

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
July 6, 2015**

Members Present:

Andrew Ozuna  
Frank Quijano  
Alan Neff  
Gabriel Velasquez  
George Britton  
Jesse Zuniga  
John Kuderer  
Roger Martinez  
Gene Camargo  
Christopher Garcia  
Paul Klein  
Harold Atkinson

Staff:

Catherine Hernandez, Planning Manager  
Margaret Pahl, Senior Planner  
Logan Sparrow, Senior Planner  
Kristin Flores, Planner  
Paul Wendland, City Attorney

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**Call to Order**

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

Mr. Ozuna, Chair, called the meeting to order and called roll of the applicants for each case.

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**CASE NO. A-15-097**

Applicant – Brown & Ortiz PC

Lots 304, S 544.60 feet of W 65 feet of 303 or 303F, E 192 feet of S 340 feet of 303 or 303A, W 70 feet of S 498.32 feet of 302, Block 29, NCB 11128

331 W Buchanan & 358 W Villaret Boulevard

Zoning: “R-4 CD AHOD” Residential Single-Family Airport Hazard Overlay

The applicant is requesting a variance from the requirement as described in 35-526 (f) and (j) that the parking lots be hard surfaced.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 34 notices were mailed, 12 were returned in favor and one was returned in opposition.

James McKnight, representative, stated the business has the required amount of parking that is needed. He also stated there is a great majority of adjacent property owners who are in support. He further stated the additional parking would be needed when there is an overflow of parking. The property would not be paved because the water would flow into the street from the property. The property is currently a collector for water.

**The following citizens appeared to speak:**

Eli De La Cruz, citizen, spoke in favor.

James Fenimore, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-15-097 closed.

**MOTION**

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-097**, variance application for a **variance from the requirement as described in 35-526 (f) and (j) that the parking lots be hardsurfaced**, subject property description being **Lots 304, S 544.60 feet of W 65 feet of 303 or 303F, E 192 feet of S 340 feet of 303 or 303A, W 70 feet of S 498.32 feet of 302, Block 29, NCB 11128, situated at 331 W Buchanan & 358 W Villaret Boulevard**, applicant being **Brown & Ortiz PC**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-097**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety, and welfare of the public**. A review of aerial photography taken on a busy weekend day shows vehicles parking on both sides of nearby residential streets, sometimes blocking driveways. Therefore, having additional overflow parking for use on only the busiest weekends is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special circumstance present on the subject property is that the overflow parking is only necessary on the busiest weekend days**. Crowds do not develop during rainy weekends and therefore the threat of mud is not a factor. Since the property is zoned for residential single-family uses, the proposed overflow parking could be easily removed for potential future, residential development. The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is represented by the Conditional Use approval granted by the City Council to provide for temporary parking to alleviate congestion and on street parking within the residential neighborhood nearby**. The applicant has parking attendants who regulate the use of all parking within the complex. These attendants will only direct cars to these overflow lots after all of the other parking lots are full. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-4 CD AHOD” Residential Single-Family Airport Hazard Overlay District with Conditional Use for a Noncommercial Parking Lot**. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **the applicant is preserving all of the mature trees and asking for the variance to allow the**

**natural grass to remain, keeping the essential character of the district during the weekdays, and weekends when the market is less crowded. As such, the variance will assist in protecting the character of the area.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **the applicant purchased the property to address concerns expressed by neighboring property owners. In addition, these neighbors expressed their desire to have the parcels remain native to the greatest extent possible. The requested variance is not financially motivated.** The motion was seconded by Mr. Garcia.

**AYES: Velasquez, Garcia, Quijano, Neff, Britton, Atkinson, Zuniga, Kuderer, Martinez, Camargo, Ozuna**

**NAYS: None**

**THE VARIANCE IS GRANTED.**

**Mr. Quijano departed at 1:30 p.m.**

**CASE NO. A-15-100**

Applicant – Juan Soledad

Lot 17, Block 32, NCB 18820

8318 Terra Ferna

Zoning: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay

The applicant is requesting 1) a five foot variance from the ten foot front setback, as described in Section 35-310.01, to allow an existing carport to remain five feet from the front property line and 2) a request for the elimination of the five foot side yard setback, also described in Section 35-310.01, to allow an existing carport to remain on the side property line.

Logan Sparrow, Senior Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 35 notices were mailed, none were returned in favor and none were returned in opposition.

Juan Soledad, applicant, stated the structure was built about three years ago and does have neighbors that are in support. He also stated the carport would provide protection for his vehicles. He further stated he is also aware of the requirements to fire rate the carport.

**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-15-100 closed.

**MOTION**

A motion was made by **Mr. Velasquez**. Re Appeal No. **A-15-100**, variance application for a **request for the elimination of the five foot side yard setback, also described in Section 35-310.01, to allow an existing carport to remain on the side property line**, subject property description being **Lot 17, Block 32, NCB 18820**, situated at **8318 Terra Ferna**, applicant being **Juan Soledad**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-100**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the applicant has brought illustrations of other properties in the community demonstrating a similar type of architecture**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the existing structure, while it was built without permits, has no strong opposition from its neighboring residents**. The spirit of the ordinance is observed and substantial justice is done in that **I would just go back to the illustrations that the property owner brought is not out of the ordinary in this community**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the applicant is not asking for different uses. It's still a single family residence**. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **as demonstrated by the illustrations that the property owner brought in, it is within character of the community and the neighboring property owner is willing to give letters that he isn't in opposition**. The motion was seconded by **Mr. Zuniga**.

**AYES: Velasquez, Zuniga, Garcia, Neff, Britton, Kuderer, Ozuna**

**NAYS: Klein, Atkinson, Martinez, Camargo**

**Mr. Camargo made a motion to reconsider the motion with all members voting in the affirmative**

**MOTION**

A motion was made by **Mr. Camargo**. I would move that in case No. **A-15-100**, the applicant being **Juan Soledad**, on property located at **8318 Terra Ferna**, legally described as **Lot 17, Block 32, NCB 18820**, be granted a **2 foot variance to allow a 3 foot side yard setback and in addition to grant a 5 foot variance from the 10 foot front yard setback to allow the carport to remain as it exist**. Specifically, we find that such variance will not be contrary to the public interest in that **the applicant has brought illustrations of other properties in the community demonstrating a similar type of architecture**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the existing structure, while it was built without permits, has no strong opposition from its neighboring residents**. The spirit of the ordinance is observed and substantial justice is done in that **I would just go back to the illustrations that the property owner brought is not out of the ordinary in this community**. Such variance will not authorize the operation of a use other than those uses



specifically authorized for the district in which the subject property is located in that **the applicant is not asking for different uses. It's still a single family residence.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **as demonstrated by the illustrations that the property owner brought in, it is within character of the community and the neighboring property owner is willing to give letters that he isn't in opposition.** The motion was seconded by **Mr. Zuniga.**

**AYES: Camargo, Garcia, Klein, Neff, Velasquez, Britton, Zuniga, Kuderer, Martinez, Ozuna**

**NAYS: Atkinson**

**THE VARIANCE IS GRANTED.**

#### **CASE NO. A-15-109**

Applicant – Camilo Avila

Lot 16, Block 15, NCB 11231

362 Ike Street

Zoning: "R-4 AHOD" Residential Single Family Airport Hazard Overlay

The applicant is requesting a special exception to allow the relocation of a residential building, as described in Section 35-399.03, from 12939 Southwest Loop 410 to a lot located at 362 Ike Street.

Kristin Flores, Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 34 notices were mailed, none were returned in favor and one was returned in opposition.

**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-15-109 closed.

#### **MOTION**

A motion was made by **Mr. Camargo.** "I would like to move that in Case No **A-15-109**, applicant **Camilo Avila**, located at **362 Ike Street**, on property described as **Lot 16, Block 15, NCB 11231**, be granted a **special exception for the relocation of a structure from 12939 Southwest Loop 410 to a lot located at 362 Ike Street.** The special exception will be in harmony with the spirit and purpose of the chapter in that **a residential use on this vacant lot is preferred, given the neighborhood is largely composed of residential dwellings.** The public welfare and convenience will be substantially served in that **the structure will be used as a duplex, as permitted within the R-4 base zoning district by making use of an undeveloped parcel within a neighborhood that could benefit from incremental revitalization.** The

neighboring property will not be substantially injured by such proposed use in that **the addition of this home will add integrity to the streetscape, bring families to the block and convert a vacant lot into a personal yard.** The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought in that **the houses in this area are small, modest homes that are well maintained and contribute to the character of the district.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the special exception will not weaken the general purpose of “R-4 AHOD” zoning district, a district designed to support residential land uses.”** The motion was seconded by **Mr. Martinez.**

**AYES: Camargo, Martinez, Garcia, Klein, Neff, Velasquez, Britton, Atkinson, Zuniga, Kuderer, Ozuna**

**NAYS: None**

**THE SPECIAL EXCEPTION IS GRANTED.**

#### **CASE NO. A-15-108**

Applicant – Hortencia Salazar

Lot 60, Block 044, NCB 15490

6443 Honey Hill

Zoning: “RM-4 AHOD” Residential Mixed Airport Hazard Overlay District

The applicant is requesting a 1.5 foot variance from the maximum 6 foot maximum rear yard fence height, as described in Section 35-514 (d), to allow a 7.5 foot tall fence in the rear yard of the property.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 29 notices were mailed, 4 were returned in favor and none were returned in opposition.

Hortencia Salazar, applicant, stated she is requesting the fence variance because the fence is sitting on railroad ties to prevent water runoff from the adjacent neighbors property. She also stated the fence would provide security and protection. She further stated she was not aware the fence height was in violation.

**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-15-108 closed.

**MOTION**

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-108**, variance application for a **1.5 foot variance from the maximum 6 foot maximum rear yard fence height, as described in Section 35-514 (d), to allow a 7.5 foot tall fence in the rear yard of the property**, subject property description being **Lot 60, Block 044, NCB 15490**, situated at **6443 Honey Hill**, applicant being **Hortencia Salazar**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-108**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety, and welfare of the public. In this case, these criteria are represented by fence height limitations to provide for safety, as well as promote a sense of community. The applicant states a vehicle has driven through an adjacent fence from the dead end. Protection of personal property and restricting unauthorized pool access is well within the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special condition present in this case is that the fence is adjacent to a dead end where people typically park to avoid passing traffic. A literal enforcement would require the reduction in fence height along the back property line and result in an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance provides fencing height regulations to protect homes and to encourage a sense of community. This fence is generally only visible from the dead end and its design does not conflict with the spirit of the ordinance. In addition, swimming pools can also attract trespass.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “RM-4” Residential Mixed District.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **the subject property’s fence is hidden from view from her neighborhood and only visible from the stub street, where other rear yards and privacy fencing are typical. Therefore, it will not alter the essential character of the district.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **the applicant’s property is adjacent to a dead end, creating the need for additional property barriers. This circumstance was not created by the applicant.”** The motion was seconded by **Mr. Garcia**.

**AYES: Velasquez, Garcia, Klein, Neff, Britton, Atkinson, Zuniga, Kuderer, Martinez, Camargo, Ozuna**

**NAYS: None**

**THE VARIANCE IS GRANTED.**



**CASE NO. A-15-111**

Applicant – Patricia Sosa

Lot 20 and 25, Block, NCB 7537

2527 Schubert Drive and the adjacent parcel generally located on the 2500 block of Schubert Drive

Zoning: “MF-33 AHOD” Multi-Family Airport Hazard Overlay District and “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting 1) a variance from the requirement that multi-family residential uses erect a 6 foot solid screen fence along a property line shared with single-family residential uses, as described in Section 35-514 (e), and 2) a 2 foot variance from the maximum 4 foot front yard fence height, as described in Section 35-514 (d), to allow a 6 foot wrought iron fence surrounding the property.

Kristin Flores, Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 14 notices were mailed, none were returned in favor and one was returned in opposition.

Patricia Sosa, applicant, stated the fence would provide security and safety for her property. She also stated there have been numerous trespassers dumping trash in the property. She further stated there has also been numerous attempts of vandalism on her 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-15-111 closed.

**MOTION #1**

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-111**, variance application for a **2 foot variance from the maximum 4 foot front yard fence height, as described in Section 35-514 (d), to allow a 6 foot wrought iron fence at the front south property line**, subject property description being **Lot 20 and 25, Block, NCB 7537**, situated at **2527 Schubert Drive and the adjacent parcel generally located on the 2500 block of Schubert Drive**, applicant being **Patricia Sosa**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-111**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **in this case, these criteria are represents fence height limitations to provide for safety, and also to promote a sense of community. The applicant asserts that the fence is required to secure the property from trespassing patrons. In addition, having a wrought iron in the front, as opposed to a**

**solid screen fence, allows from trespassers patrons.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **staff finds that the special condition present in this case is that the request serves to mitigate criminal activities.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance provides fencing height to protect homes and also to encourage a sense of community.** This fence does not detract from the residential nature of the community, nor does its wrought iron design conflict with the spirit of the ordinance. In fact, the wrought iron fence adds to the character of the community. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-6” Residential Single-Family District and “MF-33” Multi-Family District.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **the subject property fence is in keeping with adjacent properties and will not alter the essential character of the district.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **the applicant’s property is affected by its experience with trespassing, creating the need for additional property barriers. This circumstance was not created by the applicant.”** The motion was seconded by Mr. Camargo.

**AYES: Velasquez, Camargo, Garcia, Klein, Neff, Britton, Atkinson, Zuniga, Kuderer, Martinez, Ozuna**

**NAYS: None**

**THE VARIANCE IS GRANTED.**

## **MOTION #2**

A motion was made by Mr. Neff. “Re Appeal No. A-15-111, variance application for a **variance from the requirement that multi-family residential uses erect a 6 foot solid screen fence along a property line shared with single-family residential uses, as described in Section 35-514 (e), subject property description being Lot 20 and 25, Block, NCB 7537, situated at 2527 Schubert Drive and the adjacent parcel generally located on the 2500 block of Schubert Drive, applicant being Patricia Sosa.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-15-111, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety, and welfare of the public. In this case, these criteria are represented by fence height limitations and the requirement of a solid screen fence separating multi-family dwellings and adjacent single family uses, to provide for safety, and also to promote a sense of community.** The applicant asserts that



the fence is required to secure the property from trespassing patrons. In addition, having a wrought iron, as opposed to a solid screen fence, allows current and future residents to monitor the neighborhood, reduce crime, and ensure the safety of the neighborhood. Reducing crime and protection of personal property is well within the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **staff finds that the special condition present in this case is that the request serves to mitigate criminal activities which have been inflicted upon the applicant's property in the past.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance provides fencing height and design requirements to protect homes and also to encourage a sense of community.** This fence does not detract from the residential nature of the community, nor does its design conflict with the spirit of the ordinance. In fact, the wrought iron fence adds to the character of the community. Therefore, the variance would be consistent with the spirit of the ordinance. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-6" Residential Single-Family District and "MF-33" Multi-Family District.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **the subject property fence is in keeping with adjacent property and will not alter the essential character of the district.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **the applicant's property is affected by its experience with trespassing, creating the need for additional property barriers. This circumstance was not created by the applicant."** The motion was seconded by Mr. Klein.

AYES: Neff, Klein, Garcia, Velasquez, Britton, Atkinson, Zuniga, Kuderer, Martinez, Ozuna

NAYS: Camargo

**THE VARIANCE IS GRANTED.**

**Board members recessed for 7 minutes.**

**CASE NO. A-15-107**

Applicant – Rosendo Alvarez

Lot 6, Block 2, NCB 6036

205 School Street

Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting 1) a two foot variance from the three foot side yard setback, as described in Section 35-370(b)(1), to allow a carport with no eave overhang to remain one foot

from the side property line and 2) the elimination of the three foot rear setback requirement, as described in Section 35-370(b)(1), to allow the same carport to be on the rear property line.

Logan Sparrow, Senior Planner, presented background and staff's recommendation of approval of side setback variance and denial of rear variance. He indicated 27 notices were mailed, none were returned in favor and none were returned in opposition.

Jorge Lara, applicant, stated there is a slope and they are working on installing gutters. He also stated the gutters will allow for the flow of water into the street. He further stated that on street parking is a problem during school hours.

**The following citizens appeared to speak:**

Caroline Hernandez, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-15-107 closed.

**MOTION**

A motion was made by **Mr. Velasquez**. "Re Appeal No. **A-15-107**, variance application for a **two foot variance from the three foot side yard setback, as described in Section 35-370(b)(1), to allow a carport with no eave overhang to remain one foot from the side property line**, subject property description being **Lot 6, Block 2, NCB 6036**, situated at **205 School Street**, applicant being **Rosendo Alvarez**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-107**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **from the testimony the applicant states that they have communicated with the neighboring property and is not objecting to the carport remaining**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the testimony from the applicant states that this is the means to solve a problem of mass parking on the street as a result of the school. This enables them to mitigate that problem**. The spirit of the ordinance is observed and substantial justice is done in that **this is not an enclosed structure. It is on the motion as a carport only and carports on property lines are not out of character in many communities**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **this variance request is not requesting any other use other than the use in the "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District**. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **the applicant's testimony states that the existing carport has a one foot slope into the property causing the water to flow away from the neighbor's property. Their testimony has stated that their neighbor is not against the carport remaining**." The motion was seconded by **Mr. Garcia**.

**AYES:** Velasquez, Garcia, Klein, Neff, Britton, Atkinson, Zuniga, Kuderer, Martinez, Camargo, Ozuna

**NAYS:** None

**THE SIDE SETBACK VARIANCE IS GRANTED.**

#### **CASE NO. A-15-110**

Applicant – Carolina Martinez

Lot 8, Block 196, NCB 8932

1610 La Manda

Zoning: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay

The applicant is requesting the elimination of the five foot side yard setback, as described in Section 35-310.01, to allow a carport to remain on the side property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 34 notices were mailed, none were returned in favor and none were returned in opposition.

Carolina Martinez, applicant, stated the carport was existing when she purchased the home. She also stated she is willing to fire rate the carport.

**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-15-110 closed.

#### **MOTION**

A motion was made by **Mr. Camargo**. “I would move that in Case No. **A-15-110**, applicant being **Carolina Martinez**, on property located at **1610 La Manda**, legally described as **Lot 8, Block 196, NCB 8932**, be granted a variance to **eliminate the five foot side yard setback to allow a carport to remain on the side property line**. Specifically, we find that such variance will not be contrary to the public interest in that **the notices mailed out we did not receive any in opposition especially the adjacent property owner that is mostly affected by this situation**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special conditions existing on the property are the fact that this was an inheritance situation that the current owner faces, not created by her**. She has indicated that she is willing to comply with all of the city requirements, gutters, fire rating, and whatever is required to bring it more in to compliance with codes. The spirit of the ordinance is observed and substantial justice is done in that **we are giving some relief to a citizen for a situation that exists. It was not created by the individual**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in

which the subject property is located in that **the variance will not authorize the operation of a use. Use from a standpoint of a residential. This is a single family home and will continue to be used as such.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **staff has pointed out that there are several other similar carports in a similar situations in the neighborhood that would not place this as out of character as on some of the other cases that we have had.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **those circumstances being the fact that she was never notified by any of the entities that she dealt with in acquiring this property and that there was a violation that existed on the property which is quite surprising. Normally title companies, surveys, etc. will bring matters up.** The motion was seconded by Mr. Velasquez.

**AYES: Velasquez, Garcia, Klein, Neff, Britton, Atkinson, Kuderer, Martinez, Camargo, Ozuna**

**NAYS: Zuniga**

**THE VARIANCE IS GRANTED.**

#### **CASE NO. A-15-112**

Applicant – Miguel Leons

Lot 17, Block 2, NCB 9793

154 Kinder Drive

Zoning: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay

The applicant is requesting 1) a 4 foot variance from the minimum 5 foot side yard setback, as described in Section 35-310.01, to allow an attached patio cover 1 foot from the property line; 2) a 2 foot variance from the maximum 4 foot front yard fence height, as described in Section 35-514 (d), to allow a 6 foot fence and 3) a 5 foot variance from the maximum 4 foot front yard fence height, as described in Section 35-514 (d), to allow a 9 foot gate.

Kristin Flores, Planner, presented background and staff’s recommendation of denial of the requested variance. She indicated 29 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Shearer Hills – Ridgeview Neighborhood Association.

Miguel Leons, applicant, stated his intention was not to violate city codes and he did hire someone to do the construction. He also stated he was merely trying to update the appearance of the property. He further stated was not

**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-15-112 closed.

## MOTION

A motion was made by **Mr. Velasquez**. Re Appeal No. **A-15-112**, variance application for a **4 foot variance from the minimum 5 foot side yard setback, as described in Section 35-310.01, to allow an attached patio cover 1 foot from the property line and a 5 foot variance from the maximum 4 foot front yard fence height, as described in Section 35-514 (d), to allow a 9 foot gate**, subject property description being **Lot 17, Block 2, NCB 9793**, situated at **154 Kinder Drive**, applicant being **Miguel Leons**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-112**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **there isn't anything that the fence describes that would be contrary to the public entrance in my opinion**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it seems that it would require that the removal of the fence in this member's opinion inspires as oppose to creating harm**. The spirit of the ordinance is observed and substantial justice is done in that **if this passes. I think it is a fence type that again steps up the quality of fence inspiration of the neighborhood**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **there is nothing that indicates the property is being used for anything other than what would be allowed in the "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District**. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **as shown to us the kind of fence that we have had discussion about with regards to the way the UDC would be developed in the future. The fence gate entrance really does not so much appear to be a component alone of the fence system but an ornamental element**." The motion was seconded by **Mr. Neff**.

**AYES: Velasquez, Britton, Garcia, Neff, Kuderer, Camargo, Ozuna**

**NAYS: Klein, Atkinson, Zuniga, Martinez**

**Mr. Martinez made a motion to reconsider the motion with all members with the exception of Mr. Atkinson voting in the affirmative.**

## Motion

I would move that in Case. **A-15-112**, applicant being **Miguel Leons**, situated at **154 Kinder Drive**, legally described as **Lot 17, Block 2, NCB 9793**, be granted a **2 foot variance from the maximum 4 foot front yard fence height to allow a 6 foot open wrought iron fence within the front yard as indicated on the site plan**. Specifically, we find that such variance will not be contrary to the public interest in that **from all the notices that were mailed, there were none**



**that were returned in opposition.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **6 foot fences and especially fences that are wrought iron, and I don't recall us having one with rock, have been allowed in many cases where there is in fact an exception in ordinance that allows a 6 foot wrought iron fence meeting certain conditions, spacing, and so forth as a condition and not requiring a variance.** The spirit of the ordinance is observed and substantial justice is done in that **this is very attractive and certainly appears to be a nice addition to the neighborhood.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **this is a single family zone and single family use is what will be made of the property.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **we have not seen some slides or information presented where the six foot fence would be contrary to the appearance of the adjacent property.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **perhaps the only unique circumstance, it would be that the owner contracted with someone to do this work that did not follow the city regulations. It is felt that plight of the owner of the property for which the variance is sought, again due to unique circumstances of individuals that the owner hired.** The motion was seconded by Mr. Velasquez."

**AYES: Camargo, Velasquez, Garcia, Klein, Neff, Britton, Zuniga, Kuderer, Martinez, Ozuna**

**ABSTAIN: Atkinson**

**NAYS: None**

**THE VARIANCE IS GRANTED.**

#### **Motion**

A motion was made by **Mr. Garica.** Re Appeal No. **A-15-112**, variance application for a **2 foot variance from the minimum 5 foot side yard setback, as described in Section 35-310.01, to allow an attached patio cover 3 foot from the property line,** subject property description being **Lot 17, Block 2, NCB 9793,** situated at **154 Kinder Drive,** applicant being **Miguel Leons.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-112**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the general health, safety, and welfare of the public would not be affectively negatively by the presence of the existing patio cover which they are using as a carport.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the building is an existing structure so it looks to be of sturdy wood construction so therefore it would be difficult to move it back however if allowed they would be required to bring it up to code and fireproof it.** The spirit of the

ordinance is observed and substantial justice is done in that **they did not intend to violate any codes or city ordinances. The justice will done in that they will be allowed to keep their structure as and they would just have to bring it up to code and provide the fire proofing.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **they are residential and they will not change the use. They are not going to change this into commercial property.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **the patio cover will not substantially injure the appropriate use of the adjacent conforming property or alter the character of the district. If this is allowed they will have to bring in compliance.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **as stated before if we allow the patio cover to remain as is they will have to make sure it is code compliant.”** The motion was seconded by Mr. Kuderer.

**AYES: Garcia, Kuderer, Klein, Neff, Velasquez, Britton, Atkinson, Zuniga, Martinez, Camargo, Ozuna**

**NAYS: None**

**THE VARIANCE IS GRANTED.**

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**CASE NO. A-15-113**

Applicant – Rosa Linda Hernandez  
Lots 7 & 8, Block 6, NCB 8660  
514 S San Joaquin Street  
Zoning: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay

The applicant is requesting a four and a half foot variance from the minimum five foot side yard setback, as described in Section 35-310.01, to allow an attached carport, with eaves, six inches from the side property line.

Logan Sparrow, Senior Planner, presented background and staff’s recommendation of approval of modified request of a 4-foot variance. He indicated 32 notices were mailed, none were returned in favor and none were returned in opposition.

Rosa Linda Hernandez, applicant, stated the carport provides protection for her and her husband from the inclement weather. She also stated due to her husband’s health, the carport shields him from bad weather.

**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-15-113 closed.

## MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-113**, variance application for a **four foot variance from the minimum five foot side yard setback, as described in Section 35-310.01, to allow an attached carport, with eaves, 1 foot from the side property line to include gutters**, subject property description being **Lots 7 & 8, Block 6, NCB 8660**, situated at **514 S San Joaquin Street**, applicant being **Rosa Linda Hernandez**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-113**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **staff is recommending approval of a modified request to allow the carport to be one foot from the side property line. With this request, the neighboring property could also build a ten foot wide carport and leave a six foot distance between the two structures, the same distance permitted between accessory structures if they were not attached to the homes.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **staff is recommending approval of a four foot variance, to allow the carport one foot from the side property line because the neighboring property is 15 feet from the shared property line. This spacing provides for reasonable fire protection, and the addition of a potential future carport on the adjacent property. This modified request would also leave enough carport width that it could still be used.** The spirit of the ordinance is observed and substantial justice is done in that **substantial justice will be observed by granting staff’s modified request of a one foot side setback in that if the neighbor added a ten foot carport there would still be a six foot spacing between the two structures, the same distance permitted by the Unified Development Code for unattached accessory structures.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District.** Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that **staff is recommending approval of a modified request for a four foot variance from the five foot setback to allow the carport on the subject property to be located four feet from the side property line. This allows the neighboring property to add a carport, should they choose to in the future, while maintaining six foot spacing.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located in that **the unique circumstances present in this case to warrant the staff’s recommendation of a four foot variance is because the adjacent property is located abnormally far from the subject property.”** The motion was seconded by **Mr. Garcia**.

**AYES: Velasquez, Garcia, Klein, Neff, Britton, Zuniga, Atkinson, Martinez, Kuderer, Camargo, Ozuna**

**NAYS: None**

**THE VARIANCE IS GRANTED.**

#### **CASE NO. A-15-103**

Applicant – David F Bogle R.A., AIA

Lots 11, 12, the East 12.5 feet of Lot 13, and Lot 52, NCB 12048

923 and 927 Clydeville Road

Zoning: “I-1 AHOD” General Industrial Airport Hazard Overlay District and “O-1” Office Airport Hazard Overlay District

The applicant is requesting 1) a 16 foot variance from the 30 foot front setback requirement, as described in Section 35-310.01, to allow two buildings on the property to be located 14 feet from the front property line and 2) a 23 foot variance from the 30 foot side setback, as described in Section 35-310.01, to allow a building (and any potential future rear additions) to be located 7 feet from the side property line and 3) an elimination of the Type D 25 foot bufferyard, as described in Section 35-510, and 4) a 18 foot variance from the 30 foot side setback, as described in Section 35-310.01, to allow another building (and any potential rear additions) to remain 12 feet from the side property line.

Logan Sparrow, Senior Planner, presented background and staff’s recommendation of denial of variance #3 and approval of the variances #1, #2, and #4. He indicated 19 notices were mailed, none were returned in favor and one was returned in opposition.

David Bogle, applicant, stated they are expanding their kennel and increasing their office space. He also stated the variances would accommodate the existing conditions and to continue to operate the business in the present location.

**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-15-097 closed.

#### **MOTION**

A motion was made by **Mr. Velasquez**. “Re Appeal No. A-15-103, variance application for 1) a 16 foot variance from the 30 foot front setback requirement, as described in Section 35-310.01, to allow two buildings on the property to be located 14 feet from the front property line, 2) a 23 foot variance from the 30 foot side setback, as described in Section 35-310.01, to allow a building (and any potential future rear additions) to be located 7 feet from the side property line, 3) an elimination of the Type D 25 foot bufferyard, as described in



Section 35-510, and 4) a 18 foot variance from the 30 foot side setback, as described in Section 35-310.01, to allow another building (and any potential rear additions) to remain 12 feet from the side property line, subject property description being Lots 11, 12, the East 12.5 feet of Lot 13, and Lot 52, NCB 12048, situated at 923 and 927 Clydeville Road, applicant being David F Bogle R.A., AIA. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-15-103, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that the public interest is defined as the general health, safety, and welfare of the public. In this case, these criteria are represented by setback requirements to reduce the threat of fire and to provide equal access to air and light for adjacent properties. The subject property is located along Clydeville Road upon which a variety of uses, which range from single family homes all the way to turf manufacturing and sales operations. The use of a dog park is not out of place within this community. Many properties within this community have reduced front and side setbacks. Staff finds that granting a side setback variance to Building A to be built seven feet from the west property line and granting the variance for Building B to be twelve feet from the east property line are not contrary to the public interest in both cases. Staff further finds that granting the front setback variance is not contrary to the public interest as several properties along Clydeville Road enjoy reduced front setbacks. Allowing the development to be 14 feet from the street does not harm the public as parking spaces are still provided for the limited customer count experienced by this type of business. Staff does find that an elimination of the side bufferyard may be contrary to the public interest. Staff finds that a reduced bufferyard of five feet in depth should be maintained for the protection of the adjacent property owner. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the unique condition present in this case is the development pattern of the surrounding community. Often, industrially zoned property does not have to comply with strict 30 foot setbacks, which are only triggered by abutting residential zones and uses. In this case, the subject property is flanked by residential zones or uses on both sides, making the small property hardly developable. A strict enforcement of the side setback requirements would result in a loss of 49% of the developable area. Staff would recommend approval of a reduced bufferyard, to maintain a depth of five feet, for the benefit of the neighboring residential single-family home to the west. The spirit of the ordinance is observed and substantial justice is done in that substantial justice will be served as relaxing the side and front setbacks will allow the property to develop without strict restraints based upon residential uses to the east and west, some of which are nonconforming. The spirit of the ordinance will be served as adjacent properties are still protected from fire risk and because the applicant is not being granted a privilege not similarly enjoyed by others. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "I-1 AHOD" General Industrial Airport Hazard Overlay District and "O-1 AHOD" Office Airport Hazard Overlay Districts. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the



district in which the property is located in that **the proposed development requires some reduced side and front setbacks to allow for development. The testimony of the applicant stated that the side that takes the side foot buffer is restricted to office and light use. It's not the kennel side. Staff does recommend approval of a reduced bufferyard along the west property line, where the building is a bit closer to the residential home.**" The motion was seconded by Mr. Garcia.

**AYES: Velasquez, Garcia, Klein, Neff, Britton, Atkinson, Zuniga, Kuderer, Martinez, Ozuna**

**NAYS: Camargo**

**THE VARIANCE IS GRANTED.**

**The June 15, 2015 Board of Adjustment minutes were approved with all members voting in the affirmative.**

There being no further discussion, meeting adjourned at 4:49 pm.

APPROVED BY:  OR

Andrew Ozuna, Chairman

Mary Rogers, Vice-Chair

DATE:  8/18/15

ATTESTED BY: 

Executive Secretary

DATE: 8-18-15