



# BOARD OF ADJUSTMENT AGENDA

Wednesday, September 11, 2013  
7:00 p.m.

City Hall - Council Chamber  
Daniel P. Moore Community Center Complex  
1900 Billy G. Webb Drive  
Portland, Texas

1. **CALL TO ORDER:** CHAIRPERSON BURTON
2. **MINUTES:** THE BOARD OF ADJUSTMENT WILL CONSIDER APPROVING THE MINUTES OF ITS MAY 15, 2013 MEETING - CHAIRPERSON BURTON
3. **PUBLIC HEARING:** THE BOARD OF ADJUSTMENT WILL CONDUCT A PUBLIC HEARING TO SOLICIT COMMENTS FROM CITIZENS AND OTHER INTERESTED PARTIES CONCERNING A REQUEST FOR A SPECIAL EXCEPTION TO SECTION 410.G OF THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE CONSTRUCTION OF AN IN-GROUND SWIMMING POOL AT 1000 SOUTHCLIFF ENCROACHING INTO THE 25 FOOT SIDE STREET YARD SETBACK – CHAIRPERSON BURTON AND DIRECTOR OF PUBLIC WORKS AND DEVELOPMENT
4. **REQUEST FOR SPECIAL EXCEPTION:** THE BOARD OF ADJUSTMENT WILL CONSIDER A REQUEST FOR A SPECIAL EXCEPTION TO SECTION 410.G OF THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE CONSTRUCTION OF AN IN-GROUND SWIMMING POOL AT 1000 SOUTHCLIFF ENCROACHING INTO THE 25 FOOT SIDE STREET YARD SETBACK – CHAIRPERSON BURTON AND DIRECTOR OF PUBLIC WORKS AND DEVELOPMENT
5. **ADJOURNMENT:** CHAIRPERSON BURTON

**RULES OF PARTICIPATION FOR ATTENDEES**

- a. Persons who wish to speak must fill out and turn in a speaker card before the meeting is convened (The Chairperson will notify you when it's your turn speak and direct you to the podium).
- b. Persons who wish to speak must identify themselves and their places of residence.
- c. All comments, requests and proposals must be presented to or through the Chairperson.
- d. Persons who wish to speak will be given 4 minutes to do so. The Chairperson may permit persons to speak more than once if he/she believes doing so will improve the planning process and facilitate deliberation.

*NOTICE OF ASSISTANCE*

If you plan to attend this public meeting and you have a disability that requires special arrangements to be made, please contact City Secretary Annette Hall at 361-777-4513 or [annette.hall@portlandtx.com](mailto:annette.hall@portlandtx.com) in advance of the meeting. Reasonable accommodations will be made to facilitate your participation. The City Hall is wheelchair accessible and specially marked parking spaces are located in front of its entrance. Special seating will be provided in the Council Chambers during the meeting.

**BRAILLE IS NOT AVAILABLE**

Posted: September 6, 2013 by 5 p.m.  
City Hall

By:   
**Annette Hall**  
**City Secretary**

# MINUTES

## **BOARD OF ADJUSTMENT**

**May 13, 2013 Meeting**

The Board of Adjustment conducted a May 13, 2013 Meeting in the Council Chambers of City Hall (1900 Billy G. Webb) that began at 6:00 p.m. It did so in compliance with requirements of the Texas Open Meetings Act, City of Portland City Charter and Unified Development Ordinance. The following persons were in attendance:

### MEMBERS PRESENT

Logan Burton (Chairman)  
Murray Hudson  
Robert Warner  
Cliff Ezell  
Jim Naismith (Alternate)

### MEMBERS ABSENT

Samuel Haywood

### STAFF PRESENT

Mike Tanner (City Manager)  
Brian DeLatte (Director of Public Works and Development/City Engineer)  
Michel Weaver (Assistant to the City Manager)

1. **CALL TO ORDER:** CHAIRMAN LOGAN BURTON

Chairman Burton called the meeting to order at 6:00 p.m.

2. **MINUTES:** THE BOARD OF ADJUSTMENT WILL CONSIDER APPROVING THE MINUTES OF ITS APRIL 15, 2013 MEETING - CHAIRPERSON BURTON

Board Member Robert Warner made a motion to approve the minutes of the April 15, 2013 meeting, with corrections. Board Member Cliff Ezell seconded the motion.

The motion passed 5-0.

3. **POST MEETING REVIEW:** THE BOARD OF ADJUSTMENT WILL REVIEW ITS APRIL 15, 2013 MEETING AND DISCUSS WAYS TO IMPROVE FUTURE MEETINGS - CHAIRPERSON BURTON, CITY MANAGER AS WELL AS DIRECTOR OF PUBLIC WORKS AND DEVELOPMENT

City Manager Mike Tanner explained that a Board of Adjustment meetings is a quasi-judicial proceeding and including the City Attorney in future proceeds would be prudent. Mr. Tanner also discussed rules and procedures for conducting Board of Adjustment hearings. Mr. Tanner stated that those rules and procedures should be posted before meetings and that the Chairperson should go through them at every meeting. Mr. Tanner said it is important that the proceedings be as clean as possible and that discussion is limited to the agenda items.

4. **ADJOURNMENT:** CHAIRPERSON BURTON

Chairman Burton adjourned the meeting at 6:19 p.m.

APPROVED:

\_\_\_\_\_  
Logan Burton, Chairman

ATTEST:

\_\_\_\_\_  
Brian DeLatte, Director of Public Works and Development/City Engineer



**BUSINESS OF THE BOARD OF ADJUSTMENT  
OF THE  
CITY OF PORTLAND, TEXAS**

**SUBJECT:**           **PUBLIC HEARING:** THE BOARD OF ADJUSTMENT WILL CONDUCT A PUBLIC HEARING TO SOLICIT COMMENTS FROM CITIZENS AND OTHER INTERESTED PARTIES CONCERNING A REQUEST FOR A SPECIAL EXCEPTION TO SECTION 410.G OF THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE CONSTRUCTION OF AN IN-GROUND SWIMMING POOL AT 1000 SOUTHCLIFF ENCROACHING INTO THE 25 FOOT SIDE STREET YARD SETBACK – CHAIRPERSON BURTON

**REQUEST FOR SPECIAL EXCEPTION:** THE BOARD OF ADJUSTMENT WILL CONSIDER A REQUEST FOR A SPECIAL EXCEPTION TO SECTION 410.G OF THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW THE CONSTRUCTION OF AN IN-GROUND SWIMMING POOL AT 1000 SOUTHCLIFF ENCROACHING INTO THE 25 FOOT SIDE STREET YARD SETBACK – CHAIRPERSON BURTON

**SUBMITTED BY:**     Brian DeLatte, Director of Public Works and Development

**DATE SUBMITTED:**   September 6, 2013

**ATTACHMENTS:**     - Application letter and survey  
                              - Published legal notice  
                              - List of property owners of record who were notified via mail

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**SUMMARY STATEMENT:** This agenda bill addresses both the public hearing (Agenda Item No. 3) and deliberation (Agenda Item No. 4) of a special exception which, if approved, would permit the applicant (Roland Chavez) to construct an in-ground swimming pool within the platted 25 foot side yard street setback. The Board of Adjustment is a quasi-judicial body, so its quasi-judicial proceedings should be conducted with the utmost degree of dignity and decorum. Process is as important as outcome.

**PUBLIC HEARING TO BE CONDUCTED**

It is imperative that a fair, impartial and legally compliant public hearing be conducted, regardless of the outcome. Agendas have been posted, a legal notice has been published, and copies of the published legal notice have been mailed to property owners of record (persons owning property within 200 feet of the property for which a special exception has been requested). Please do not concern yourself with legal issues that may be raised during the presentation of public comments. When the Chairperson is satisfied that the request for a special exception has been fully articulated (the Director of Public Works and Development will present the case and the applicant will be given an opportunity to present a

statement) and every person or party in attendance has been given an opportunity to comment, the public hearing should be formally closed.

### **SPECIAL EXCEPTION TO BE DELIBERATED**

City Staff is supporting a special exception that would permit the applicant to construct an in-ground swimming pool within the 25 foot side street yard setback at 1000 Southcliff. The lot was platted in 1968 with a 25 foot front yard setback on Southcliff and a 25 foot side yard setback on Moore Ave. The Section 410.G of the Unified Development Ordinance (UDO) generally prohibits swimming pool construction in the proposed location (underline added for emphasis):

*Swimming Pools. No swimming pool shall be constructed until a permit for the principal use or structure has been obtained. The outside walls of a swimming pool or hot tub shall not project beyond the required yard line along any street. The outside walls of a swimming pool or hot tub must be at least three (3) feet from side and rear property lines. The outside walls of an in-ground swimming pool or hot tub shall also keep at least one (1) foot of horizontal distance to each one (1) foot of depth from any structure, easement, or property line (unless plans and a report are prepared by a Professional Engineer).*

The intent of the ordinance is to prohibit swimming pool (and other accessory structures) from being constructed in the front yard of properties or within side yards on corner lots immediately abutting the property line. The request for swimming pool construction on this lot is somewhat unique in that the 25 foot side yard setback on Moore is ten feet more than would be required if the lot was platted as R-6 Single-Family Residential under current UDO 410.D.4.a:

*Corner Lots. A corner lot shall have one front yard as required by the table above, and a side yard adjacent to the street of not less than fifteen (15) feet, except in the R-8, Single-Family Residential, OT-1, Olde Town Residential, and OT-2, Olde Town Mixed Use districts, where only a ten (10) foot side yard shall be required. A side yard adjacent to a street may be reduced as necessary to maintain a forty (40) foot width between side yards, however in no case shall the side yard be reduced to less than five (5) feet. No accessory building shall project beyond the required yard line along any street. No structure shall be built within the "vision triangle" as defined in Chapter 10.*

The applicant is requesting that the pool construction be allowed 12 feet from the property line. The decking of the pool would be in compliance as proposed 9 feet from the property line. The 12 foot setback is the largest setback that would allow the construction of the pool without the relocation of the residence's wastewater and gas service lines.

### **PUBLIC NOTIFICATION AND RESPONSE**

A legal notice was published in The Herald on August 22, 2013. Written notices were mailed to 21 property owners of record (all own property within 200' of the properties for which a special exception is being sought) on August 28, 2013. No one has yet responded to published or mailed legal notices.

## STAFF ANALYSIS

The Staff, using the same step by step approach that the Board of Adjustment is legally required to use, has spent a significant amount of time and effort analyzing the special exception request.

In analyzing the request, City Staff considered several positions:

1. City codes would allow the applicant to replat the property with a 15 foot setback, thus allowing the swimming pool 15 feet from the property line. While replatting the property is allowed by code, City Staff generally encourages applicants to pursue other approval processes, such as applying for relief from the Board of Adjustment, rather than initiate “spot platting” or “spot zoning” efforts.
2. In the review of other properties in the area, the use of the 25 foot side yard setback on Moore is inconsistent. Note the following addresses and side yard setbacks, moving north to south:
  - a. 1001 Southcliff – 25 feet
  - b. 1000 Southcliff – 25 feet
  - c. 1001 Starlite – 25 feet
  - d. 1000 Starlite – 15 feet
  - e. 1001 Polaris – 20 feet
  - f. Also note that the Stripes gas station directly across from 1000 Southcliff observes a 10 foot setback from Moore.
  - g. Further down Moore, Briar Bluff Unit 1 maintains 15 foot setbacks from Moore.
3. As noted by the applicant, multiple non-conforming structures already encroach into the setbacks on Moore on adjacent lots in the immediate vicinity of 1000 Southcliff.
4. Moore Avenue is at its ultimate width and will not be widened in the future.

Staff Comment: Aerial photography and copies of the adjacent plats confirming the above positions will be presented at the Board of Adjustment hearing and are not included in this agenda packet due to reprographic constraints.

## DELIBERATION BY THE BOARD OF ADJUSTMENT

UDO Section 313 prohibits the Board of Adjustment from granting a special exception without an affirmative finding (minimum of 4 votes) that one or more of four prescribed circumstances applies (“*Special Circumstances Resulting in Unnecessary Hardship*” described by UDO 312.C.1, “*Overriding Public Interest*” described by UDO 312.C.2, “*Equity*” described by UDO 312.C.3 and “*Literal Enforcement*” as described by UDO 312.C.4). The Staff has determined that three of the four prescribed circumstances do in fact apply:

- ***Special Circumstances Resulting in Unnecessary Hardship.*** A special exception may be granted where special circumstances exist on the property related to the size, shape, area, topography, surrounding conditions or location that do not generally apply to other property in the same zoning district, and that the circumstances are such that strict application of this Ordinance would create an unnecessary hardship or deprive the applicant of reasonable use of the land or building.

- **Equity.** A special exception may be granted to permit modifications of height or setback regulations as may be needed to secure equity in the development of a parcel of land where it has been demonstrated that, due to the existence of legally nonconforming structures, a substantial proportion of the other properties in the same area and zoning district are legally enjoying the conditions that the applicant is requesting.
- **Literal enforcement.** A special exception may be granted if it is found that the literal enforcement and strict application of this Ordinance will result in extraordinary circumstances inconsistent with the general provisions and intent of this Ordinance, and that, in granting the special exception, the spirit of the Ordinance will be preserved and substantial justice done. The Board of Adjustment shall state in their minutes the nature of the circumstances that justifies the special exception.

UDO 312.E prohibits the Board of Adjustment from granting a Special Exception without an affirmative finding (minimum of 4 votes) that all 6 criteria described by UDO 312.E.1-6 are met.

1. Special circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district and are not merely financial.

*Staff comment: **Special circumstances exist and they are not merely financial. Platted building lines in the vicinity are inconsistent.***

2. These special circumstances are not the result of the actions of the applicant.

*Staff comment: **The developer, not the applicant, created these special circumstances.***

3. Literal interpretation and enforcement of the terms and provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other land in the same zoning district.

*Staff comment: **The literal interpretation and enforcement of the UDO would deprive the applicant of rights commonly enjoyed by other land in the same zoning district.***

4. Granting the special exception is the minimum action that will make possible the use of the land or structure which is not contrary to the public interest, and would carry out the spirit of this Ordinance and substantial justice.

*Staff comment: **Granting this special exception is the minimum action that will achieve a fair and just result.***

5. Granting the special exception will not adversely affect adjacent land in a material way.

*Staff comment: **Granting the special exception will allow the applicant to construct a swimming pool in the same location as other similarly located structures on adjacent lots.***

6. Granting the special exception will be generally consistent with the purposes and intent of this Ordinance.

*Staff comment: Granting the special exception is consistent with the purpose and intent of the UDO.*

## **CONCLUSIONS AND RECOMMENDATIONS**

Upon review of the positions above, City Staff is in support of some level of relief from Section 410.G. The alternatives available to the Board of Adjustment are as follows:

1. Deny the application of the Special Exception.
2. Allow the construction of the pool using a 15 foot setback, which would be allowed by current subdivision codes and match the setbacks on Starlite.
3. Allow the construction of the pool using a 12 foot setback as requested by the applicant.
4. Allow the construction of the pool using a 10 foot setback, matching the setback of the Stripes gas station fuel pumps and those in R-8 zoning districts.

Using the analysis presented in this report, City Staff recommends that the Board of Adjustment approve the Special Exception for the construction of the pool at the 12 foot setback. This will match other properties in the immediate area and will not cause any adverse impacts on adjacent properties.

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**STAFF RECOMMENDATION:** **Adopt a motion approving a Special Exception for 1000 Southcliff Drive for the construction of an in-ground swimming pool 12 feet from the property line abutting Moore Avenue.**

Roland J. Chavez  
1000 Southcliff Drive  
Portland, Texas 78374

August 01, 2013

Zoning Board of Adjustment  
C/o Brian Delatte  
Director of Public Works and Development  
City of Portland  
1100 Moore Avenue  
Portland, Texas 78374

Dear Board Members, Brian

I am Roland J. Chavez and I live at 1000 Southcliff Drive in Portland, Texas. My wife Laura and I recently began looking at installing an in-ground pool at our residence. I met with the Director of Public Works Brian Delatte and was informed that my residence had a 25 foot setback line from Moore Avenue. This removes 2500 square foot of yard usage and does not allow sufficient room for us to install a pool, so I asked Brian to see what if any remedies would be available. We viewed the area and discovered that my house was one of three that had a 25 foot setback. The other houses all have 15 foot setbacks and we also observed a residence at the corner of Waterview and Moore Avenue that has an in-ground pool. The pool extends beyond the set back line but does not distract from the neighborhood. The pool actually adds to the attractiveness of the neighborhood.

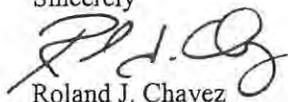
The residences that are referenced above are located at the following physical addresses:

847 Cliff, 101 Cox Drive, 104 Cox Drive, 1000 Starlite, 1010 Moore Avenue, 1012 Moore Avenue, 1404 Moore Avenue, 1406 Moore Avenue, 1451 Moore Avenue, 1093 Polaris, 1094 Polaris, 917 Summit Circle, 918 Summit Circle, 946 Waterview, and 947 Waterview.

Brian advised Laura and I that we could apply for a "Special Exception" and that is what brings me here today. We would like to petition the Zoning Board of Adjustment to please accept our application for a "Special Exception" to allow us a variance to build within this 25 foot setback line. I have included a copy of the survey of our lot and the dimensions for the proposed pool that we would like to build. The installation of the pool would not prevent access to any utilities, would add value to our home, and provide a place for our family to gather and enjoy the outdoors.

We pray that you will hear our request and grant us the use of this property for installing a pool. There will still be sufficient space from the structure to Moore Avenue as well as beautify the property and allow us to spend time as a family enjoying the pool.

Sincerely

  
Roland J. Chavez







## **NOTICE OF PUBLIC HEARING**

Notice is hereby given that a Public Hearing will be held before the Board of Adjustment of the City of Portland on Wednesday, September 11, 2013, in the Council Chamber of the City Hall (1900 Billy G. Webb Drive - Daniel P. Moore Community Center Complex) at 7:00 p.m. to solicit comments from citizens and other interested parties concerning a request for a Special Exception to Section 410.G of the Unified Development Ordinance. The applicant is proposing construction of an in-ground swimming pool at 1000 Southcliff that encroaches into the 25 foot side street yard setback. The Special Exception, if approved, would allow the construction of the swimming pool within the 25 foot setback along Moore Avenue.

Any questions concerning this matter should be directed to Brian DeLatte, Director of Public Works and Development, at (361) 777-4601 or [brian.delatte@portlandtx.com](mailto:brian.delatte@portlandtx.com).

## 1000 Southcliff Drive Special Exception Addresses

<b>Address</b>	<b>Owner</b>	<b>Owner's Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Legal</b>
1003 Starlite Drive	Herbert Stewart	PO Box 1102	Ingleside	TX	78362-1	Westcliff #3, Blk 3, Lt 1
1007 Starlite Drive	Ciro & Berta Cuellar	1007 Starlite Drive	Portland	TX	78374	Westcliff #3, Blk 3, Lt 29
1000 Starlite Drive	Thomas & Darlene Hinnant	1000 Starlite Drive	Portland	TX	78374	Westcliff #3, Blk 2, Lt 1
1001 Starlite Drive	Thomas & Suzanne Meglen	1001 Starlite Drive	Portland	TX	78374	Westcliff #3, Blk 3, Lt 32
1002 Starlite Drive	Juan Ramirez	1002 Starlite Drive	Portland	TX	78374	Westcliff #3, Blk 2, Lt 2
1005 Starlite Drive	Guadalupe & Adelina Ochoa	1005 Starlite Drive	Portland	TX	78374	Westcliff #3, Blk 3, Lt 30
1003 Southcliff Drive	Stephen & Nancy McClarney	1003 Southcliff Drive	Portland	TX	78374	Westcliff #3, Blk 4, Lt 2
1001 Southcliff Drive	C R Trlica	410 Paul Place	Beeville	TX	78102	Westcliff #3, Blk 4, Lt 1
1005 Southcliff Drive	Ruben & Rose Cortez	1005 Southcliff Drive	Portland	TX	78374	Westcliff #3, Blk 4, Lt 3
1008 Southcliff Drive	Abel & Dorothy Torres	1008 Southcliff Drive	Portland	TX	78374	Westcliff #3, Blk 3, Lt 5
1007 Southcliff Drive	Raul Hinojosa	1007 Southcliff Drive	Portland	TX	78374	Westcliff #3, Blk 4, Lt 4
1006 Southcliff Drive	William Byrne	1006 Southcliff Drive	Portland	TX	78374	Westcliff #3, Blk 3, Lt 4
1002 Southcliff Drive	Lillian Garcia	1002 Southcliff Drive	Portland	TX	78374	Westcliff #3, Blk 3, Lt 29
1004 Southcliff Drive	Victor Reyes	1004 Southcliff Drive	Portland	TX	78374	Westcliff #3, Blk 3, Lt 3
1000 Northcliff Drive	Salvador & Guadalupe Sanchez	1000 Northcliff Drive	Portland	TX	78374	Westcliff #4, Blk 4, Lt 38
1002 Northcliff Drive	Uvaldino & Columbia Castillo	1002 Northcliff Drive	Portland	TX	78374	Westcliff #4, Blk 4, Lt 37
1004 Northcliff Drive	John Sutherland	1004 Northcliff Drive	Portland	TX	78374	Westcliff #4, Blk 4, Lt 36
1301 Moore Avenue	Starprop LP 7055	PO Box 9036	Corpus Christi	TX	78469-9	Briar Bluff #2, Lt 1A
1001 Bluff Drive	Mohammed & Joyceline Shaffie	616 Broadway Boulevard	Portland	TX	78374	Briar Bluff #5, Blk 1, Lt 1
1000 Bluff Drive	Danny & Anissia Hedrick	122 Fulton Place	Portland	TX	78374	Briar Bluff #4, Blk 1, Lt 1
1003 Bluff Drive	Duncan & Carrie Allred	108 Presidio Drive	Portland	TX	78374	Briar Bluff #5, Blk 1, Lt 2