

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
November 20, 2017**

Members Present:

Mary Rogers
Jeff Finlay
Donald Oroian
Denise Ojeda
Roger Martinez
Maria Cruz
Alan Neff
Dr. Lisa Zottarelli
Jesse Zuniga
John Kuderer
George Britton Jr.

Staff:

Catherine Hernandez, Planning Manager
Ted Murphree, City Attorney
Logan Sparrow, Principal Planner
Oscar Aguilera, Planner

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Ms. Rogers, called the meeting to order and called roll of the applicants for each case.

Herman Perez, World Wide Languages-Interpreter, present.

Case A-17-204 has been withdrawn.

Case A-17-201 has been postponed.

Case Number: A-18-011
Applicant: San Antonio River Foundation
Owner: City of San Antonio
Council District: 3
Location: 9900 and 10040 Espada Road
Legal Description: Southwest Irregular Point of Triangular 73 Feet Except the Southeast Irregular 96.12 Feet of the Non-Adjacent Property, NCB 11173
Zoning: "NP-10 H HS RIO-6 AHOD" Neighborhood Preservation Mission Historic Significant River Improvement Overlay Airport Hazard Overlay District
Case Manager: Logan Sparrow, Principal Planner

Request

A request for a two foot and six inch variance from the 39 foot and nine inch MPOD height limitation to allow a public art installation to be 42 feet and three inches tall feet tall.

Logan Sparrow, Principal Planner presented the background information and staff's recommendation of the variance. He indicated 34 notices were mailed, 0 returned in favor, and 0 returned in opposition with no neighborhood association.

Stuart Johnson, representative stated the applicant was merely updating the Project. A new artist was hired so the design changed triggering the Variance request.

No one 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-18-011 closed.

MOTION

A motion was made by **Ms. Ojeda**. "Regarding Appeal No. A-18-011, a request for a two foot and six inch variance from the 39 foot and nine inch MPOD height limitation to allow a public art installation to be 42 feet and three inches tall feet tall, subject property being the Southwest Irregular Point of Triangular 73 Feet Except the Southeast Irregular 96.12 Feet of the Non-Adjacent Property, NCB 11173, situated at 9900 and 10040 Espada Road, applicant being the San Antonio River Foundation.

I move that the Board of Adjustment grant the applicant's request for the 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:

1. *The variance is not contrary to the public interest.*

The public interest is represented by maximum building height limitations to preserve the view of Mission Espada. The application included a height survey, conducted by a drone, clearly showing the requested height is not visible from Mission Espada. Because it does not obscure the view to the Mission, or the view from the Mission, the board finds that the request is not contrary to the public interest.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The special condition in this case is that the requested fence height does not interfere with the intent of the MPOD height limits. The height limits were established to prevent development from obscuring the view to and from Mission Espada. Because the proposed art installation does not conflict with these purposes, the board finds that a literal enforcement of the ordinance would result in unnecessary hardship.

- 3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The spirit of the ordinance is the intent of the requirements rather than the strict letter of the law. The intent of the height limit is to protect the Mission viewshed. In that the variance request does not detract from that intent, the board finds that granting the variance will result in substantial justice.

- 4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “NP-10 H HS RIO-6 AHOD” Neighborhood Preservation Mission Historic Significant River Improvement Overlay Airport Hazard Overlay District.

- 5. *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.*

It is unlikely that the variance will injure adjacent property owners. Loop 410 Expressway is located to the north, the San Antonio River is located east of the subject property, and there are agricultural uses to the south. The single-family homes to the west would be most directly affected, but the nearest home is located nearly 300 feet away.

- 6. *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 unique circumstance present in the case is that the intent of the MPOD height limitation is met as the requested variance does not obscure the view to or from Mission Espada.” The motion was seconded by Mr. Martinez.

AYES: Ojeda, Martinez, Kuderer, Rodriguez, Finlay, Cruz, Rodriguez, Zottarelli, Oroian, Zuniga, Rogers

NAYS:None

THE VARIANCE IS GRANTED.

Case Number:	A-17-198
Applicant:	Jake Jacobson
Owner:	NO NAME CAY LLC
Council District:	7
Location:	125 De Chantle Drive
Legal Description:	Lot 16H, NCB 8407
Zoning:	“C-2 AHOD” Commercial Airport Hazard Overlay District.
Case Manager:	Oscar Aguilera, Planner

Request

A request for a special exception, as described in Section 35-399.04, to allow a seven foot tall predominantly open fence around the property.

Oscar Aguilera, Planner presented the background information and staff's recommendation of the variance. He indicated 13 notices were mailed, 0 returned in favor, and 0 returned in opposition. No response from the Maverick Neighborhood Association.

Ian Cochran, representative gave a presentation on behalf of the owner and asked for approval for the special exception simply to protect their property.

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-17-198 closed.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No. A-17-198, a request for a special exception to allow a predominantly open seven foot tall predominantly open fence around the property, subject property Lot 16H, NCB 8407, situated at 125 De Chantle Drive, applicant being Jake Jacobson.

I move that the Board of Adjustment grant the applicant's request for the special exception 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:

A. The special exception will be in harmony with the spirit and purpose of the chapter.

The request for a seven foot predominantly open fence around the property line is in harmony with the spirit and purpose of the chapter as the fence is intended to protect the property and there are similar fences within the district.

B. The public welfare and convenience will be substantially served.

Allowing the property owner to place a seven foot fence around the property line will help to prevent acts of trespass, theft, and vandalism in the future and ensure the safety of the owner's property. Therefore, the public welfare and convenience will be substantially served.

C. The neighboring property will not be substantially injured by such proposed use.

Granting the requested special exception will not substantially injure the neighboring properties as the fence will be able to protect the subject property from trespass, theft, and vandalism. In addition there are similar fences on adjacent property.

D. 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.

The predominately open seven foot fencing around the front property line would not significantly alter the overall appearance of the district since there are similar fences on adjacent property.

E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.

The purpose of the fencing standards is to protect the health, safety, and general welfare of the public. The special exception request is to allow a seven foot predominantly open fence in order to add security for the staff and clients. Therefore, the requested special exception will not weaken the general purpose of the district.” The motion was seconded by **Ms. Ojeda.**

AYES: Martinez, Ojeda, Oroian, Zuniga, Britton, Rodriguez, Kuderer, Cruz, Finlay, Zottarelli, Rogers

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED.

Case Number:	A-17-189
Applicant:	Mary Borrego
Owner:	Mary Borrego
Council District:	1
Location:	2203 West Hermosa Drive
Legal Description:	Lots 19-23, Block 31, NCB 8428
Zoning:	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District.
Case Manager:	Oscar Aguilera, Planner

Request

A request for 1) a special exception to allow a six foot tall predominately open fence, as described in Section 35-399.04, around the front yard of the property and 2) a request from the Clear Vision requirements, as described in Section 35-514 a(2), at the intersection of West Hermosa Drive and Melbourne Avenue and 3) a request to vary from the Clear Vision requirements at the western-most driveway located on West Hermosa Drive.

Oscar Aguilera, Planner, presented background, and staff’s recommendation of the variance requests. He indicated 42 notices were mailed, 0 returned in favor, and 1 returned in opposition and no response from the Los Angeles Heights Neighborhood Association.

Mary Borrego, applicant was not clear as to why the fence was a problem. She stated she saved for years to build the fence for her safety. Ms. Borrego asked for the Boards approval.

The Following citizens appeared to speak.

Estella V. Salinas: requested interpreter services, spoke in opposition

Martha Trevino: spoke in opposition

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 17-189 closed.

MOTION

A motion was made by **Ms. Ojeda** "Regarding Appeal No. A-17-189, a request for a special exception to allow a predominantly open six foot tall fence in the front yard, subject property being Lots 19-23, Block 31, NCB 8428, situated at 2203 West Hermosa Drive, applicant being Mary Borrego.

I move that the Board of Adjustment grant the applicant's request for the special exception 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:

A. The special exception will be in harmony with the spirit and purpose of the chapter.

The request for a six foot predominantly open fence in the property line is in harmony with the spirit and purpose of the chapter as the fence is intended to protect the property and there are similar fences within the district. Further, the chapter would permit the requested fence height if the lot was 5,000 square feet larger.

B. The public welfare and convenience will be substantially served.

Allowing the property owner to place a six foot fence around the property line will help to prevent acts of trespass in the future and ensure the safety of the owner's property. In addition, the owner is only a few thousand square feet away from meeting the requirements for a large lot fencing requirements. Therefore, the public welfare and convenience will be substantially served.

C. The neighboring property will not be substantially injured by such proposed use.

Granting the requested special exception will not substantially injure the neighboring properties as the fence will be able to protect the subject property from trespass. In addition there are similar fences in height within the neighboring district.

D. 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.

The predominately open six foot fencing around the front site property line would not significantly alter the overall appearance of the district since there are similar fences in height.

E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.

The purpose of the fencing standards is to protect the health, safety, and general welfare of the public. The special exception request is to allow a six foot tall front fence in order to add security for the owner. Therefore, the requested special exception will not weaken the general purpose of the district.” Mr. Zuniga seconded the motion.

AYES: Ojeda, Zuniga, Martinez, Rodriguez, Oroian, Britton, Cruz, Finlay, Zotarelli, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

MOTION

A motion was made by **Mr. Martinez**. “Regarding Appeal No. A-17-189, a request from the Clear Vision requirements for intersection visibility, subject property being Lots 19-23, Block 31, NCB 8428, situated at 2203 West Hermosa Drive, applicant being Mary Borrego.

I move that the Board of Adjustment grant the applicant’s request for the 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:

- 1. The variance is not contrary to the public interest.*

The request not to enforce the Clear Vision requirements at the intersection of West Hermosa Drive and Melbourne Avenue is not contrary to the public interest. Not providing the Clear Vision will not pose a hazard to drivers and pedestrians since it is a predominantly open fence that will not obstruct the visibility of drivers.

- 2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

A literal enforcement of the ordinance would result in the applicant not being able to protect her property and family.

- 3. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The spirit of the ordinance is the intent of the code, rather than the strict letter of the law. In this case, the intent of the Clear Vision Requirement is to provide safety. Since the fence is a predominantly open fence it observes the spirit of the law and substantial justice will be done.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District.

5. *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.*

Other Drivers and pedestrians are unlikely to be negatively affected by the requested variance in that the fence is predominately open.

6. *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 applicant has provided a predominately open fence for the protection of drivers. Several other homes within the district have similar fences.” The motion was seconded by Mr. Britton.

AYES: Ojeda, Britton,

NAYS: Martinez, Finlay, Zuniga, Rodriguez, Oroian, Cruz, Zotarelli, Kuderer, Rogers

THE VARIANCE FAILED

Case Number: A-17-200
Applicant: UP Engineering, LLC
Owner: Home Living Hospitality, LTD
Council District: 4
Location: the Northeast corner of Elm Valley Drive and Five Palms Drive
Legal Description: Lot P-37 ABS 16, NCB 15261
Zoning: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager: Oscar Aguilera, Planner

Request

A request for a 0.80 foot variance from the 50 foot minimum lot width, as described in Section 35-310.01, to allow Lots 2-25 to be 49.20 feet wide.

Oscar Aguilera, Planner, presented the background information, and staff’s recommendation of the variance request. He indicated 48 notices were mailed, 0 returned in favor, 2 returned in

opposition and no response from the People Active Community Effort Neighborhood Association.

Natasha Alridge: representative stated the plans have been altered to reduce the pavement the number of units to 11 with all these changes they feel the new plan is the best option.

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-17-200 closed.

MOTION

A motion was made by **Mr. Oroian**, "Regarding Appeal No. A-17-200, a request for a 0.80 foot variance from the 50 foot minimum lot width to allow Lots 2-25 to be 49.20 feet wide, subject property being Lot P-37 ABS 16, NCB 15261, situated at the Northeast corner of Elm Valley Drive and Five Palms Drive, applicant being UP Engineering, LLC.

I move that the Board of Adjustment grant the applicant's request for the 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:

1. *The variance is not contrary to the public interest.*

Allowing the Lots 2-25 to be 49.20 feet wide is not is not contrary to the public interest. These lots will maintain six thousand square feet in size and the 0.80 foot variance will not affect the setback requirements for these lots. The lots will provide the required setbacks established by the UDC.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The special condition present on the subject property is the configuration of the land. A survey error revealed Lots 2-25 are 0.80 feet shy of the requirement, but still provide the required six thousand square foot lot size. As the request is minimal in nature, staff finds that a literal enforcement would result in unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The spirit of the ordinance is defined as the intent of the code rather than the strict letter of the law. The requested variance modifying the minimum lot width in this subdivision observes the spirit of the code since the lots will still be six thousand square feet in size and the frontage will be 49.20 feet.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-6 AHOD” Single-Family Residential Airport Hazard Overlay District.

- 5. *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.*

The requested variance will allow a subdivision for a new home site, and this will not alter the character of district.

- 6. *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 requested lot width variance will be indiscernible to the passerby because the lots will be six thousand square feet same as all the lots within the proposed subdivision. Setbacks are unaffected.” Mr. Zuniga seconded the motion.

AYES: Rodriguez, Cruz, Finlay, Ojeda, Zottarelli, Britton, Kuderer, Rogers

NAYS: Oroian, Martinez, Zuniga,

THE VARIANCE FAILED

The Board of Adjustment recessed for a 10 min break at 2:50pm and reconvened and returned at 3:00pm with Mr. Oroian recusing from Case #A-17-202.

Case Number:	A-17-202
Applicant:	Jim Poteet
Owner:	Dwight Hobart and Patty Ortiz
Council District:	1
Location:	143 Cedar Street
Legal Description:	South 43.8 Feet of the East 100 Feet of Lot 9 & the North 6.2 Feet of the East 100 Feet of Lot 10, Block B, NCB 935
Zoning:	“MF-33 H HS AHOD” Multi-Family King William Historic Significant Airport Hazard Overlay District
Case Manager:	Logan Sparrow, Principal Planner

Request

A request for 1) a ten foot variance from the 20 foot rear setback to allow an addition to be ten feet from the rear property line and 2) a four foot variance from the required five foot side yard pool setback to allow a pool to be one foot from the side property line.

Oscar Aguilera, Planner, presented background information, and staff's recommendation of the variance requests. He indicated 34 notices were mailed, 2 returned in favor, 0 returned in opposition and no response from the King William Neighborhood Association.

Jim Poteet, applicant presented his case and said he merely wants to restore a single family home back to prominence with a pool. He answered all of the Boards questions then asked for the Boards approval.

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-17-202 closed.

MOTION

A motion was made by **Mr. Finlay**. "Regarding Appeal No. A-17-202, a request for 1) a ten foot variance from the 20 foot rear setback to allow an addition to be ten feet from the rear property line and 2) a four foot variance from the required five foot side yard setback for a pool to allow a pool to be one foot from the side property line, subject property being the South 43.8 Feet of the East 100 Feet of Lot 9 & the North 6.2 Feet of the East 100 Feet of Lot 10, Block B, NCB 935, situated at 143 Cedar Street, applicant being Jim Poteet.

I move that the Board of Adjustment grant the applicant's request for the 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:

1. *The variance is not contrary to the public interest.*

The requested setback is not unlike those shared by similarly situated property owners and the pool setback reduction is unlikely to harm adjacent property owners. As such, the variance is not contrary to the public interest.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The special condition in this case is that the only reason that the 20 foot rear setback is required is because the owner is developing a single-family project in a multi-family zone. If the property carried the "RM-4" Residential Mixed zoning like other surrounding properties, no rear setback variance would be necessary. The special condition present in this case related to the swimming pool is that, unlike other development near property lines such as carports or additions, a swimming pool won't require trespass to maintain nor pose any fire spread threat. Staff finds that a literal enforcement of the ordinance would result in unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The intent of the setback is to provide sufficient separation between incompatible uses. As the addition still provides a ten foot rear setback, the same setback required by adjacent property, staff finds that the spirit of the ordinance will be observed. Further, because the pool poses little risk to adjacent property, staff finds that that request also observes the spirit of the code.

- 4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “MF-33 H AHOD” Multi-Family King William Historic Significant Airport Hazard Overlay District.

- 5. *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.*

It is unlikely that either variance request will injure adjacent property owners. Neither variance sought by the applicant would lead to water runoff, fire threat, or trespass. The variances sought are not contrary to the essential character of the district.

- 6. *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 unique circumstance present in the case is that the 20 foot rear setback is only required because a single-family home is being developed within a multi-family zone. There is minimal space on the small lot for a pool, and allowing it one foot from the side property line is unlikely to harm adjacent property owners.” The motion was seconded by Mr. Finlay.

AYES: Dr. Zottarelli, Finlay, Martinez, Cruz, Zuniga, Britton, Ojeda, Rodriguez, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

At 3:18pm Mr. Oroian returned to the meeting

Case Number: A-17-194
Applicant: Elliot Grochal
Owner: Elliot Grochal
Council District: 1
Location: 812 West Russell Place
Legal Description: East 49.94 Feet of Lot 6, Block 5, NCB 1877

Zoning: "MF-33 NCD-2 AHOD" Multi-Family Alta Vista Neighborhood
Conservation Airport Hazard Overlay District
Case Manager: Logan Sparrow, Principal Planner

Request

A request for 1) a four foot variance from the five foot side setback, as described in Section 35-370, to allow a carport/accessory dwelling unit to be one foot from the side property line and 2) a request for a four foot variance from the five foot rear setback, also described in Section 35-370, to allow a carport/accessory dwelling unit to be one foot from the rear property line.

Logan Sparrow, Principal Planner, presented background information, and staff's recommendation of the variance request. He indicated 32 notices were mailed, 1 returned in favor, 0 returned in opposition and no response from the Alta Vista Neighborhood Association.

Eliot Grochal, applicant stated he worked with Neighborhood Design Committee on the plan which had no complaints and gave his reasons for adding a 5th unit and asked for the Boards approval.

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-17-194 closed.

MOTION

A motion was made by **Ms. Ojeda**. "Regarding Appeal No. A-17-194, a request for 1) a four foot variance from the five foot side setback to allow a carport/dwelling unit to be one foot from the side property line and 2) a four foot variance from the five foot rear setback to allow a carport/dwelling unit to be one foot from the rear property line, subject property being the East 49.94 Feet of Lot 6, Block 5, NCB 1877, situated at 812 West Russell Place, applicant being Elliot Grochal.

I move that the Board of Adjustment grant the applicant's request for the 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:

1. *The variance is not contrary to the public interest.*

The proposed living space meets the five foot setback requirement. The only portion encroaching into the required setbacks are the stairs and walkway used to gain access to the unit.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The special condition in this case is that the only portion of the structure in violation of the setback is the walkway used to gain access to the dwelling unit, not the dwelling unit, itself.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The dwelling unit does meet the setback, and only a twelve foot by five foot walkway and the stairs are located within it.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "MF-33 NCD-2 AHOD" Multi-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District.

5. *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.*

As the proposed structure will be in the same footprint as the current carport, which was built in 1992, per BCAD, it is unlikely that adjacent property will be harmed by the proposed development as adjacent property has not been harmed for the past 25 years.

6. *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 unique circumstance present in the case is that the carport/accessory dwelling unit does meet the side setback; only the walkway to access the unit is in violation. This setback issue is not merely financial in nature." Mr. Oroian seconded the motion.

After further questions from the Board, Ms. Rogers reopened the meeting for the applicant to answer the Boards questions.

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-17-194 closed.

AYES: Ojeda, Oroian, Zuniga, Rodriguez, Martinez, Cruz, Finlay, Britton, Dr. Zottarelli, Kuderer, Rogers
NAYS: None

THE SPECIAL VARIANCE IS GRANTED



Case Number: A-17-196
Applicant: Amelia Gauna
Owner: Amelia and John Gauna
Council District: 5
Location: 2106 Bronte Street
Legal Description: Lot 45, Block 5, NCB 8608
Zoning: "MF-33 AHOD" Multi-Family Airport Hazard Overlay District
Case Manager: Oscar Aguilera, Planner

Request

A request for a three foot variance from the five foot side setback, as described in Section 35-310.01, to allow a garage to be two feet from the side property line.

Oscar Aguilera, Planner, presented background, and staff's recommendation of the variance requests. He indicated 38 notices were mailed, 3 returned in favor, and 1 returned in opposition and no neighborhood association.

John Guana, representative stated the carport is for elderly mother. Mr. Guana stated prior to building he spoke to the Neighbors husband and asked for permission. He also said he would use fire rated materials.

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 17-196 closed.

MOTION

A motion was made by **Ms. Cruz**. "Regarding Appeal No A-17-196, a request for a three foot variance from the five foot side setback to allow a garage to be two feet from the side property line, subject property being Lot 45, Block 5, NCB 8608, situated at 2106 Bronte Street, applicant being Amelia Gauna.

I move that the Board of Adjustment grant the applicant's request for the 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:

1. *The variance is not contrary to the public interest.*

The proposed garage meets the front setback requirement. Allowing the garage to be two feet from the side property line will leave room for maintenance. The applicant is aware that the structure will need to be fire-rated.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

A literal enforcement of the ordinance would result in the applicant not being able to park a car in the garage.

- 3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The spirit of the ordinance is the intent of the code, rather than the strict letter of the law. In this case, the intent of the setback is to allow room for maintenance and to provide safe separation. A two foot setback would satisfy this intent. The spirit of the ordinance is observed in that the garage meets front setbacks, will not pose a fire risk once fire-rated, and will not drain water onto adjacent properties.

- 4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “MF-33 AHOD” Multi-Family Airport Hazard Overlay District.

- 5. *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.*

Adjacent properties are unlikely to be negatively affected by the requested changes in that the proposed design will consist of fire retardant material and the garage will not drain water onto the adjacent properties. There are several properties within the community that include a carport on or near the side property line. The request would not be out of character of the district.

- 6. *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 applicant will not have space to build a garage to accommodate their vehicle if the five foot setback is enforced. The plight of the owner is not merely financial in nature.”* The motion was seconded by **Mr. Rodriguez.**

Mr. Oroian made a motion to amend to limit the request for a 3 foot variance from the 5 foot setback to the site plan for the proposed garage as presented for a 24 foot deep garage as presented. Mr. Martinez seconded the motion.

**AYES: Oroian, Martinez, Zuniga, Dr. Zottarelli, Finlay, Kuderer,
NAYS: Rodriguez, Cruz, Ojeda, Britton, Rogers**

THE AMENDMENT FAILED

Mr. Martinez made an amendment to change from a 3 foot variance to a 2 foot variance from the side setback. Mr. Oroian seconded the amendment.

**AYES: Martinez, Oroian, Zuniga, Dr. Zottarelli, Finlay, Rodriguez, Cruz, Ojeda, Britton,
Kuderer, Rogers
NAYS: None**

THE AMENDMENT IS GRANTED

Main Motion:

AYES: Martinez, Oroian, Zuniga, Dr. Zottarelli, Finlay, Rodriguez, Cruz, Ojeda, Britton, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED

Case Number: A-17-199
Applicant: Lisa Carrasco
Owner: Lisa Carrasco
Council District: 3
Location: 3619 Devon Street
Legal Description: Lot 34, Block 4, NCB 12849
Zoning: "R-4 AHOD" Single-Family Residential Airport Hazard Overlay District
Case Manager: Oscar Aguilera, Planner

Request

A request for 1) a three foot variance from the ten foot front setback requirement to allow a carport to be seven feet from the front property line and 2) a request for a four foot and eleven inch variance from the required five foot side setback to allow a carport to be one inch from the side property line.

Oscar Aguilera, Planner, presented background, and staff's recommendation of the variance requests. He indicated 33 notices were mailed, 2 returned in favor, and 0 returned in opposition and no response from the Highland Hills Neighborhood Association.

Lisa Carrasco, applicant stated the carport was made of metal and has water gutters and is not a fire hazard. She built it to protect her 4 vehicles and asked the Board to keep the structure as is.

No citizens appeared to speak.

Regarding Appeal No. A-17-199, a request for 1) a three foot variance from the ten foot front setback requirement to allow a carport to be seven feet from the front property line and 2) a request for a four foot and eleven inch variance from the required five foot side setback to allow a carport to be one inch from the side property line, subject property being Lot 34, Block 4, NCB 12849, situated at 3619 Devon Street, applicant being Lisa Carrasco.

I move that the Board of Adjustment **grant an adjustment from the 2ft variance from the side setback and a 7ft variance from front setback to allow the carport to be 2ft from the side property line and no closer than 7ft from the front**, 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:

1. *The variance is not contrary to the public interest.*

Allowing the carport to remain one inch from the side property line and seven feet from the front property line in this case will not pose a hazard to the neighbors since it is a metal carport and has a gutter. Therefore, there is no possible fire hazard issue or drainage in to the neighboring property or the public right-of-way.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

A literal enforcement of the ordinance would result in unnecessary hardship for the applicant. The applicant has large vehicles and these vehicles do not fit inside the garage. Therefore, the applicant will be unable to protect her vehicles from the inclement weather.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The spirit of the ordinance is the intent of the code rather than the strict letter of the law. In this case the intent of the setback is to provide safe separation between structures. Since the carport is made of metal and has a gutter, no fire hazard or drainage issues exist that may affect the neighbors or the community. In addition, there are similar carports in the district therefore, the spirit of the ordinance will be observed.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-4 AHOD" Single-Family Residential Airport Hazard Overlay District.

5. *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.*

The granting of the variance will not substantially injure the adjacent properties since the carport is made of metal and has a gutter. In addition, there are similar carports within the district and, therefore, it will not alter the essential character of the district.

6. *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 applicant has large vehicles and these do not fit inside the garage. Therefore, the applicant will be unable to protect her vehicles from the inclement weather. The

applicant advised that she hired a person to build the carport and believed that the carport complied with the City Code.” Ms. Ojeda seconded the motion.

AYES: Martinez, Oroian, Zuniga, Dr. Zottarelli, Finlay, Rodriguez, Cruz, Ojeda, Britton, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED

Ms. Rogers made a motion to approve the November 20, 2017 minutes with all members voting in the affirmative.

Manager’s report: The Board was informed of a future meeting for new Members on December 18, 2017

There being no further discussion, meeting adjourned at 5:00 pm.

APPROVED BY: Mary E. Rogers OR _____
Chairman Vice-Chair

DATE: 12-4-17

ATTESTED BY: [Signature] DATE: 12/6/17
Executive Secretary