

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
July 20, 2015**

Members Present:

Mary Rogers
Frank Quijano
George Britton
Maria Cruz
Jesse Zuniga
John Kuderer
Roger Martinez
Gene Camargo
Jeffrey Finlay
Christopher Garcia
Lydia Fehr

Staff:

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

Call to Order

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

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

CASE NO. A-15-115

Applicant – Alicia Pearl

Lot 16, NCB 11898

330 E Terra Alta

Zoning: “NP-10 AHOD” Neighborhood Preservation Airport Hazard Overlay District

The applicant is requesting 1) a two foot variance from the maximum six foot rear yard privacy fence height, as described in Section 35-514, to allow an eight foot fence in the rear yard of the property and 2) a five foot variance from the maximum three foot tall front yard solid fence height limitation, also described in Section 35-514, to allow an eight foot tall fence in the front yard of the property.

Logan Sparrow, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 24 notices were mailed, 3 were returned in favor and none were returned in opposition and no response from the Oak Park/Northwood Neighborhood Association.

Alicia Pearl, applicant, stated her property is on a flag shaped lot and her home is elevated 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-15-115 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-15-115**, variance application for 1) a two foot variance from the maximum six foot rear yard privacy fence height, as described in Section 35-514, to allow an eight foot fence in the rear yard of the property and 2) a five foot variance from the maximum three foot tall front yard solid fence height limitation, also described in Section 35-514, to allow an eight foot tall fence in the front yard of the property, subject property description Lot 16, NCB 11898, situated at 330 E Terra Alta, applicant being **Alicia Pearl**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-115**, 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 protect property owners and also to encourage a sense of community. The requested fence variance is not contrary to the public interest in that the proposed fencing design serves to protect both properties. The neighbor located in front of the property, being the property owner most directly affected by the request, has expressed written support of the request to city staff. 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 related to the previous variance being granted on the subject property. In October of 2012 the Board granted variances to reduce the setbacks on the subject property to make development of the home possible. The Board found that reducing the setbacks was necessary as the type of home required a larger footprint to accommodate a special layout to meet the needs of the applicant. The special condition present in this case is that having the home located nearer the property line does come at the cost of reduced privacy. Denial of the requested variance will result in unnecessary hardship for both the homeowner and the neighbor. The spirit of the ordinance is observed and substantial justice is done in that granting the variance will result in substantial justice in that both the home owner and neighbor will reclaim the level of privacy enjoyed by other home owners in the City of San Antonio. The spirit of the ordinance will be observed as the proposed fence will not be visible from any public right of way. 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 “NP-10 AHOD” Neighborhood Preservation 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 proposed fence will not substantially injure adjacent properties, rather, it will**

contribute to an increased enjoyment for both the home owner and the neighbor most directly affected by the variance request. 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 circumstance present in this case is that, by granting the variance to reduce the setbacks in October of 2012, both the home owner and the neighbor have experienced less privacy. The requested variance is in response to a unique circumstance and that the plight of the owner is not due to, or the result of, general conditions within the community, nor merely financial in.” The motion was seconded by Mr. Martinez.

AYES: Quijano, Martinez, Fehr, Garcia, Britton, Cruz, Zuniga, Finlay, Camargo, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-117

Applicant – Felipe Morin

Lot 26, Block 6, NCB 277

410 Rosa Verde

Zoning: “MF-33 AHOD” Multi-Family Airport Hazard Overlay District

The applicant is requesting a one foot variance from the four foot front yard, predominately open fence height, as described in Section 35-514 (d), to allow a five foot tall fence in the front yard of the property.

Kristin Flores, Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 29 notices were mailed, 2 were returned in favor and none were returned in opposition.

Felipe Morin, applicant, stated the fence provides security and protection for his family. He also stated the fence would prevent his dogs from jumping over the fence. He further stated there have numerous attempted break-ins in the neighborhood.

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-15-117 closed.

MOTION

A motion was made by **Mr. Garcia**. “Re Appeal No. **A-15-117**, variance application for a **one foot variance from the four foot front yard, predominately open fence height, as described**

in Section 35-514 (d), to allow a five foot tall fence in the front yard of the property, subject property description Lot 26, Block 6, NCB 277, situated at 410 Rosa Verde, applicant being **Felipe Morin**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-15-117, 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 protect home owners, and also to provide for a sense of community. The applicant had a five foot tall fence constructed in the front yard of the property without a fence permit and was cited by Code Enforcement. The five foot tall fence was built to deter thefts and home burglaries which, per the applicant, have affected the neighborhood on multiple occasions, recently. Additionally, the applicant owns two Rottweiler dogs and wants to ensure the animals are contained on his property. Staff finds that the additional one foot 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 condition present in this case is the occurrence of criminal activity within this community. The applicant had the fence built to protect the home from such crime. The additional one foot of height will serve to protect the home more adequately from such activity. The spirit of the ordinance is observed and substantial justice is done in that granting the requested variance would result in substantial justice as the variance would allow the family to adequately protect their home from crime in 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 "MF-33 AHOD" Multi-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 noted that several homes in this community have similar fences in front yards. Staff does not find that the request detracts from the character of the community. 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 circumstance present in this case is that the neighborhood has been negatively affected by criminal activity. Staff finds that the request for one additional foot of fence height to protect the home is a legitimate request that is not merely financial in nature nor the fault of the owner of the property."** The motion was seconded by Mr. Martinez.

AYES: Garcia, Martinez, Kuderer, Quijano, Fehr, Britton, Cruz, Zuniga, Finlay, Camargo, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-118

Applicant – Sylvia Cepeda

West Irregular 68 Feet of Lot 6, Block 11, NCB 8498

2302 & 2304 Santa Barbara

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

The applicant is requesting 1) a two foot variance from the four foot maximum fence height in the front yard, as described in Section 35-514 (d), to allow a six foot fence and 2) a four foot variance from the maximum four foot fence height, as described in Section 35-514 (d), in the front yard to allow an eight foot tall gate.

Kristin Flores, Planner, presented background and staff’s recommendation of approval of the fence height and denial of the gate height. She indicated 28 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Los Angeles Heights Neighborhood Association.

Sylvia Cepeda, applicant, stated the contractor informed that since the fence was existing she did not need a permit. She also stated the fence provides protection and security for her family. There have numerous break-ins in the neighborhood. She further stated there is a commercial business across the street from her home which causes heavy traffic in the neighborhood.

The following citizens appeared to speak:

Elisa Orozco, citizen, spoke in favor.

Terry Perez, 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-15-117 closed.

1st MOTION

A motion was made by **Mr. Camargo**. “I would move that in Case No. **A-15-118**, applicant being **Sylvia Cepeda**, on property located at **2302 & 2304 Santa Barbara**, legally described as the **West Irregular 68 Feet of Lot 6, Block 11, NCB 8498**, property being zoned “**R-4 AHOD**” **Residential Single-Family Airport Hazard Overlay District**. I would move that the board approve both requests being 1) a **six foot fence** and 2) **which addresses the 8 foot gate in the center of the property as per site plan submitted**. Specifically, we find that such variance will not be contrary to the public interest in that **no notices were returned in opposition and in addition to that there were adjacent property owners that appeared in favor of both requests that are before the board**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **there is no unnecessary hardship in the fact that they did not obtain a permit but the fact that there are existing fences of this height and additional height in the area, I think possibly led the applicant to feel that she**

would be in compliance with regulations. The spirit of the ordinance is observed and substantial justice is done in that the development that is before us is very much in keeping with the development within this same block of similar fencing that apparently according to testimony have been erected due to various crimes occurring in the area. The variance will not result in substantial justice as the variance would allow for the family to adequately protect their home from crime in 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 in that this is where we get into this issue of whether it's a legal home occupation or not which it certainly appears from the description that Ms. Cepeda gave to this board. 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 it will be continued to be used as a duplex for which is allowed in the zoning classification apparently. 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 again the circumstances that continued to be brought to the board's attention is that of crime. Staff did recommend approval of the 6 foot fencing and variance #1. The reason I'm including variance #2 is that this, in my opinion, is totally different from that which we acted on last meeting. This property fronts onto a street intersection, fronts onto the side of a commercial building and it's not like its fronting onto a residential property as we had in previous cases. I feel that it doesn't damage the property just by its location fronted onto the back end of a commercial use." The motion was seconded by Mr. Zuniga.

AYES: Camargo, Kuderer, Garcia, Britton, Finlay, Rogers

NAYS: Zuniga, Quijano, Fehr, Cruz, Martinez

THE VARIANCE IS NOT GRANTED.

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

2nd MOTION

A motion was made by Mr. Camargo. "I would move that in Case No. A-15-118, applicant being Sylvia Cepeda, on property located at 2302 & 2304 Santa Barbara, legally described as the West Irregular 68 Feet of Lot 6, Block 11, NCB 8498, property being zoned "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District. I would move that the board approve the variance requests of a two foot variance from the four foot maximum fence height in the front yard, as described in Section 35-514 (d), to allow a six foot fence. Specifically, we find that such variance will not be contrary to the public interest in that no notices were returned in opposition and in addition to that there were adjacent property owners that appeared in favor of both requests that are before the board. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that there is no unnecessary hardship in the fact that they did not obtain a permit but the fact that there are existing fences of this height and additional height in the area, I think

possibly led the applicant to feel that she would be in compliance with regulations. The spirit of the ordinance is observed and substantial justice is done in that **the development that is before us is very much in keeping with the development within this same block of similar fencing that apparently according to testimony have been erected due to various crimes occurring in the area. The variance will not result in substantial justice as the variance would allow for the family to adequately protect their home from crime in 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 **in that this is where we get into this issue of whether it's a legal home occupation or not which it certainly appears from the description that Ms. Cepeda gave to this board.** 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 **it will be continued to be used as a duplex for which is allowed in the zoning classification apparently.** 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 **again the circumstances that continued to be brought to the board's attention is that of crime. Staff did recommend approval of the 6 foot fencing and variance #1. The reason I'm including variance #2 is that this, in my opinion, is totally different from that which we acted on last meeting. This property fronts onto a street intersection, fronts onto the side of a commercial building and it's not like its fronting onto a residential property as we had in previous cases. I feel that it doesn't damage the property just by its location fronted onto the back end of a commercial use."** The motion was seconded by Mr. Martinez.

AYES: Camargo, Martinez, Kuderer, Quijano, Fehr, Garcia, Britton, Cruz, Zuniga, Finlay, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-119

Applicant – Victor Hernandez
Lot 13, Block 21, NCB 15048
5918 Deer Horn

Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a two foot variance from the six foot maximum rear yard fence height, as described in Section 35-514 (d), to allow an eight foot fence, in the rear yard of the property, to remain.

Kristin Flores, Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 27 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Thunder Hills Neighborhood Association.

Victor Hernandez, applicant, stated the eight foot fence is on the side of the house. He also stated the concrete allows for some control of the water drainage from the neighbor's property when it rains. He further stated his property and the neighbors have a topography difference of six inches.

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-15-119 closed.

MOTION

A motion was made by **Mr. Camargo**. "I would like to move that in Case No. **A-15-119**, applicant being **Victor Hernandez**, on property located at **5918 Deer Horn**, legally described as **Lot 13, Block 21, NCB 15048**, be granted a variance for the **fence height that currently exist on the above described property as it currently exist with no additional height being permitted**. Specifically, we find that such variance will not be contrary to the public interest in that **the protection of personal property is well within the public interest which is what the applicant has indicated was the purpose of this structure being erected**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **this change in grade increases storm water runoff directed toward the applicant's homes and the fencing that has been erected has been made to address that conditional**. The spirit of the ordinance is observed and substantial justice is done in that **this fence does not detract from the residential nature 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 variance will not authorize the operation of a use other than those that is permitted in the zoning classification which is that of single family**. 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 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 circumstances being that the applicants property is affected by its sloping topography creating the need for additional property barriers. This circumstance was not created by the applicant. Staff has recommended approval**." The motion was seconded by **Mr. Garcia**.

AYES: Camargo, Garcia, Kuderer, Quijano, Fehr, Britton, Cruz, Zuniga, Finlay, Martinez, Rogers

NAYS: None

THE VARIANCE IS GRANTED.



CASE NO. A-15-116

Applicant – Todd & Deborah Goodwin

Lot 20, Block 11, NCB 17415

9203 Proclamation Drive

Zoning: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting 1) the elimination of the required five foot side setback, as described in Section 35-310.01, to allow a carport along the side property line and 2) a two and a half foot variance from the maximum six foot rear yard fence height, to allow a privacy fence eight and a half feet tall along the south property line in the rear yard of the yard, when measured from ground elevation.

Logan Sparrow, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 35 notices were mailed, 7 were returned in favor and 2 were returned in opposition.

Paul Hunt, representative, stated the property was purchased in the 80’s and had plenty of parking. He also stated the owner was not aware of permits not being obtained. He further stated the fence would provide security and privacy for the homeowners.

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-15-116 closed.

MOTION

A motion was made by **Mr. Kuderer**. “Re Appeal No. **A-15-116**, variance application for 1) **the elimination of the required five foot side setback, as described in Section 35-310.01, to allow a carport along the side property line and 2) a two and a half foot variance from the maximum six foot rear yard fence height, to allow a privacy fence eight and a half feet tall along the south property line in the rear yard of the yard, when measured from ground elevation**, subject property description **Lot 20, Block 11, NCB 17415**, situated at **9203 Proclamation Drive**, applicant being **Todd & Deborah Goodwin**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-116**, 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 protect property owners and also to encourage a sense of community. These criteria are further represented by setback requirements to ensure equal access to air and light and to**

reduce the threat of fire. The requested fence design is not contrary to the public interest in that the proposed fencing design, although for a portion of the yard located taller than the code allows, serves only to protect the car when parked under the carport. The rest of the property has a conforming six foot tall fence. The side setback is not contrary to the public interest because of its adjacency to a street. Lastly, there is a large right of way easement south of the subject property that offers the look of a respected setback. 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 applicant is located on a corner lot and therefore the reduced side yard setback will not harm adjacent properties. Furthermore, the subdivision was platted with a generous right of way between the street and the applicant's property. As such, there is still a grassy area that offers the look of a respected setback. The portion of the fence that exceeds six feet is only located along the carport for increased protection of the cars. Beyond the carport, the fencing is at a permitted height. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance will be respected in that the applicant can continue to protect their vehicles from the elements. The carport and fence do not harm any adjacent properties as the property is a corner lot. 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-5 AHOD" Residential Single-Family Airport Hazard Overlay D. 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 that proposed fence will not substantially injure adjacent properties. The carport contributes to increased protection of the vehicle. The structure is made of metal and, thus, poses little fire threat as we heard in the testimony. The right of way offers the look of a respected setback and, therefore, does not negatively alter the essential character of the dist. 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 when the needs of the applicant's family mandated an additional parking space, this portion of the property was identified as the most logical location. Because a carport in this location is not likely to harm any other properties, staff finds that there is reason to grant the requested variance. The plight of the owner of the property is not merely financial in nature." The motion was seconded by Mr. Martinez.

AYES: Kuderer, Martinez, Quijano, Fehr, Garcia, Britton, Cruz, Zuniga, Finlay, Rogers
NAYS: Camargo

THE VARIANCE IS GRANTED.



CASE NO. A-15-114

Applicant – David Cupit
Lots 21 & 22, Block 13, NCB 11729
10715 & 10723 Tybalt Trail
Zoning: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a ten foot variance from the minimum 20 foot rear yard setback, as described in Table 35-310-1, to allow a 10 foot rear yard setback on two lots

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 9 notices were mailed, one was returned in favor and none were returned in opposition.

David Cupit, applicant, stated they have two home buyers who are ready to build but need a 10 foot rear setback. The current zoning allows for a 10 foot rear setback if a townhome were to be built but not for single a family residence. He also stated there will at least 30 between the future construction and the rear property. He further stated the lots are bigger than required for an R-4 zoning.

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-15-114 closed.

MOTION

A motion was made by **Ms. Cruz**. “Re Appeal No. **A-15-114**, variance application for a **ten foot variance from the minimum 20 foot rear yard setback, as described in Table 35-310-1, to allow a 10 foot rear yard setback on two lots**, subject property description **Lots 21 & 22, Block 13, NCB 11729**, situated at **10715 & 10723 Tybalt Trail**, applicant being **David Cupit**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-114**, 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. This property has remained vacant for over 60 years with paper streets preventing its redevelopment. The setback reduction on two of the 72 lots 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 circumstance present on the subject property is that the cul-de-sac wraps around the front of these two lots reducing their depth. Therefore this unique circumstance makes literal enforcement an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the variance process was created to address those uniquely shaped parcels for which the**

minimum standards are particularly challenging. These two lots are exactly those types of lots and the spirit will be observed by providing the requested variance. 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-5 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 is constructing 70 lots with the minimum setback of 20 feet and is seeking a variance on the two most awkward shaped lots within the project. These two lots are not adjacent to any established lots in the vicinity, but instead share a rear property line with 3 other lots which will comply with the 20 foot setback.** 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 is requesting a reduced rear setback for 2 of the 72 homes to be built. The buyers will have a choice to accept the smaller yard or buy a different lot.”** The motion was seconded by Mr. Quijano.

AYES: Cruz, Quijano, Kuderer, Fehr, Garcia, Britton, Zuniga, Finlay, Martinez, Camargo

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-120

Applicant – Serafin Gutierrez

Lot 11, Block 9, NCB 9108

2431 W. Mistletoe

Zoning: “R-6 NCD-7 AHOD” Residential Single-Family Jefferson Neighborhood Conservation Airport Hazard Overlay District

The applicant is requesting 1) the elimination of the side setback, as described in Table 35-310-1, to allow a carport to remain along the side property line; 2) a 5 foot variance from the maximum 10 foot height, as described in the Jefferson Neighborhood Conservation District (NCD) design standards to allow the carport 15 feet in height; 3) a variance from the NCD design requirement that the carport match the primary structure in scale and proportion and 4) a 4 foot variance from the minimum 10 foot separation between two adjacent residential structures, required by the NCD design standards, to allow the carport 6 feet from the neighboring home.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of denial of the requested variance. She indicated 25 notices were mailed, none were returned in favor and 2 were returned in opposition and the Jefferson Neighborhood Association acknowledged that the design is in conflict with their standards.

Serafin Gutierrez, applicant, stated the carport would provide protection for the vehicles from bad weather. He also stated the carport gives allows for this family to have some shade in the front yard. He further stated the contractor was supposed to obtain the proper permits for the construction of the carport and was unaware he had not obtained the permits.

No citizens appeared to speak.

Alejandro Soto, citizen, 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-15-120 closed.

MOTION

A motion was made by **Mr. Martinez**. “Re Appeal No. **A-15-120**, variance application for **1) the elimination of the side setback, as described in Table 35-310-1, to allow a carport to be built along the side property line**, subject property description **Lot 11, Block 9, NCB 9108**, situated at **2431 W. Mistletoe**, applicant being **Serafin Gutierrez**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-120**, 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, the public interest is represented by both the minimum side setbacks/building separation, as well as the neighborhood design standards. The minimum setbacks are in place to protect the neighbor from fire hazard. There are mitigation measures that can be employed to reduce the potential for fire spreading to adjacent structures. The design standards are not as easily mitigated. The carport width could be reduced to reflect the maximum driveway width of 12 feet and the roofline could be shortened to reduce the dominating impact it has on the house. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the circumstance present on the subject property, and most other properties built in this time period, is that the width and placement of the driveway is generally along the side property line. Allowing a reduced side setback within neighborhoods of this age sometimes warrants consideration. In this case however, there are similar carports in this area. The spirit of the ordinance is observed and substantial justice is done in that the variance process was created to address those uniquely shaped parcels for which the minimum standards are particularly challenging. Many carports built over driveways cannot accommodate a 5 foot setback. A reduced setback sometimes can be provided, which allows vehicle coverage and room for maintenance without 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 “R-6 NCD-7 AHOD” Residential Single-Family Jefferson Neighborhood Conservation District 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 **contrary to other neighborhoods, this neighborhood has very few carports. There are no other carports on this block. This structure will not change the appearance of this home and alter the character and the purpose of the NCD.** 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 property has no unique characteristics. The applicant began construction of a carport prior to obtaining a building permit. The design requirements for carports are applied to each of the 1,400 homes within this overlay district. The applicant must reduce the width and height of the proposed carport and match the materials and scale of the primary home. This motion for only for the variance of the side setback and is not approval for the existing structure.**” The motion was seconded by Mr. Kuderer.

AYES: Martinez, Kuderer, Cruz, Finlay, Rogers

NAYS: Quijano, Fehr, Garcia, Britton, Zuniga, Camargo

THE VARIANCE IS NOT GRANTED.

CASE NO. A-15-121

Applicant – Robert Brown

Lot 16, Block 1, NCB 10233

3067 E Commerce Street

Zoning: “AE-3 S EP-1” Arts and Entertainment Facility Parking/Traffic Control District with a Specific Use Authorization for a Laundry Facility

The applicant is requesting 1) a variance from the Arts and Entertainment (A & E) zoning requirement, as described in 35-358 (c) 2 A. that mandates that building facades shall be constructed parallel to the principal frontage line; 2) a 10 foot variance from the maximum 10 foot front setback, as described in 35-358 (f) 3 A. to allow an office building to be located 20 feet from the front property line; 3) a variance from the requirement that all parking be screened, as described in 35-358 (f) 3 E. to allow parking visible from the right of way; 4) a variance from provisions described in 35-358 (f) 3 D. to allow the elimination of the required pedestrian walkway improvements; and 5) a 2 foot variance from the maximum 4 foot fence height, as described in 35-514 (d) to allow a 6 foot wrought iron fence in the front yard.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 15 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Jefferson Heights Neighborhood Association.

Robert Brown, applicant, stated the variance would allow the property owners to keep their existing office operations functioning during construction of the new 30,000 square foot office building.

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-15-121 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-15-121**, variance application for 1) a **variance from the Arts and Entertainment (A & E) zoning requirement, as described in 35-358 (c) 2 A. that mandates that building facades shall be constructed parallel to the principal frontage line; 2) a 10 foot variance from the maximum 10 foot front setback, as described in 35-358 (f) 3 A. to allow an office building to be located 20 feet from the front property line; 3) a variance from the requirement that all parking be screened, as described in 35-358 (f) 3 E. to allow parking visible from the right of way; 4) a variance from provisions described in 35-358 (f) 3 D. to allow the elimination of the required pedestrian walkway improvements; and 5) a 2 foot variance from the maximum 4 foot fence height, as described in 35-514 (d) to allow a 6 foot wrought iron fence in the front yard, subject property description Lot 16, Block 1, NCB 10233, situated at 3067 E Commerce Street, applicant being Robert Brown. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-121**, 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, the public interest is represented by the guidelines adopted for the A & E zoning district. In this district, first created in 2008, the City tried to respect the industrial nature of existing uses, while providing enhanced design requirements for the eventual redevelopment of the area. The applicant has shown a long-term commitment to the neighborhood and is making on-going investments on the property. Each project within the property enhances the entire area, consistent with the goals of the district. The new offices will further enhance the streetscape, but require the above listed variances to allow the facility operations to continue during construction. Therefore, the variances are not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the circumstance present on the subject property is that the facility employs hundreds of people and provides technical support throughout the region. The existing office building was built in 1968 and has become obsolete, but needs to remain operational during construction. The site has room for the proposed new office building, and the applicant is hoping to begin construction within the next few months. This available location cannot satisfy some of the design requirements of the A & E district, triggering the need for the requested series of variances. A literal enforcement of the ordinance would result in an unnecessary hardship. The spirit of the****

ordinance is observed and substantial justice is done in that **the variance process was created to address those unique situations for which the minimum standards are particularly challenging. If the applicant were able to build the new office parallel to the frontage, they would. The proposed building exceeds the design requirement for windows on each of the facades. Additionally, the applicant is reconstructing and re-landscaping the frontage, observing 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 "AE-3 S EP-1" Arts and Entertainment Facility Parking/Traffic Control District with a Specific Use Authorization for a Laundry Facility.** 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 **because the A & E district regulations are relatively new compared to the age of the structures in the area, most of the buildings are non-conforming to the design requirements. There have been recent investments and the area is in transition. The requested variances will not injure adjacent property or alter the essential character.** 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 existing office building is home to the southwest regional staff support team and the technological support infrastructure for 22 other industrial laundry facilities in 12 other states. These functions have to be protected during construction of the new office building, making the compliance with selected provisions of the A & E district impossible to achieve."** The motion was seconded by Mr. Garcia.

AYES: Quijano, Garcia, Kuderer, Fehr, Britton, Cruz, Zuniga, Finlay, Martinez, Camargo, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

The July 6, 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 Mary Rogers
Andrew Ozuna, Chairman Mary Rogers, Vice-Chair

DATE: 8/17/2015

ATTESTED BY: [Signature] DATE: 8.17.15
Executive Secretary