

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
January 11, 2016**

Members Present:

Mary Rogers
Frank Quijano
Alan Neff
George Britton
Maria Cruz
Jesse Zuniga
Christopher Garcia
John Kuderer
Roger Martinez
Gene Camargo
Henry Rodriguez

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Kristen Flores, Planner
Paul Wendland, City Attorney

Call to Order

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

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

CASE NO. A-16-022

Applicant – Refugio Mendez
Lot 10, Block 2, NCB 15355
242 Meadow Path
Zoning: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay
District

The applicant is requesting for a 6 foot variance from the 10 foot front setback, as described in Section 35-310.01, to allow a carport 4 feet from the front property line.

Kristin Flores, Planner, presented the background and staff’s recommendation of the variance. She indicated 31 notices were mailed, 1 returned in favor, and 0 returned in opposition. The Meadow Villa Neighborhood Association is in opposition.

Refugio Mendez, applicant, stated he was unaware permits were needed to build his carport. He built the carport for the safety of his family and the vehicles.

Paola Mendez, representative, helped to translate for the applicant.

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-16-022 closed.

MOTION

The motion was made by **Mr. Rodriguez**. "Regarding Appeal No. A-16-022, variance application for a 6 foot variance from the 10 foot front setback to allow a carport 4 feet from the front property line, subject property description Lot 10, Block 2, NCB 15355, situated at 242 Meadow Path, applicant being Refugio Mendez.

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

- 1) "Such variance will not be contrary to the public interest" in that **to allow the structure to remain as constructed improves property values and the applicant already recorded a BSL plat removing the platted setback.**
- 2) "Due to special conditions, a literal enforcement of the ordinance would result in required demolition **of the carport, a very substantial structure.**
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **permits and inspections will verify the carport is structurally sound. There is no fire separation or trespass issues with this carport.**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized **in the "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District.**
- 5) "Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located" in that **the carport is attractive and adds value to the surrounding area.**
- 6) "The plight of the owner of the property is due to unique circumstances existing on the property **in that the owner removed the platted setback but still encroaches into the front setback.**" The motion was seconded by **Mr. Neff.**

AYES: Rodriguez, Neff, Britton, Cruz, Garcia, Rogers

NAYS: Quijano, Zuniga, Martinez, Camargo, Kuderer

THE VARIANCE FAILED.

CASE NO. A-16-025

Applicant – Danny Watson
Lot 9, NCB 15894
5630 Walzem Road
Zoning: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting for a ten foot variance from the minimum ten foot bufferyard, as described in Table 35-510-1, along 70 percent of the frontage, to allow no bufferyard along Walzem Road.

Logan Sparrow, Senior Planner, presented the background and staff’s recommendation of the requested variance. He indicated 12 notices were mailed, 0 returned in favor, and 0 returned in opposition.

Danny Watson, applicant, stated he uses the carport for leisure uses and to help accommodate his disability.

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-16-025 closed.

MOTION

A motion was made by **Mr. Neff**. “Regarding Appeal No. A-16-025, variance application for a ten foot variance from the minimum ten foot bufferyard, along 70 percent of the frontage, to allow no bufferyard subject property description Lot 9, NCB 15894, situated at 5630 Walzem Road, applicant being Danny Watson.

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

- 1) “Such variance will not be contrary to the public interest” in that **the applicant is installing all of the required planting.**
- 2) “Due to special conditions, a literal enforcement of the ordinance would result in an unnecessary hardship in that the property is subject to a deed restriction requiring extra parking and just dedicated 20 feet in right of way.

- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **the applicant is installing all of the required plant materials and recently dedicated 20 feet of property to the City for future road expansion.**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized in the **"C-2 AHOD" Commercial Airport Hazard Overlay District.**
- 5) "Such a bufferyard setback 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 area will still be obvious, it will simply be owned by the City and maintained by the adjacent property owner.**
- 6) "The plight of the owner of the property is due to unique circumstances existing on the property in that **the property owner was required to provide an additional 20 feet of land to the City for future roadway expansion.**" The motion was seconded by **Mr. Rodriguez.**

AYES: Neff, Rodriguez, Quijano, Britton, Cruz, Zuniga, Garcia, Martinez, Camargo, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-16-033

Applicant – Joseph Nazaroff

N IRR 23 ft. of Lot 11, Block 1, NCB 6735

526 Roseborough Street

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

The applicant is requesting for a four foot variance from the minimum ten foot rear setback, as described in Table 35-310-1, to allow a home as near as six feet from the rear property line.

Logan Sparrow, Senior Planner, presented background, and staff's recommendation of the variance. He indicated 15 notices were mailed, 0 returned in favor, and 0 returned in opposition. No response from the Denver Heights Neighborhood Association.

Joseph Nazaroff, applicant, bought the lot to build intercity.

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-16-033 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Regarding Appeal No. A-16-033, variance application for 4 foot variance from a minimum ten foot rear setback, to allow a home as near as six feet

from the rear property line, subject property description N IRR 23 ft. of Lot 11, Block 1, NCB 6735, situated at 526 Roseborough Street, applicants being Joseph Nazaroff.

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

- 1) "Such variance will not be contrary to the public interest" in that the property **had a large portion of the lot dedicated to ROW when Interstate 10 was built and is left with a smaller lot, making development difficult.**
- 2) "Due to the special condition in that there is no development behind this property and therefore, no property to be harmed by the requested setback reduction
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **reducing the rear setback another four feet is unlikely to damage other properties and will result in substantial justice.**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized in the **"RM-4 AHOD" Residential-Mixed Airport Hazard Overlay District..**
- 5) "Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located" in that **there are no properties behind this lot to be negatively affected by the requested variance.**
- 6) "The unique circumstances present in this case are the result of the highway construction, which occurred over 60 years ago. This is not the fault of the owner, nor is this problem merely financial in nature." The motion was seconded by Mr. Rodriguez.

AYES: Kuderer, Rodriguez, Quijano, Neff, Britton, Cruz, Zuniga, Garcia, Martinez, Camargo, Rogers

NAYS:

THE VARIANCE IS GRANTED.

CASE NO. A-16-031

Applicant – Kent McIntire & John Bartkowski
Lot 32, Block 17, NCB 15077
1230 & 1231 Asherton Way

Zoning: "PUD R-6 MSAO-1 ERZD" Planner Unit Development Residential Single-Family
Military Sound Attenuation Edwards Aquifer Recharge District

The applicant is requesting for a 6 foot variance from the minimum 20 foot garage setback, as described in Section 35-516 (g), to allow a garage 14 feet from the front property line.

Kristin Flores, Planner, presented background and staff's recommendations of the requested variance. She indicated 26 notices were mailed, 1 returned in favor, and 3 returned in opposition. No response from the Stone Oak Meadow Neighborhood Association.

Kent McIntire, applicant, stated the lots were affordable and great for building small houses.

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-16-031 closed.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No. A-16-031, variance application for a 6 foot variance from the minimum 20 foot garage setback, to allow a garage 14 feet from the front property line subject property description Lots 94 & 95, Block 1, NCB 17624, situated at 1230 & 1231 Asherton Way, applicants being Kent McIntire and John Bartowski.

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

- 1) "Such variance will not be contrary to the public interest" in that the property **has a topographical hardship requiring accommodation.**
- 2) "Due to the special condition in this case the largely sloping topography does not allow the property owner to utilize the rear portion of the property for building, making the buildable area greatly diminished.
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **the intent of the code is to provide adequate parking area, which will be in the garage. Granting the requested variance will result in substantial justice.**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized in the **"PUD R-6 MSAO-1 ERZD" Planned Unit Development Residential Single-Family Military Sound Attenuation Edwards Recharge Zone District.**
- 5) "Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located" in that **garages are a prominent feature of the homes in this neighborhood. Additionally, the**

reduced setback will not increase fire risk to adjacent properties or cause undue water runoff.

- 6) "The plight of the owner of the property is due to unique circumstances existing on the property **in that the sloping topography in the rear has reduced the buildable area of the property.**" The motion was seconded by **Mr. Garcia.**

AYES: Martinez, Garcia, Quijano, Neff, Rodriguez, Britton, Cruz, Zuniga, Camargo, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-16-023

Applicant – Joe E. Guillaumin

Owner: Ester Ann Baylor

Lot 141, Block 39, NCB 19215

231 Chesswood Drive

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

The applicant is requesting for 1) a 1.5 foot variance from the minimum 5 foot side setback, as described in Section 35-310.01, to allow a carport 3.5 feet from the side property line & 2) a 10 foot variance from the minimum front setback, as described in Section 35-310.01, to allow a carport on the front property line.

Kristin Flores, Planner, presented the background and staff's recommendation for the variances. She indicated 27 notices were mailed, 1 returned in favor, and 0 returned in opposition.

Joe E. Guillaumin, representative, explained the owner's needs for the carport for safety and security of her home and vehicles. He presented a police report of a burglary occurring within the home in 2012. He also presented support from the surrounding neighborhood community, by means of an affidavit from the side neighbor, and a petition with many signatures from the community in favor. An engineering report was also presented to the board to show the carport was safely made, and he also made a recommendation to an alternative variance to be approved.

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-16-023 closed.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No. A-16-023, variance application for 1) a 1.5 foot variance from the minimum 5 foot side setback, to allow a carport 3.5 feet from the side property line, subject property description Lot 141, Block 39, NCB 19215, situated at 231 Chesswood Drive, applicant being Joe Guillaumin.

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

- 1) "Such variance will not be contrary to the public interest" in that **the carport encroaching into the side setback is not contrary to the public interest. The applicant has taken measures to address water mitigation and will meet fire standards, if approved.**
- 2) "Due to special conditions, a literal enforcement of the ordinance would result in an unnecessary hardship, **being if the carport will be total dismantled. The requested side setback variance of 1.5 feet is minimal.**
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **permits and inspections will verify the carport is structurally sound. There is no fire separation or trespass issues with this side setback variance.**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized in the **"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District. Add language to support the front variance.**
- 5) "Such a side setback 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 water runoff still remains on applicant's property.**
- 6) "The plight of the owner of the property is due to unique circumstances existing on the property in that **the owner encroaches into the side setback by only 1.5 feet." This motion is only dealing with the side set back variance.** The motion was seconded by **Mr. Garcia.**

AYES: Martinez, Garcia, Quijano, Neff, Rodriguez, Britton, Cruz, Zuniga, Kuderer, Rogers

NAYS: Camargo

THE VARIANCE IS GRANTED.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No. A-16-023, variance application for a 2 foot variance from the minimum front setback, to allow a carport on the front property

line to be 8 feet from the property line, subject property description Lot 141, Block 39, NCB 19215, situated at 231 Chesswood Drive, applicant being Joe Guillaumin.

"I move that the Board of Adjustment grant the applicant's request 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." **The carport has been built and although it is currently in violation, the front setback requirement could be altered to bring it back, and giving it the additional 2 feet, would make it much simpler for the homeowner to comply with the front set back requirements with the 2 foot allowance for the overhang with the earlier variance we have issued with the side set back**

Specifically, we find that:

- 1) "Such variance will not be contrary to the public interest" in that **the carport encroachment of 2 feet to the 10 foot setback will not greatly deter from the property**
- 2) "Due to special conditions, a literal enforcement of the ordinance would result in an unnecessary hardship. **It would be extremely costly to remove the entire carport, and to mention the substantial support from the neighborhood, for such a carport. Although it does encroach currently, this variance will allow for a substantial portion to remain.**
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **the structure will have to meet all permitting restrictions, other than the variance of 2feet from front.**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized **in the "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District.**
- 5) "Such a variance for the front 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."
6. The plight of the owner of the property is due to unique circumstances existing on the property **in that adding to file that there have been a number of issues in the neighborhood that have brought concerns and necessity for additional carport length. The owner's encroachment on to the front, will be alleviated if the carport is cut back and allowing a 2 foot over hang into the encroachment area of the 10 foot area.** The motion was seconded by Mr. Zuniga.

AYES: Martinez, Garcia, Quijano, Neff, Rodriguez, Britton, Cruz, Zuniga, Kuderer, Rogers

NAYS: Camargo

THE VARIANCE IS GRANTED.

3:27 p.m. Board members recessed for 10 minutes.

CASE NO. A-16-026

Applicant – Felipe Jamie Lopez
Lot 141, Block 39, NCB 19215
632 West Rosewood Avenue
Zoning: “R-6 NCD-5 AHOD” Residential Single-Family Beacon Hill Neighborhood
Conservation Airport Hazard Overlay District

The applicant is requesting for a 4 foot variance from the minimum 5 foot side setback, as described in Section 35-310.01, to allow a new carport 1 foot from the side property line.

Kristin Flores, Planner, presented the background and staff’s recommendation for the variance. She indicated 33 notices were mailed, 0 returned in favor, 26 returned in opposition, 1 returned in opposition as anonymous, and 7 returned in opposition outside of 200 feet. The Beacon Hill Neighborhood Association is in opposition.

Felipe Lopez, applicant, regrets not getting the permit for the carport, but needed the access for his handicapped son

John Ochoa, translator for the applicant.

The following citizens appeared to speak:

Mario Nerio, expressed his confusion about the variance request.

Mary Nerio, yielded minutes to Madeleine Nerio.

Charlotte Nerio, yielded minutes to Madeleine Nerio.

Madeleine Nerio, spoke in opposition and expressed her confusion in regards to the variance request. She stated she was not aware it was only for the carport structure, and to her understanding there is an accessory structure attached to the carport from her view.

Mark Spielman, president of the Beacon Hill Neighborhood Association, spoke in opposition due to the quality and design standard of the neighborhood conservation district.

Rose Cohen- Brown, spoke in opposition.

Cosima Colvin, spoke in opposition.

Jack Finger, spoke in opposition.

Carlos Lopez, Applicant’s son, spoke in concern for the neighbors who are 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-16-026 closed.

A motion was made by **Mr. Quijano to continue this case to the March 7, 2016 meeting.** The motion was seconded by **Mr. Camargo.**

AYES: Quijano, Neff, Rodriguez, Britton, Cruz, Zuniga, Garcia, Martinez, Camargo, Kuderer, Rogers

NAYS: None

THE CONTINUANCE IS GRANTED.

CASE NO. A-16-027

Applicant – John Ochoa

Lot 12, Block 6, NCB 2401

1903 San Fernando

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

The applicant is requesting for 1) a two foot variance from the minimum three foot side setback to allow a carport one foot from the side property line and 2) a seven foot variance from the minimum ten foot front setback, both as described in Table 35-310-1 to allow a carport three feet from the front property line.

Logan Sparrow, Senior Planner, presented the background and staff’s recommendation for the variances. He indicated 57 notices were mailed, 1 returned in favor, 0 returned in opposition, and no response from the Avenida Guadalupe Neighborhood Association.

John Ochoa, Applicant, wants to build the carport to protect his family and vehicles.

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-16-027 closed.

MOTION

A motion was made by **Mr. Rodriguez.** “Regarding Appeal No. A-16-027, variance application for 1) a two foot variance from the minimum three foot side setback to allow a carport one foot from the side property line and 2) a seven foot variance from the minimum ten foot front setback, to allow a carport three feet from the front property line, subject property description Lot 12, Block 6 NCB 2401, situated at 1903 San Fernando, applicant being John Ochoa

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

- 1) “Such variance will not be contrary to the public interest” in that **the public interest is represented by providing adequate off-street parking for permitted uses.**
- 2) “Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship” in that **the applicant needs parking and maneuvering area.**
- 3) “The spirit of the ordinance is observed and substantial justice is done” in that **providing adequate covered parking for a residential property meets the intent of the Code and if approved the carport will require a permit for fire-rated construction.**
- 4) “Such variance will not authorize the operation of a use other than those uses specifically authorized in the “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District.
- 5) “Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located” in that **the flat roof is hardly visible from the street.**
- 6) “The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, because the driveway is wide to accommodate trucks.” The motion was seconded by **Mr. Neff.**

AYES: Rodriguez, Neff, Quijano, Britton, Cruz, Zuniga, Garcia, Martinez, Camargo, Kuderer, Rogers

NAYS: None

THE VARIANCES ARE GRANTED

CASE NO. A-16-030

Applicant – Brown & Ortiz, PC

W. 50 ft of Lot 16, E. 43 ft. of Lots 17, 18, 19, 20, & 21, Block , NCB

11879

200, 206 & 212 Ridgecrest Drive and 8110 Lookover

Zoning: “IDZ AHOD” Infill Development Zone Airport Hazard Overlay District

The applicant is requesting for 1) a 15 foot variance from the minimum 20 foot garage setback, as described in 35-516, to allow a garage five feet from the property line; and 2) a variance from the requirement that homes be oriented toward the public street, as described in 35-343, to allow homes to be oriented toward common open space.

Logan Sparrow, Senior Planner, presented the background and staff's recommendation of the variances. She indicated 40 notices were mailed, 0 returned in favor, and 1 returned in opposition. 1 noticed returned in favor for the project but concerned about the tree preservation

James Griffin, representative, requested the variances to allow the orient toward the common space for 16 single-family residential homes.

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-16-030 closed.

MOTION

The motion was made by **Mr. Quijano**. "Regarding Appeal No. A-16-030, variance application from the requirement that homes be oriented toward the public street, to allow homes to be oriented toward common open space. subject property description W. 50 ft of Lot 16, E. 43 ft. of Lots 17, 18, 19, 20, & 21, Block , NCB 11879, situated at 200, 206 & 212 Ridgecrest Drive and 8110 Lookover Drive applicants Brown & Ortiz.

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

- 1) "Such variance will not be contrary to the public interest" in that **the site plan indicates that the 16 single-family homes will be oriented towards an internal open space, rather than the public street, creating a sense of community within the project.**
- 2) "Due to the special condition in this case the desire for inward-facing building orientations, an architectural design element that is becoming increasingly popular as homeowners seek alternative designs that create more neighborly communities. The intent of the zone, which stresses compact development, is respected as the development will have a shared open space.
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **the request respect the intent of the "IDZ" Infill Development Zone, and honor the spirit of the ordinance.**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized in the "IDZ AHOD" Infill Development Zone Airport Hazard Overlay District.
- 5) "Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located" in that

the entire east block of Lookover Drive will be contained within the proposed project, staff finds that there will be no impact to adjacent, conforming properties.

- 6) The unique circumstances present in this case is the size of the lot used for this project. The "IDZ" Infill Development Zone was created to ease development on smaller lots." The motion was seconded by Mr. Martinez.

AYES: Quijano, Martinez, Neff, Rodriguez, Britton, Cruz, Zuniga, Garcia, Camargo, Kuderer, Rogers

NAYS: None

THE VARIANCES ARE GRANTED.

CASE NO. A-16-028

Applicant – River Road Neighborhood Association

Lot 1, Block 15, NCB 6204

112 Lindell Place

Zoning: "MF-33 H RIO-1 AHOD" Multi-Family Residential River Road

Historic River Improvement Overlay Airport Hazard Overlay District

The applicant is requesting an appeal by the River Road Neighborhood Association of the Historic Preservation Officer's decision regarding an application for a Certificate of Appropriateness granted for property within the River Road Historic District.

Margaret Pahl, Senior Planner, presented the background and staff's recommendation of the appeal. She indicated 23 notices were mailed, 0 returned in favor, and 30 returned in opposition.

Shanon Miller, Office of the Historic Preservation, presented information stating that the OHP staff found the applicant's request to rehabilitate the existing structure at 112 Lindell Place consistent with the Historic Design Guidelines, Chapter 2, Guidelines for Exterior Maintenance and Alterations. She stated specifically within this request, the applicant proposed to restore the existing, original stucco façade, replace the existing asphalt shingle roof with a new, standing seam metal roof, preserve and restore all existing window and door openings. She stated the request also included the removal of later additions found to be non-contributing by the OHP staff based on physical evidence and Sanborn Fire Insurance maps that indicate the original footprint of the structure. In regarding the approved new construction, the OHP staff found the applicant's request to be consistent with the Historic Design Guidelines, Chapter 4, Guidelines for New Construction. She explained the OHP staff reviews applications for new construction to ensure consistency with the Historic Design Guidelines and/or the UDC, and within this request, the OHP staff reviewed building setbacks, building orientation, height, massing, building to lot ratio, building materials, roof form, architectural elements, façade arrangement and location of mechanical equipment.

She confirmed the Office of Historic Preservation's recommendation as well as the Historic and Design Review Commission's actions are consistent with those from similar requests. An example is in 2015 alone, the OHP reviewed approximately ten Historic and Design Review

Commission applications in which the removal of a non-contributing addition was part of the request for rehabilitation of a designated structure. The OHP staff recommended the removal of these additions and the HDRC approved these requests as part of the overall rehabilitation, and these are not considered as separate demolition requests. The review and decision is consistent with other similar types of cases. She stated the applicant has asserted that a demolition application should have been required for the removal of the addition, and this is not the case, because UDC Section 35-611, gives authority for administrative approval of a number of types of work categorized as demolition. None of these require a separate demolition application or an argument of economic hardship or loss of significance. She stated the applicant has also asserted that an application for non-contributing status is mandatory, but this is also not the case, because the UDC does not require an application for staff to find a portion of a structure non-contributing during the course of the review of a project. She explained this is a task performed routinely by staff in reviewing HDRC applications and proposed work. She noted the applicant states that the HPO approved the removal based on it being a "minor outbuilding", but this is also not the case, as in Findings e, f, g, and h in the Certificate of Appropriateness from November 18, 2015, were used as the basis for approval. As articulated in Finding e, the portions for removal were found to be later additions to the historic structure. In her conclusion, the portion of the structure that was approved for removal was non-contributing to the historic structure as shown through evidence reviewed by staff, and no demonstration of economic hardship or loss of significance was required in this case. She stated the historic structure contributing to the River Road Historic District is to remain and will be rehabilitated as part of the proposed project, and the requested rehabilitation and new construction approved by the Historic and Design Review Commission at 112 Lindell Place is consistent with the Historic Design Guidelines. She stated staff recommends the Board of Adjustment to uphold the Historic Preservation Officer's decision to approve the rehabilitation of the existing structure at 112 Lindell Place, and the construction of a two story building, housing six residential units along the corner of Woodlawn Avenue and Lindell Place.

Mark Canaan, representing the River Road Neighborhood Association, presented background information and provided the Board with a report detailing the appeal.

The following citizens appeared to speak:

Asher Reilly, yielded minutes to Ken Brown.

Mike Reilly, yielded minutes to Ken Brown.

Ken Brown, representative of the property owner, spoke in opposition of the appeal. He explained the property owner sought a Certificate of Appropriateness for rehabilitation and new construction on the property. He stated, Mr. Cannan believes only one application could have been made and that it was for demolition, but the applicant made an application for rehabilitation and new construction. Mr. Brown presented a power point presentation, and stated the definitions from the UDC include a definition of rehabilitation which includes the definition of alteration, which includes the definition of reconstruction. He stated, for the reconstruction, it says you are allowed to remove later work, and that is the reason they submitted an application for rehabilitation. He stated the application has been made and approved by the Office of Historic Preservation officer and the HDRC. He explained the appeal here today, is to overturn the Office

of Historic Preservation, and the HDRC decision. He stated the OHP and HDRC decision concluded that it is in an historic district and the structure is contributing to the overall historic nature of the district, but the submitted application and site plan show they are going to take off some of the non-contributing elements, and leave the basic structure. He confirmed nothing has been done, and the determination has been made that some of these add-ons were after 1946; such as the patios, porches, and the pool, and they are non-contributing to the historical district. He requested to allow the rehabilitation that removes some of the non contributing elements, and to allow the new construction of 6 units.

Mark Murray, agreed with Mr. Brown's statements.

Jim Bailey, skipped turn.

Chip Collin, skipped turn.

Barbara Howard, left meeting.

Betty Eckert, left meeting.

Daniel Ortiz, skipped turn.

Billy Morgan, spoke in opposition of the appeal. He states that he bought his property in 2006, and was not allowed to move into until 2010, because of similar processes as Mr. Riley. He states, as a regular guy speaking, he believes in fairness, and making decisions based on the law, and expecting a fair outcome. He stated when Mr. Riley purchased his property, it was not a historical district, and it was zoned Multi-Family. He stated Mr. Riley has been through multiple boards trying to present his case, and when he presents his case, there is another issue brought up. He stated he had the similar experience regarding his property. In his opinion, he loves River Road, because it is a great place to live. He stated Mr. Cannann does not represent me, as he a part of the Neighborhood Association as well, and is asking for a fair decision for Mr. Riley by honoring the Office of Historic Preservation's decision and allowing him to move forward.

Donna Martin, yielded minutes to Jim Cullum.

Cosima Colvin, yielded minutes to Jim Cullum.

Jim Cullum, Chair-man of the River Road Neighborhood Association, spoke in favor of the appeal; he presented pictures of the neighborhood and the different houses. He presented a map of the neighborhood, with the count of the neighbors in opposition of taking down the house. He stated, he believes Mr. Riley has the right to develop his property, but with the exception to demolishing part of the historic house in this historical neighborhood. He stated there is a flow of the house components, and you cannot tell where the add-ons begin or end. He believes Mr. Riley should comply with the historical outlines in the UDC, and the 2 story setbacks. In his opinion, the historic districts are unique and charming, and the neighbors fight hard to keep the historic houses in the neighborhood.

Arlene Fisher, left meeting.

Rebuttal:

Mark Canaan, representing the River Road Neighborhood Association, stated that if the additions were there in 2010 when it became a historic district, then they are a part of the structure.

Board Questions and Discussion:

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-16-028 closed.

MOTION

The motion was made by **Mr. Camargo**. “I move in case A-16-028, an appeal by the River Road Neighborhood Association, of the decision rendered by the Office of Historic Preservation, is declined, and the OHP determination as recommended by the HDRC, that the structure at 112 Lindell Place, be allowed to be rehabbed in the manner of the OHP and HDRC review plans. In addition to that, the second portion construction of the two-story building housing 6 residential units that were also recommended in the Certificate of Appropriateness is upheld in the decision of the OHP. To clarify the motion, it is to uphold the Office of Historic Preservation Director’s decision and deny the Appeal.” The motion was seconded by **Mr. Zuniga**.

Motion Discussion:

Mr. Neff, “I agreed with the motion by Mr. Camargo, this is a determination made by the HDRC, that should be upheld and it is very clear in this case as described, we are talking about differences between a past case, which was the whole demolition of an entire structure, and arguing about additions as to if they are worthy or not, and conflating that to today where we are talking about maintaining and rehabilitating a structure and tearing down only the elements that are considered to be non contributing. It is clear to me to what has been presented today, and I agree the decision the HDRC and OHP is correct and I will be voting in favor of the motion made.”

Ms. Rogers, “In regards to my personal opinion, having known this property and River Road, I don’t like what they are doing there, but they are legally able to have the apartments. I believe the OHP has looked into this, researched it, and correctly made her opinion. Therefore I am going to uphold her decision.”

AYES: Camargo, Zuniga, Quijano, Neff, Rodriguez, Britton, Cruz, Garcia, Martinez, Kuderer, Rogers

NAYS: None

THE APPEAL FAILED.

[REDACTED]

Ms. Rogers made a motion to approve the December 21, 2015 minutes with all members voting in the affirmative.

[REDACTED]

Directors Report:

[REDACTED]

There being no further discussion, meeting adjourned at 7:13 pm.

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

DATE: 2-8-16

ATTESTED BY: M. R. R. DATE: Feb. 10, 16
Executive Secretary