



**City of Harker Heights
Zoning Board of Adjustment
Minutes
October 23, 2013**

Present:	Carl Ford	Chairman
	Jeff Orlando	Board Member
	Chris Diem	Board Member
	Brain Brannock	Board Member
Staff:	Fred L. Morris III	Director of Planning & Development
	James Scholz	City Planner
	Michael Beard	Building Inspector
	Melvia Norwood	Administrative Assistant
		Planning & Development

A quorum was established, and Chairman Carl Ford called the meeting of the Zoning Board of Adjustment to order at 6:03 P.M.

The next item on the agenda was the approval of the minutes from the June 10, 2013, meeting. Mr. Diem made the motion to approve the minutes. Seconded by Mr. Orlando. The motion passed unanimously (4-0).

The case before Zoning Board of Adjustment, Case #2013-03, to discuss and consider a request by Mr. Chris Doose for a variance from the required 25' front yard setback to a 20' front yard setback and for a variance from the required 15' side yard setback to a 10' side yard setback on property located at 939 and 941 Pinewood Drive, described as Lots 1A, 1B, and 1C, Block 11, Rocky Creek Addition II Replat. Mr. Scholz presented the staff report. He stated that the applicant has requested this variance in order to construct a duplex unit on each lot. Mr. Scholz stated that a previously unidentified easement that crosses the rear portion of each lot, leaving only seventy-five (75) percent of the total lot size available for development purposes, creates a specific hardship that supports granting the variances. Mr. Scholz stated that the power line easement has created an exceptional situation or condition for this specific piece of property. In addition, the strict application of a provision of this chapter would result in peculiar and exceptional practical difficulties and particular hardship in the development of this property. Mr. Scholz stated that granting this variance will allow construction of new residential units on the property and they will be similar to other units presently available in the Wildewood neighborhood. Mr. Scholz stated that Section §155.222(D) of the Code of Ordinances requires that every variation granted or denied by the Board shall be accompanied by a written finding of fact specifying the reason for granting or denying such variation. Mr. Scholz stated that staff recommends approval of this request based on the following: (1) The existence of the public utility easements does substantially reduce the developmental footprint of the lot by approximately 25% and strict application of a provision of this chapter would result in peculiar and exceptional practical difficulties and particular hardship in the development of this piece of property and (2) The granting of the variances would not cause substantial detriment to the public good. Additionally, the

granting of the variances would not substantially impair the general purpose and intent of the comprehensive plan since both lots are currently zoned R-2 (Two-Family Dwelling District) and both lots meet the intensity of use requirements (7800 SF) for a duplex lot in the Wildwood Addition. Mr. Ford stated that before hearing from the applicant, he would like to express some concerns. Mr. Ford stated that one (1) of the concerns was the legal issues on a previous matter the board heard. He stated that he asked the Director of Planning perhaps could consult with the City Attorney to seek legal advice. Mr. Ford stated that he believed the response was if the City Attorney's duties are to principally represent the City Council and the City in all matters. Mr. Ford stated that according to the Planning Director, it would be a conflict of interest for the City Attorney to give the Zoning Board of Adjustment advice over a specific legal issue. Mr. Ford stated that this causes him to hesitate and some concerns because if the interest of the City Council are not very similar or the same as the Zoning Board of Adjustments that means that there is a conflict. Mr. Ford stated that he is going to take it on his strictest recommendation that when the Zoning Board of Adjustment is reviewing this case today and in the future that the following six (6) items be specifically reviewed prior to approving or disapproving the request: (1) The application of §155.023 and §155.039 of the City of Harker Heights Code of Ordinances to the property would create a practical difficulty because the property is subject to exceptional physical conditions unique to it or would result in an unnecessary hardship not applicable to other properties in the same zoning district that deprives the owner of the reasonable use of the property; (2) The practical difficulties or unnecessary hardship were not created by the applicant; (3) The variance is the minimum needed to prevent a practical difficulty or an unnecessary hardship; (4) The variance will not impair an adequate supply of light and air to adjacent property, substantially increase congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood; (5) The variance will be in harmony with the general purposes and intent of the Ordinance and the Comprehensive Plan; and (6) The property complies with all other aspects of the Zoning Ordinance. Mr. Ford also stated that following this would hold the Zoning Board of Adjustments in good stead if there were a future dispute and a legal standing over this matter. Mr. Ford stated that if the Zoning Board of Adjustment follows these six (6) items, the City would be obliged to provide the Zoning Board of Adjustment a full defense. Mr. Ford stated that if the Zoning Board of Adjustment acts outside of these six (6) items, then the board is taking it upon themselves and maybe held personally accountable. Mr. Ford asked Mr. Scholz if he could give the Zoning Board of Adjustment an abstract example of what might be a substantial detriment to the public good or what would substantially impair the general purpose and intent of the comprehensive plan. Mr. Scholz stated that the Comprehensive Plan is broken down into a number of use types such as R-1 (One-Family Dwelling District); R-2 (Two-Family Dwelling District) which is the medium residential and there is a high residential. Mr. Scholz stated that most of the area in the Wildewood Subdivision was R-MU (Mixed Use Residential) and R-1 (M) (One-Family Manufactured Home Dwelling District). Mr. Scholz stated that both of these lots show to be in the medium density of the Comprehensive Plan. Mr. Scholz stated that these lots are currently vacant and that building duplexes would improve the value of the land which will increase the appearance and not be a detriment to the neighborhood. Representing the request was Mr. Chris Doose, 703 Illinois Avenue, Killeen, 76542. Mr. Doose stated that the survey

failed to show that the power line was outside of its standard easement. Mr. Doose stated that he went to the power company and asked if they could move the power line into their easement but did not get any cooperation. Mr. Doose stated he came to the City to see if it would be possible to build the duplexes on these lots. Mr. Brannock wanted to know if the street light on the corner of Verna Lee Blvd would remain. Mr. Doose stated that it would remain and it is City owned. Mr. Scholz added that there is a ten (10) foot utility easement on the plat for this property. Mr. Ford wanted to know if both of these lots are equal width. Mr. Doose stated that Lot 21B is 3.39 feet wider. Mr. Diem wanted to know if the part on the Vera Lee side would be fenced in. Mr. Doose stated that these lots will be full sod, irrigation and a six (6) foot privacy fence and high end duplexes. Mr. Brannock asked what the plans were for drainage. Mr. Doose stated that the lots drain from Pinewood to Ashwood, from front to back, there is a drainage ditch in the rear which these duplexes will drain to. Mr. Ford asked if the City required some form of detention; Mr. Doose stated the City did not require a form of detention. Mr. Brannock made the motion to grant the variance. Seconded by Mr. Orlando. Mr. Ford amended the motion to state the variance be granted after consideration of the articles in Section 155.222(D) of the Code of Ordinances (specifically items 1-6). Seconded by Mr. Brannock. The motion passed unanimously (4-0).

Prior to adjournment, Mr. Ford stated that he would like to set a date and time to meet with the with the Planning Department, with the board members concurrence, to discuss and consider an agenda item to approve policy for the Zoning Board of Adjustment. Mr. Ford stated that he did not see anything that precludes the Zoning Board of Adjustment for setting its own policies as long as the Zoning Board of Adjustment does not infringe upon the requirements set by the State and the City. And if there are additional items the board would like to include they can also be discussed. Mr. Ford stated that this would be a Public Hearing and some decisions will be made. Mr. Morris pointed out that in the City of Harker Heights Code of Ordinances, #2001-36 and 155.220(E), are the rules and regulations in which the way the Zoning Board of Adjustment operates that are adopted for the boards operations. Mr. Ford mentioned that it also states clearly that the Zoning Board of Adjustment can set policy. Mr. Morris reiterated that board shall adopt rules according to the provisions of this subchapter and rules are currently adopted. Mr. Morris stated that he would check with legal staff about amending those rules. Mr. Ford stated that he is making no attempt to amend anything that is a directive from the City. Mr. Ford stated that he is simply making a statement that he believes that the ordinance allows the Zoning Board of Adjustment to set policy for the board as long as the board is not less restrictive of that of the City or State it should be okay. Mr. Morris asked Mr. Ford to review that section very carefully and Mr. Ford stated that he would and that we will review it in the meeting.

Mr. Diem made the motion to adjourn the meeting at 6:34p.m. Seconded by Mr. Brannock.

Carl Ford

Carl Ford, Chairman

ATTEST:

[Signature]