City of Riverside
Board of Zoning Appeals Meeting

August 24, 2021
7:00 P.M.

Members Present:	Chuck Childers, Chairman Todd Pultz Tim Schneider Reece Timbrook	***Members Absent:***	Jerry Richardson
Staff Present:	Nia Holt, Zoning Administrator Gary Burkholder, Community Development Director Katie Lewallen, Clerk of Council		

CALL TO ORDER: Chairman Childers called the City of Riverside Board of Zoning Appeals meeting to order at 7:00 p.m.

ROLL CALL: Mr. Childers, present; Mr. Pultz, present; Mr. Richardson, absent; Mr. Schneider, present; and Mr. Timbrook, present.

EXCUSE ABSENT MEMBERS: Chairman Childers motioned to excuse Mr. Richardson. Mr. Timbrook seconded the motion. On the call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; and Mr. Schneider, yes. **Motion carried**.

APPROVAL OF MINUTES: Chairman Childers motioned to approve the meeting minutes of July 27, 2021. Mr. Schneider seconded. On call of the roll: Mr. Childers, yes; Mr. Schneider, yes; Mr. Pultz, yes; and Mr. Timbrook, yes. **Motion carried**.

HEARING OF APPEALS:

A. BZA Case #21-0019 – 2714 Valley Pike (Parcel I39 00230 0039) – R-4, Multi-Family Zoning District

- **VARIANCES FROM UDO SECTIONS 1107.05(E)(1)(C) AND 1115.01(E)(3)(A) TO ALLOW AN EIGHT (8) FOOT FENCE IN THE FRONT YARD.**

Ms. Holt took the oath of office. She stated there are two variances requested to allow an 8' fence in the front yard setback. She presented the case summary. The site is at the intersection of Valley Pike and Hypathia Avenue. The applicant proposes an 8' wooden privacy fence in the front yard spanning 550 feet across the northern portion of the property; screening the exiting mobile home park. She presented the zoning map, an aerial map, the site plan, and site photos. She presented the standards for approval. The property can still have beneficial use and yield a reasonable return without a front yard setback. The property still has beneficial use without a variance for fence height increase. Both variances are substantial. The first variance is a 100%

encroachment into the front yard; the second one is a 166% increase of the permitted height. The character of the neighborhood would not change nor would surrounding properties suffer any detriment. The proposed fence will also be out of any site triangles. The delivery of governmental services will not be impacted. Staff does not have information on the applicant's knowledge at the time of property purchase as to whether they knew of the zoning restriction. The property owners' predicament can not be obviated through some other method other than a variance for both variances. For the front yard setback, due to the dramatic difference in elevation between the sidewalk and subject site and the public right-of-way, the applicant is providing a buffer and screening between the sidewalk and mobile homes so the spirit and intent behind the zoning requirement would be observed. Regarding the fence height, the spirit and intent behind the zoning requirement would not be observed as there could be the same goal met with a shorter fence of 6'. Staff recommends approval of the front yard setback variance. Staff recommends denial of the fence height variance as it is not adequately justified, but would have recommended with conditions if it was 6' height.

Mr. Timbrook asked why the staff recommendation was 6'. Ms. Holt replied they could still screen with that level and it is not so substantial of a variance.

Chairman Childers opened the public hearing. Mr. Roger Kielbaso took the oath to give sworn testimony. His company is RK Deck Builders, the contractor putting up the fence, and he represents the owners of the company, Dayton Estates MHPE, LLC. The 8' fence is being requested because the grade up the hill between the property and street is about 4 ½' to the bottom of the street along with a handrail that goes above that. To be able to not see into the property, they would need an 8' fence; a 6' fence will not accomplish the goal of making it a better living space for people who live there. Chairman Childers stated that the city allows for 36" and for 6' it is doubled, but they want to do more than that. Discussion was held over 6' and 8' fences. Mr. Burkholder asked if with a 6' fence they would still see the railing. Mr. Kielbaso replied that was correct. He explained the grade and the incline of the street; the fence will be 8' but as it goes up, the fence gets shorter.

Mr. Pultz asked Mr. Kielbaso with his expertise if it would be a good use of the client's money to put a 6' fence in or would that be a waste. Mr. Kielbaso replied it would be a total waste of materials. By the time they are at the end of the walkway, they are already at 6'. It is not hiding or sheltering the people from onlookers or any type of privacy they would have. The beginning of the walkway it gives more privacy, but by the end it will be only 4 ½' high to the bottom of the walkway plus the rail; it would not even hide the rail. He stated he would not do the job unless it was an 8' fence as it would be a waste of money. The owners also want an 8' fence.

Chairman Childers close the public hearing at 7:16 pm.

Mr. Pultz stated the history of this property coming up to council regarding a sign on the property and how a council member did not like how the property looked from Valley Street. The owner of the property heard the city and heard some of the council members say to work with them to come up with a solution to screen it off and make it look better. He feels that is what they are trying to accomplish. A fence less than 8' does not accomplish the goal of what council had asked to happen. If they put a motion forward to pass this, he would not vote for a motion with conditions. He would recommend doing a motion without conditions because it is a

variance; there is no reason to send it to planning commission to make sure their variance is the right decision. They are trying to do what the city has asked.

Mr. Schneider asked if the city didn't have some information or didn't realize it until now. Mr. Burkholder asked Ms. Holt if they knew the elevation change. Ms. Holt replied no. Mr. Burkholder stated in light of that, Mr. Kielbaso expressed well there is quite an elevation change. They were not sure how much screening they wanted, but certainly understand that the 8' would give privacy and adequate screening. They need to have enough screening for the residents and the passers-by on the street. Discussion continued on the elevation change and the need for an 8' fence. Ms. Holt stated the condition as stated in the previous meeting would let the applicant know what their next step is. A privacy fence by code is not permitted in the front yard without a waiver; regardless of height, it needs a waiver. It would still have to go to planning commission before she could issue the permit. Discussion continued on the process on going to planning commission and next steps for the applicant.

Mr. Kielbaso asked if he had to go to a planning commission meeting. Ms. Holt replied yes; she has the application for him. The planning commission meeting is on September 20, 2021.

Chairman Childers reviewed the findings for BZA Case #21-0019a – front yard setback. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the presumption that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small it may be. The property in question **would** yield a reasonable return and there can be beneficial use of the property **without** the variance; the fence will replace a chain link fence in the front yard. They find the variance is substantial; it is a 100% encroachment in the front yard. The BZA finds that the essential character of the neighborhood **would not** be substantially altered, nor would adjoining properties suffer any detriment. The BZA finds that the owner's predicament **could not** be obviated without the requested variance. With the homes along the portion of the property the fence would not be able to be moved back. This is an existing, non-conforming condition. They find that the spirit and intent behind the Zoning Ordinance **would be** observed by granting the variance due to the dramatic difference in elevation between the property and the public right-of-way. They also take into consideration that the city's zoning staff recommends approving the variance as requested. They find the appellant **has** met the burden of showing that practical difficulties exist for a variance in the front yard setback requirement.

Chairman Childers motioned that the variance be granted as requested. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; Mr. Schneider, yes. **Motion carried**.

Chairman Childers reviewed the findings for BZA Case #21-0019b – fence height. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the presumption that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small it may be. The property in question **would** have a beneficial use **without** a variance; the applicant could install a 6' fence. They find the variance of 166% is substantial to increase the permitted height

of the fence by 60" from 36" to 96". The BZA finds that the essential character of the neighborhood **would not** be altered, nor would adjoining properties suffer any detriment. The proposed fence is similar to others in the neighborhood and will be out of sight triangle of any traffic. The BZA finds that the owner's predicament **could not** be obviated without the requested variance. They find that the spirit and intent behind the Zoning Ordinance **would be** observed by granting the variance. They also take into consideration that the city's zoning staff recommends denying the variance as requested. They take into consideration the city's zoning staff would recommend approval if a 6' fence was requested. They find the appellant **has** met the burden of showing that practical difficulties exist for a variance for the fence height.

Chairman Childers motioned that the variance be granted as requested with the condition that a privacy fence greater than 36" in the front yard must be approved by planning commission. If the planning commission does not approve the waiver for the higher fence, then the applicant must install a compliant fence. Mr. Pultz seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Pultz, yes; Mr. Schneider, yes; and Mr. Timbrook, yes. **Motion carried**.

B. BZA Case #21-0020 – 4969 Pepperwood Drive (Parcel I39 00307 0001) – R-3, Medium Density Residential

- **VARIANCE FROM UDO SECTION 1107.05(D)(1)(E) TO ALLOW AN ENCROACHMENT INTO THE REQUIRED REAR YARD SETBACK.**

Ms. Holt stated the variance is to allow an encroachment into the required rear yard setback. The requirement is 25'; the request is for a 5' or 20% encroachment. She reviewed the case summary. The applicant is proposing to construct a patio cover on the rear of the existing house. The proposed cover will project over the concrete patio already there. She presented a zoning map, an aerial map, the site plan, and site photos. She stated the property could have beneficial use, but the property will yield a greater return and more use for the applicant with a patio cover. This is a substantial variance as it is a 20% encroachment. The essential character of the neighborhood would only be altered nor would any other properties suffer any damage. No governmental services will be impacted. Staff does not have enough information on the applicant's knowledge at the time the property was purchased. The property owners' predicament could not be obviated through some other method than a variance, which is required to allow the patio cover to match the footprint of the existing patio. The spirit and intent behind the zoning requirement would be upheld by granting the variance; it is already meeting the required side yard setbacks and will match the existing house. Staff recommends approval of the variance.

Chairman Childers opened the public hearing. Ronald Reiboldt, owner of 4969 Pepperwood Drive, took the oath to give sworn testimony. He stated he purchased the property in April 2021 and it had a new 10' x 20' concrete patio. He would like to put a patio cover over it because it will be connected to the house so he can control the water coming off the roof. If he doesn't do that, he has water running between his awning and his house.

Chairman Childers closed the public hearing at 7:36 pm. Discussion was held that there were no concerns and it will be the same character of the house.

Chairman Childers reviewed the findings of fact for Case #21-0020. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was

followed, therefore, the BZA began their inquiry with the presumption that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small it may be. The property in question **would** yield a reasonable return and there can be beneficial use of the property **without** the variance. The applicant is requesting a 20% encroachment, which is substantial. The BZA finds that the essential character of the neighborhood **would not** be substantially altered, nor would adjoining properties suffer detriment. The BZA finds that the owner's predicament **would require** a variance to allow the patio cover to cover the footprint of the existing patio. They find that the spirit and intent behind the Zoning Ordinance **would be** observed by granting the variance. They also take into consideration that the city's zoning staff recommends granting the variance as requested. They find the applicant **has** met the burden of showing that practical difficulties exist for the variance as requested.

Chairman Childers motioned that the variance be granted as requested. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; and Mr. Schneider, yes. **Motion carried**.

C. BZA Case # 21-0021 – 120 Rohrer Boulevard (Parcel I39 00719 005, I39 00719 0056, & I39 00719 0057) R-3, Medium Density Residential

- **AN APPEAL OF AN ADMINISTRATIVE DECISION REGARDING THE DENIAL OF A RIGHT-OF-WAY PERMIT & ZONING DRIVEWAY PERMIT PER UDO SECTION 1113.13.C.6.**

Ms. Holt presented the case summary. On July 2, 2021, engineering technician, Mark Tilley, performed a pre-work inspection at the site. He noticed the new driveway exceeded the maximum width permitted at both the right-of-way line, where private property meets the public right-of-way, and the apron itself. He notified both the applicant and the contractor that the proposed driveway was not in compliance on that day. On July 6, a follow-up inspection was performed. Mr. Tilley found the work had been completed out of compliance and denied the permit. The code enforcement officer, Robert Lunsford, went to the site to follow-up on July 7, 2021, and measured the driveway. He cited the applicant for several violations including the noncompliant driveway. Zoning staff reviewed the permit several days later and found the proposed driveway was not in compliance. The site plan did not depict the accurate property and that it crossed over property lines. That permit was denied on July 13, 2021. The applicant submitted an appeal on July 26, 2021. Pursuant to code, the BZA has the right to hear appeals. She presented the zoning map, which shows the subject site in blue and consists of three parcels not combined. She presented an aerial comparison from 2019 and 2016, the site plan submitted with the appeal application, and the site plan submitted with the zoning permit. She presented site photos of the subject site noting where the right-of-way starts. Staff finds that the driveway put in exceeds all of the dimension requirements in Section 1113.13; the maximum width is 30' and when it meets the public right-of-way, it has to narrow down to 24' then it can come back out again into an apron of 30'. The driveway is over 33' in the right-of-way and on the private property; the apron is over 51'. The current aerials show there was an expansion between 2016 and 2019; there are no records of a permit when that original expansion happened. Any further expansion loses nonconforming rights that would have been on the property. Staff finds the applicant knowingly paved the driveway with no valid right-of-way or zoning permit. They were

informed by the service department that the areas marked to be paved were not in compliance. Staff finds there is sufficient evidence the applicant knew the driveway was not in compliance and that he completed the work without approved permits. Neither the applicant nor contractor received permit approvals for the work done. The service department and zoning staff made the correct decision to deny the permits because the applicant and contractor knowingly completed the driveway and apron in violation of the UDO. The BZA actions are to find whether the applicant has met his burden of proof to sustain his appeal.

Mr. Pultz asked staff to go to the site plan that was submitted. Ms. Holt noted that this is a sample site plan they have on all their applications. It was drawn over. Mr. Pultz asked if it was on three lots. Ms. Holt replied yes. Mr. Pultz asked if the three lots were consolidated by hiring a survey engineer and that went through, then they could have filed for the variance for the larger driveway. Ms. Holt stated that did not come up because they did not have a chance to properly review the application. He asked if that would be a solution if they had the chance to do that. Mr. Burkholder stated that this is strictly regarding the appeal not the options, just the appeal of the decision of the zoning administrator.

Mr. Schneider asked what it means to bring the driveway into compliance. Ms. Holt stated that the permitted driveway can be 30' on private property and when it meets the right-of-way it can narrow down to 24'. When it goes to the apron the maximum width is 30'. That would bring it into compliance. Mr. Schneider asked what would they do since it is already done. Mr. Burkholder stated they would have Mr. Lunsford and Mr. Tilley swear in and answer the question at the appropriate time.

Chairman Childers opened the public hearing. Mr. Clyde Mason took the oath to give sworn testimony. He stated they assumed the property in 2018; the property was as it was with the driveway. They filed for a permit, which he guessed was denied as he was not aware of that. They came out and told him they weren't allowed to pave it, but they paved it anyway. He understands now that he needs to file a variance. He spoke to his attorney who said they need to go down to Montgomery County and apply to have the three parcels put into one, then they won't exceed 35% of their street value, and they should be fine. Mr. Burkholder stated he did not think that was pertinent to this discussion as they are discussing the right-of-way and both the zoning relative to the dimensional. Mr. Mason was under the impression that Mr. Oakley applied for the permit and they were good. He dropped off the equipment and had the paving crew there, and they paved it. Mr. Mason stated he was informed that they should not pave the driveway. He was told they should not pave the driveway because the permit was not approved. Chairman Childers asked if he was told that before it was done. Mr. Mason replied it was while they were paving. City staff came out and made marks on it when they were halfway through the driveway. They were paving the driveway when he showed up and showed where they are allowed to be and where the easement was and what they could not exceed, while the guys were paving the driveway. He did not know what he was supposed to do. Chairman Childers stated the point of this hearing is not a variance or like a variance; the whole point is an appeal of the city's decision-making process. His appeal says the city incorrectly, mistakenly or used the wrong law or did not interpret it properly. He asked Mr. Mason if he is saying what the city did was improper. Mr. Mason replied no. Chairman Childers stated he isn't appealing the decision-making process, but he is saying he didn't know about it until they paved it and that is his argument. Mr. Mason stated that was correct. He did not know he needed a variance until after

the lawyer and after he paid for the appeal.

Mrs. Michelle Mason took the oath to give sworn testimony. She stated they had been on a waiting list to have the driveway paved. There was possibly some miscommunication. They are trying to improve their property. They have five children and seven drivers in the house. They bought the house in foreclosure, sight unseen. They are doing the best they can to make improvements that need to be made. Prior to the driveway going in, if they had seen they property they would see why they needed it. They have bad flooding on their property. She provided before and after pictures. They were on a waiting list and Thomas Oakley doesn't do much residential anymore, but they trusted him to do the work for them. Things happened so fast and he had an opening, which is why it got done quickly.

Mr. Mark Tilley took the oath to give sworn testimony. He stated on the day of the pre-work inspection, he notified Mr. Mason that where he intended to have the driveway paved was out of compliance. He showed him dimension on the pavement, but it was not while they were getting ready to do the paving. The trucks had pulled up as he was leaving. He did call Tom Oakley to let him know that his permit had been denied on the basis that the dimensions were outside of the code. Mr. Mason was notified even before they did the work. Chairman Childers asked if before anything was done everyone was aware of the oversize. Mr. Tilley replied yes. Mr. Mason's comment when Mr. Tilley showed him, he said "I'm going to pave it all anyway".

Mr. Robert Lunsford took the oath to give sworn testimony. He stated he was notified later once Mark noticed the asphalt had already been laid and it was passed over to him. He went out and took the measurements and confirmed it was over the size allowed, 33' width of the driveway and wingtip-to-wingtip is 51' 1". It is considerably over what it is supposed to be. There was discussion that day where Mr. Mason wanted him off of his property even though he was standing in the street. He tried explaining the public right-of-way and Mr. Mason would not listen to him. He finished his measurements and photos and came back to the office. It was done on the 7th and was already being driven on.

Mr. Mason stated that Mr. Oakley was at the job site at 9:30 am of the morning. The crews showed up at 10:00 am on the day they paved, before Mr. Tilley showed up. Mr. Tilley confirmed he was not there on the day they started. The paving was on a Friday. He notified Mr. Oakley that the permit had been denied even before they started. I called him up to let him know because the crews had just pulled up to start doing the job as Mr. Tilley was leaving. There was no pavement on the ground. Chairman Childers asked if they started as Mr. Tilley was driving away. Mr. Tilley stated they were getting out of the vehicles to do whatever operation they were there to do. Mr. Mason stated the crews showed up at about 9:30 am and Mr. Tilley didn't show up until about noon. They had already put down about 50 tons of blacktop. Chairman Childers stated he believed both of them, but it is irrelevant. Mr. Mason asked why he was there. Chairman Childers stated he wanted to skip what he said; the problem is that he did something he wasn't supposed to do without a permit. Mr. Mason stated he didn't do it Mr. Oakley did. Chairman Childers stated he is the property owner and gets to bear the brunt of it. He may have to deal with Mr. Oakley, but that has nothing to do with the city. Mr. Mason stated he did everything he thought was proper. He asked Mr. Oakley to file for a permit. He gave the dimensions they thought would be correct. He now knows three parcels need to be put into one. They will do that through Montgomery County, and then file for a variance. Chairman Childers

asked him about the comment that he was going to pave it anyway. Mr. Mason stated he does not recall making that comment. He does not pave; he used to run a bobcat. The crew was there and they were paving. Chairman Childers stated it is still against the law to do that without a permit and without permission and it being oversized. If he got the permits he would have been in compliance.

Mr. Schneider asked the city what are they supposed to do now. Mr. Tilley stated there was another case this week out of compliance. The contractor came down and cut the edges off of the apron and put the driveway into compliance by removing the excess driveway. He shaved it back to the right size. He also had a permit, but went bigger than it allowed and then had it brought into compliance.

Chairman Childers asked Mrs. Mason if she had a problem with shaving it back to the right size. She indicated that on that side of the plat the water run-off is ridiculous; a majority of the flooding happens at the entrance of the driveway. Now, it is going off to the side and is not flooding the yard. She stated it floods bad on that side of the street as water has nowhere to go. The other side of her front yard still floods and they have to put cones out so people coming down the street would quit driving through it as they were making ruts in the yard. Chairman Childers asked if she would not be willing to shave it back to get a permit and get it in compliance. Mrs. Mason stated she isn't saying she is not willing, but she has a problem with doing that. The whole thing was to make the property better not only cosmetically, but how it functions for their family. She asked if they needed to file for a variance through the county. Chairman Childers stated she can't do that at this point; they have to wait until this is over to do that. He stated she can't get a variance on top of a non-permitted property. Mr. Pultz stated that was not accurate. Ms. Holt stated they have heard after-the-fact variances before; but this is beyond the scope of this particular case. Mr. Burkholder stated that legal counsel at the previous meeting advised that the scope of this hearing is limited. He also advised that this appeal needed to be adjudicated first, and if they want to inquire about a variance whether that would be permissible or not, but that is not within the scope of this hearing. This is about the appeal. It is the city's position given the testimony heard so far that no evidence has been presented by the applicant that justifies the appeal. Chairman Childers stated he has that. Mrs. Mason asked if it was said earlier that the driveway sits in the middle of two parcels. She asked if because it is on two parcels can it be split. Chairman Childers stated that she will have to discuss it with the city. Discussion continued on the legality and the speed at which things happened and how to resolve the situation. Mrs. Mason stated they held on to their stimulus check to pay for the driveway and that they live paycheck-to-paycheck. She wants to know what they can do to get it resolved without it coming out of pocket. Chairman Childers stated it is not something they can decide today because they did not file for a variance; the BZA just has to follow the law.

Chairman Childers closed the public hearing at 8:09 pm. Mr. Timbrook stated that this is similar to the case last time where it spiraled to what the options are beyond the case in front of them. He thinks there is a way forward for them, but it is outside their purview for tonight. Mr. Pultz stated he thinks they are looking at the entire enforcement action when they look at an appeal. He does not think the city had any other option in this case. If it had been one consolidated lot and they were asking for a variance, and they denied the variance and it was appealed that would be different. The city had no other option in this case. He thinks the applicant already stated he knows the correct process to go forward. Mr. Schneider stated he agreed with both their

comments and feels bad, but they don't have any other options.

Chairman Childers reviewed the findings of fact for Case #21-0021. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the presumption that the law should be upheld **without** granting the appeal and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the appeal may be. The property in question contains a driveway that exceeds a permitted driveway in violation of UDO Section 1113.13(c)(6). This Code section expressly prohibits a driveway to exceed 24' in the width of the right-of-way. The BZA finds that the property in question contains a driveway that intersects the public street for which no permit was obtained prior to the expansion of the driveway into the right-of-way in violation of UDO Section 1113.13(c)(1). This Code section expressly prohibits driveways intersecting the public right-of-way prior to a permit being issued. They find the applicant was informed by the city staff of the UDO violations relative to the driveway project, yet, continued to proceed without obtaining a permit in accordance with the code. Thus, his completed driveway stands in violation of the UDO sections listed above. They find the testimony and documentary evidence presented to the board supports the finding that the applicant failed to obtain a permit pursuant to the UDO regarding subject driveway width and failed to obtain a permit pursuant to the UDO regarding subject driveway intersection through the public right-of-way. They find the review of publicly available geographic documents presented to the board supports the findings that the driveway is in violation of the stated UDO sections. They find the currently completed driveway in excess of 24' in width of the public right-of-way, and without a prior permit for construction at the public right-of-way were in violation of the plain language of the Code and that no conforming use or permit was granted for the property prior to the construction of the driveway. They find that the appeal for denial of the permit substantial. The requested appeal is a complete deviation from the Code; the Code prohibits driveways in excess of 24' in width at the public right-of-way. The requested appeal is for the expressly prohibited driveway width in excess of the code provision. They find that substantial detriment would occur to the uniformity and conformity of the Code provisions to right-of-way permit applications should the appeal be granted, thus creating confusion and uncertainty for subsequent applications as to how the Code is interpreted and enforced. They find that the owner's predicament **can** be obviated through some method other than the requested appeal by constructing a driveway that complies with the Code with respect to width, and by obtaining a proper permit for the driveway prior to constructing the driveway. The BZA finds that the spirit and intent behind the Zoning Ordinance **would not** be observed by granting the appeal. The driveway as constructed, without a permit, is a complete deviation from the plain language of the Code, which expressly prohibits driveways in excess of 24' in width at the public right-of-way on the subject property. Granting the appeal on these facts would violate the spirit and intent of the Zoning Ordinance, and create disparate application of the Code in an arbitrary and non-uniform fashion They also take into consideration that the City Zoning Staff **does not** recommend granting the appeal as requested. They find that the appellant **has not** met the burden of proof for an appeal of the City's denial of the permit for the construction of the driveway, as the plain language of the Code prohibits the width of the driveway and requires a permit prior to construction, not afterward.

Chairman Childers motioned that the appeal be denied as requested as the applicant has not met

his burden. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; and Mr. Schneider, yes. **Motion carried**.

D. BZA Case # 21-0022 – 5363 Robinwood Avenue (Parcel I39 01204 0057) R-3, Medium Density Residential

- **VARIANCE FROM UDO SECTION 1107.05(D)(1)(D) TO ALLOW A CARPORT TO ENCROACH INTO THE REQUIRED SIDE YARD SETBACK.**

Ms. Holt stated that this is a variance request for encroachment into the side yard setback. The request is for a 1.5' or 30% encroachment on a 5' required minimum side yard setback. She reviewed the case summary. The applicant is proposing to construct a 570 sq. ft. carport on the west side of their home. It will cover a portion of their rear porch and existing driveway. She presented the zoning map, an aerial map, the site plan for the proposed carport, and site photos indicating the variance area. She presented photos of similar structures in the neighborhood. She stated the property still have a beneficial use without a variance, but understands the property will yield a greater return and more use for the applicant with the carport. She stated it is a substantial variance as it is a 30% encroachment. The essential character of the neighborhood would not be affected. Delivery of government services would not be impacted. Staff had no information of the applicants knowledge of the zoning code at the time of the purchase. There is no other method to alleviate the predicament other than a variance due to the pie-shaped lot. They can meet the setback towards the front, but the rear section is where it narrows and they need a variance. Staff finds the requested variance is adequately justified and meets the standards for approval. They recommend with the condition that it is built that is consistent with the character of the house.

Chairman Childers opened the public hearing. Mr. Jorge Ruiz took the oath to give sworn testimony. He presented the BZA with pictures of his driveway. He stated when they purchased the house the patio was already there. They cannot enjoy the porch because at 5 pm it is so hot. They cannot cool off the kitchen in the summer when they are cooking because the sun hits it. They would like to get some kind of a roof on that side of the house to block rain and snow. Chairman Childers asked if it will put his truck in shade where he has it. Mr. Ruiz replied it would. He stated his neighbor is fine with the roof to cover his patio. Mr. Timbrook stated that the city recommends it to be architecturally consistent with the house. Mr. Ruiz stated he didn't have enough time as he did not if he would get the permit, but he wants something nice. He asked if he could build it out of wood. Chairman Childers stated it needs to look something like the house, seamless with roof line, pitch, and materials. It needs to look like it was made with the house. Mr. Ruiz stated he did not want just a piece of metal for a roof. Ms. Holt stated Mr. Ruiz included a concept drawing that was included in the packet.

Mrs. Kristy Ruiz took the oath to give sworn testimony. She asked if the top has to be the same as the roof of the patio and the roof of their house because it will not. Ms. Holt stated she would contact her and get her information.
Chairman Childers closed the public hearing at 8:25 pm.

Chairman Childers reviewed the findings of fact for Case #21-0022. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would yield a reasonable return and can be of beneficial use without the variance. They find that the variance is substantial because it is a 30% encroachment. The essential character of the neighborhood would not be altered nor would adjoining suffer substantial detriment as a result of the variance. The owner's predicament could not be obviated through some method other than a variance. A variance is required to build a carport on the applicant's pie shaped lot. A variance is required where the lot narrows in the rear. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. They also take into consideration that the City Zoning Staff recommends approving the variance as requested with the conditions. They find that the appellant **has** met the burden of showing that practical difficulties exist for a variance as requested.

Chairman Childers motioned that the variance be granted as requested with the condition as UDO Section 1115.01(c) accessory buildings and structures located on residential premises and greater than 100 sq. ft. in floor area shall be architecturally consistent with the character of the house on the premises in regards to roof pitch, design, and materials. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; and Mr. Schneider, yes. **Motion carried**.

E. BZA Case # 21-0023 – 445 Hypathia Avenue (Parcel I39 00616 0049) R-3, Medium Density Residential

- **VARIANCES FROM UDO SECTIONS 1107.05(D)(1)(C) AND 1115.01(E)(3)(A) TO ALLOW A SIX (6) FOOT FENCE IN THE FRONT YARD.**

Ms. Holt stated these variances are to allow a 6' fence in the front food. The requirement for the front yard is a 20' setback and their encroachment is 20' so a 100% encroachment; the requirement for a fence in the front yard is 36" and they are doubling that so a 100% increase. She presented the case summary. It is a corner lot, and the applicant is proposing to construct a 6' fence on the front yard off of Georgia Drive. The fence will enclose slightly more of the yard than the previous fence. It will be set back from the intersection so as to not interfere with any site triangles. She presented a zoning map, an aerial map, a site plan, and site photos. There is an above ground pool on the property constructed prior to current zoning regulations. The variance is required for the applicant to have beneficial use of the property and observe fence regulations. The variances are substantial as it is 100% encroachment and a 100% increase for fence height. The essential character of the neighborhood would not be changed, and it will be out of the sight triangle. Delivery of government services will not be impacted. The property owner purchased the property prior to current zoning regulations; however, removal of the current fence is a loss of their nonconforming and grandfathered rights and requires a variance. There is no other option for them to put the fence back other than the variance; due to the placement of the pool, it can only be constructed right on the property line on Georgia Drive. The 6' fence height is a minimum necessary to afford relief to the applicant and screen the pool from traffic on both

streets. The spirit and intent behind the zoning requirement would be observed and substation justice done by granting the variances. Staff recommends approval for front yard setback with conditions that the fence must be constructed out of the public right-of-way. Staff recommends approval of the requested fence height increase with the condition that it goes to planning commission for the waiver.

Chairman Childers opened the public hearing. Ms. Tamara Allison took the oath to give sworn testimony. She stated she has owned the house for over 22 years and has had a fence the entire time. She has custody of two special needs children and has a pool in the backyard for them. She explained there is a window in the basement where someone has tried to get in and she wants to cover that up. She has custody of her niece who has anxiety because her mom has tried to break into her house and has been arrested a number of times. She stated that the fence is so bad while the house is beautiful. She wants to do it right. Chairman Childers asked if she was just changing the fence and bring it around. Ms. Allison stated the fence is going to be exactly the same except the trees out there were taken down and it will be out a few feet and taken up to the picture window. It will be two feet further towards the street. She is getting a whole new fence because that one is rotten. She wants to give the dog a little more space to run and the kids more space for their friends to come over.

Chairman Childers asked he if she was aware she will have to go to planning commission for a waiver. Ms. Allison stated her fence is already 6' and is still there. He stated when she tears it down she will then have to comply with current code and get a waiver from planning commission. Ms. Holt stated it was having the privacy fence in the front yard. Ms. Allison stated she understands she has to go to the planning commission.

Chairman Childers closed the public hearing at 8:39 pm.

Chairman Childers reviewed the findings of fact for Case #21-0023a –front yard setback. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. They find that a variance is required to have a beneficial use of the property. An above ground pool was constructed on the property to the current zoning regulations. find that the variance is substantial; the requested variance is a 100% encroachment into the front yard. The essential character of the neighborhood would not be altered nor will adjoining properties suffer any detriment. The appellant's predicament cannot be obviated through some method other than the variance. Due to the placement of the pool, the fence can only be constructed in the front yard on Georgia Drive right up to the property line. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. The applicant has forfeited their non-conforming rights and is requesting a variance to construct a fence which would comply with the pool regulations. They also take into consideration that the City Zoning Staff recommends approving the variance as requested with conditions. They find that the appellant **has** met the burden of showing that practical difficulties exist for the variance as requested.

Chairman Childers motioned that the variance be granted as requested with the condition the

proposed fence must be constructed out of the public right-of-way. Mr. Pultz seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Pultz, yes; Mr. Schneider, yes; and Mr. Timbrook, yes. **Motion carried**.

Chairman Childers reviewed the findings of fact for Case #21-0023b – fence height. The BZA finds that the property in question would yield a reasonable return and have a beneficial use without the variance. They find that a variance is required to have a beneficial use of the property. An above ground pool was constructed on the property to observe current zoning regulations. They find that the variance is substantial; the requested variance is a 100% to increase the permitted height of the fence by 36 inches from 36 inches to 72 inches, 6'. The essential character of the neighborhood would not be altered nor will adjoining properties suffer any detriment. The appellant's predicament cannot be obviated through some method other than the variance. The requested height of the fence is the minimum to afford relief to the applicant. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. The applicant has forfeited their non-conforming rights and is requesting a variance to construct a fence which would comply with the pool regulations. They also take into consideration that the City Zoning Staff recommends approving the variance as requested with conditions. They find that the appellant **has** met the burden of showing that practical difficulties exist for a variance for the fence height.

Chairman Childers motioned that the variance be granted as requested with the condition that a privacy fence greater than 36" in the front must be approved by the planning commission. If the planning commission does not approve the waiver of the higher fence, the applicant must install a compliant fence. Mr. Pultz seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Pultz, yes; Mr. Schneider, yes; and Mr. Timbrook, no. **Motion carried**.

Ms. Allison asked what would happen if the planning commission does not approve it. Ms. Holt stated she could appeal it and then would come back to the BZA.

OLD BUSINESS:

Chairman Childers asked if they wanted to discuss the case going to the appeals court. No discussion was had. Mr. Pultz asked about the findings the chairman reads and where it came from. Chairman Childers stated it came from him and he sends it to the clerk. It confirms what is recorded.

A) BZA Work Session – Future Dates: Ms. Holt stated that staff has a lot going on right now and with the resolution for training of BZA and planning commission; they are going to provide them with some videos from the American Planning Association to help assist them. Mr. Burkholder stated they will get Jim Miller, legal counsel, come back and just have a work session and BZA go over a few things.

ADJOURNMENT: Mr. Timbrook motioned to adjourn. Mr. Schneider seconded the motion. All were in favor; none opposed. **Motion carried**. The meeting adjourned at 8:47 pm.

_____ _____

Chairman Date