the Northern Hills Homeowners Association and Northern Hills Architectural Review Board, spoke in support.

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-13-060 closed.

MOTION

A motion was made by **Mr. Kuderer**. “In Case A-13-060, variance application for **Francisco J. Morales**, owner **Steven C Jones**, subject property is **Lot 59, Block 38, NCB 16808**, situated at **4311 Hilton Head**. I move that the Board of Adjustment grant the applicant’s request regarding Case No. **A-13-060**, specific request for a **request for 1) a 5-foot variance from the 5-foot required side yard setback to allow a zero lot line dwelling and 2) a 4.9-foot variance from the 20-foot required rear yard setback to allow a dwelling 15.1 feet from the rear of the property**. Specifically, we find that such variance will not be contrary to the public interest in that **building setbacks are designed to maintain orderly and safe development, and ensure access to air and light**. The UDC provides for zero lot line dwellings so long as certain conditions are met. In this case the demolished structure may have been developed under the previous zero-lot line plat. Given that the demolished structure was a non-conforming zero lot line dwelling, and that fact that any new structure will have to meet the fireproofing requirements of the International Residential Code, the requested variance is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **because of the previous existence of a**

zero-lot line dwelling, as well as the adjacent land use as a golf course, special conditions exist that would cause a literal enforcement of the ordinance to result in an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that the UDC does allow zero lot line dwellings if certain platting and other conditions are met. One of the conditions is a 10-foot setback on the non zero lot line side of the property in order to provide proper building separation. This required 10-foot setback is indicated on the site plan, and a distance of at least 10 feet separates to the proposed dwelling to the neighboring dwelling on the zero lot line side; as such, the spirit of the ordinance will be observed. Additionally, the open space function of the adjacent golf course helps to maintain the openness of the rear yard, and thus the spirit of the ordinance is observed. 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 base 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, if approved, will not injure the appropriate use of adjacent conforming properties as zero-lot line dwellings are commonplace in this neighborhood. Additionally, the proximity of the rear of the structure to the existing gold course will likely not substantially injure the function or operation of the use. 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.” The motion was seconded by Ms. Cruz.

AYES: Kuderer, Cruz, Quijano, Rogers, Klein, Smith, Dutmer, Zuniga, Britton, Ozuna

RECUSAL: Gallagher

NAYS: None

THE VARIANCES WERE GRANTED.

Mr. Gallagher returned to the boardroom at 1:38 pm.

CASE NO. A-13-061

Applicant – Keith Douglas

Lot 31, Block 33, NCB 11833

227 Royal Oaks Drive

Zoned: “NP-10 AHOD” Neighborhood Preservation Airport Hazard Overlay District

The applicant is requesting a 2-foot variance from the 6-foot maximum allowable fence height requirement to allow a fence 8 feet in height in the rear and side yards.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 12 notices were mailed, 2 were returned in favor and none were returned in opposition and no response from the Oak Park Northwood Neighborhood Association.

Keith Douglas, applicant, stated the fence would allow some privacy from the commercial properties in the back of the residence. He also stated this would block the view from the passing traffic on the highway. He further stated the fence would improve the neighborhood and was not aware of obtaining a permit due to commercial property behind the residence.

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-13-061 closed.

MOTION

A motion was made by **Ms. Rogers**. "Re Appeal No. **A-13-061**, application for a **2-foot variance from the 6-foot maximum allowable fence height requirement to allow a fence 8 feet in height in the rear and side yards**, subject property at **227 Royal Oaks Drive**, subject property **Lot 31, Block 33, NCB 11833**, the applicant being **Keith Douglas**. I move that the Board of Adjustment grant the applicant's request regarding the stated variance, 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 will allow the necessary privacy for the owners from the apartment complex in the rear and also from the traffic which travels down this alley behind the property between the apartments. There does not appear to be any reduction in clear vision area or visual distraction from the fence, as such, the variance is not contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **because the lot abuts a utility right-of-way and not the actual commercially-zoned apartment complex and because the side fence abuts only a collector street, an 8-foot high fence is not permitted by right.** As previously stated, the alley essentially functions as part of the apartment complex, and North Vandiver Road is heavily traveled and I know that for a fact because I have used that many times which impacts the quality of life and enjoyment of property for the applicant. As such, a special condition exists on the property. The spirit of the ordinance is observed and substantial justice is done in that **higher fences between incompatible land uses and to reduce noise and other negative impacts from busier streets, it does allow for higher fences to preserve quality of life and enjoyment of property.** As such, granting the variance will observe the spirit of the ordinance. 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 "NP-10" Neighborhood Preservation 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 will not substantially injure the adjacent use of conforming 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 unique circumstances existing on the property are due to the site's proximity to the adjacent multi-family development and the fact that the platted alley functions as part of that development. Additionally, the location of the property along a collector street is also a unique circumstance existing on the property.**" The motion was seconded by Mr. Quijano.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-13-062

Applicant – Abel Vidal

Lot 24, NCB 2956

234 Carolina Street

Zoned: "RM-4 H CD AHOD" Residential Mixed Historic Airport Hazard Overlay District, with a conditional district to allow a 3-unit apartment

The applicant is requesting a 1-foot variance from the maximum allowed 2-foot projection of an eave overhang to allow an eave within 2-feet of the side property line.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of denial of the requested variance. She indicated 31 notices were mailed, none was returned in favor and 2 were returned in opposition.

Abel Vidal, applicant, stated he was not aware of the overhang setback. He also stated there is going to be 15-feet between the homes. He further stated he is going to set the house on the property with what was agreed with the Historic Commission.

No citizens appeared to speak.

Irene Vidal, 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-13-062 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-13-062**, variance application for a **request for a 1-foot variance from the maximum allowed 2-foot projection of an eave overhang to allow an eave within 2-feet of the side property line**, subject property description is **Lot 24, NCB 2956**, situated at **234 Carolina Street**, the applicant is **Abel Vidal**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-062**, application for a variance to the subject property as described, 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. It was this concern that lead to the establishment of the requirement to always remain at least 3-feet from a property line. As such, the public interest would not be served by granting the variance. However there are conflicting circumstances that have been brought up that shows in reality the property owners are really starting out with a smaller plot than they actually would have if they had the original plot then that would not be a problem.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant claims that the narrow width of the lot constitutes a special condition. The lot is narrow, but six of the nine residential zoning districts for single family housing allow lots less than 50 feet wide. Many designers assume the house width is reduced by the two side yard setbacks (5 ft each). In this case, the applicant is losing more than that to provide a driveway into the rear yard. However, Historic District Design Guidelines and Neighborhood Conservation District requirements have really have approved of this concept. They have given approval of the design and the plotting of it. I believe that most of those people are looking at it from a different point of view and I hardly agree with them. It has been shown in the applicants testimony that they are looking to enhance the neighborhood by bringing in a green environment into the buildings. 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. In this case, the wall is located at the minimum setback, potentially representing the spirit of the ordinance.** 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-4 (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 **allowing the encroachment of the eave overhang into the side yard setback will likely not injure the adjacent property or alter the essential character of the district. It should be noted however, that the majority of homes along the block do appear to maintain the minimum 5-foot setback.** 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.” The motion was seconded by **Ms. Dutmer**.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-13-063

Applicant – Moises Gomez
Lot 6, Block 129, NCB 15231
6223 Bright Valley
Zoned: “R-6 AHOD” Residential Single Family Airport Hazard Overlay District

The applicant is requesting a special exception to allow an ornamental iron fence, up to 6-feet in height, in the front yard.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 28 notices were mailed, 2 were returned in favor and none were returned in opposition.

Moises Gomez, applicant, stated there has been trespassers in the yard. He also stated the fence would provide security to the homes. He further stated they hired a company to install 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-13-063 closed.

MOTION

A motion was made by **Mr. Klein**. “Re Appeal No. **A-13-063**, this is a **special exception to allow an ornamental iron fence, up to 6-feet in height, in the front yard**, the applicant is **Mosies Gomez**, the location is **6223 Bright Valley**, legal description being **Lot 6, Block 129, NCB 15231**, the zoning is “**R-6 AHOD**” **Residential Single Family Airport Hazard Overlay District**. I move that the Board of Adjustment grant the applicant’s request regarding this appeal, 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 35-399.04. 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 allows fences taller than four feet in the front yard as a special exception, authorized under certain circumstances in accordance with specific factors as described in this report that was provided to the board as of this date. The applicant has a fence plan that satisfies the established criteria concerning fence**

height with vertical bars or balusters, spacing between the balusters and other criteria that's provided for the board's review. And this has been provided as part of the testimony today. The public welfare and convenience will be substantially served in that the property owner is potentially concerned about crime in the neighborhood but also more so for protection of children who play in the front yard. The public welfare and convenience can be served by the added protection of front yard fencing, allowing the owner to protect the property and their children from potential injury. The neighboring property will not be substantially injured by such proposed use in that this attractive fencing with brick pillars, masonry pillars, and wrought iron fencing can improve the appearance of the neighborhood in general. The neighboring properties will not be injured if the special exception is granted. 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 property will remain zoned "R-6 AHOD" and will not permit any additional zoning uses to occur if this special exception were granted. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that the purpose of the single-family residential zoning districts is to encourage patterns of residential development that provide housing choices and a sense of community. Fences are restricted in height and transparency to allow visibility between the private property and the public property. The evidence presented to the board today satisfies this requirement as far as visibility, light, and airflow. Therefore, the requested special exception will not weaken the general purpose of the district." The motion was seconded by Ms. Dutmer.

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

NAYS: None

THE VARIANCE IS GRANTED.

Approval of the Minutes

The July 15, 2013 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 2:52 pm.

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

DATE: 8-19-13

ATTESTED BY: JPT DATE: 8-22-13
Executive Secretary