

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
September 21, 2015**

Members Present:

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

Staff:

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

Call to Order

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

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

CASE NO. A-15-135

Applicant – Brown & Ortiz, PC
Lots 1 & 2, Block 32, NCB 17643
9418 & 9526 W Military Drive
Zoning: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting 1) a one foot variance from the six foot maximum fence height, as described in Section 35-514, to allow for the construction of a seven foot tall wall along a portion of the property; and 2) a two foot variance from the maximum six foot fence, also described in Section 35-514, to allow columns eight feet in height.

Logan Sparrow, Planner, stated the applicant requested a continuance to October 5, 2015.

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-15-135 closed.

MOTION

A motion was made by **Ms. Rogers to continue this case until the next regularly scheduled meeting on October 5, 2015.** The motion was seconded by **Mr. Martinez.**

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

NAYS: None

THE CONTINANCE WAS GRANTED.

CASE NO. A-15-144

Applicant – Douglas Gonzalez

Lot 9, Block 3, NCB 6777

1260 Kirk Place

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

District

The applicant is requesting a 16 inch variance from the maximum 4 foot front yard fence height, as described in 35-514 (d) to allow a 5 foot 4 inch predominately open fence in the front yard.

Margaret Pahl, Senior Planner, presented the background and staff's recommendation of approval for the variances. She indicated 22 notices were mailed, 2 returned in favor, 0 returned in opposition and no response from the Thompson Neighborhood Association.

Claudia Gonzales, explained the reason for the variance due to theft and safety for her children.

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-15-144 closed.

MOTION

A motion was made by **Mr. Kuderer. Re Appeal No. A-15-144, variance application for a 16 inch variance from the maximum 4 foot front yard fence height, as described in 35-514 (d) to allow a 5 foot 4 inch predominately open fence in the front yard,** subject property description **Lot 9, Block 3, NCB 6777, situated at 1260 Kirk Place,** applicant being **Douglas Gonzalez.**

"I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-144**, 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. The requested increase in front fencing 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 its proximity to a busy street.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is observed since the permitted fence height is proposed to increase at the end of the year.** 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 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 design of the fence is irregular rod lengths, which reduces its perceived height. The fence does not have a negative impact on the character of the street.** 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 **according to the applicant, they have had their vehicle stolen and wanted additional height for security. Their three small children also enjoy playing in the enclosed front yard.”** The motion was seconded by Mr. Martinez.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-145

Applicant – Mary Lou Galvan

Lot 56, Block 2, NCB 15972

5747 Broken Lance Drive

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

The applicant is requesting a two foot variance from the four foot maximum predominately open front yard fence height, as described in Section 35-514, to allow a six foot tall chain link fence in the front yard of the property.

Logan Sparrow, Planner, presented the background and staff’s recommendation of approval of the requested variance. He indicated 41 notices were mailed, 3 returned in favor and 1 returned in opposition.

Mary Lou Galvan, applicant, explained the request for the variance due to vandalism and animal safety.

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-15-145 closed.

MOTION

A motion was made by **Mr. Camargo**. "I move in case No. **A-15-145**, the applicant being **Mary Lou Galvan**, on property located at **5747 Broken Lance Drive**, also legally described as **Lot 56, Block 2, NCB 15972**, be granted a **two foot variance from the four foot maximum predominately open front yard fence height**, as described in **Section 35-514**, to allow a **six foot tall chain link fence in the front yard**. The requested change will not be contrary to the public interest and the 1 notice returned in opposition, 1 block away and on the adjacent street. There were several notices returned in favor of the request. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **apparently the animals of the applicant that are kept on the property are for protection of the property and they have shown pictures and testimony were the existing four (4) foot fence is not sufficient to contain the animals within the property**. It is thought in appearance that granting the variance will provide the protection to the homeowner as well as to the passing public. The requested variance will not authorize the operation of a use on the subject property other than those permitted in the zoning classification. This is **Single-Family Zone** and the uses on the property are of **Single-Family**. The variance will not substantially injure the appropriate use of adjacent conforming property. **It has been pointed out that the adjacent property currently enjoys the privilege of a six (6) foot fence, and this merely will continue the fencing along the front and one side of the 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 **being photos and testimony, that the existing fence does not provide the protection to the homeowner and the public**." The motion was seconded by **Mr. Martinez**.

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

NAYS: None

THE VARIANCE IS GRANTED.

Applicant – Laurence Seiterle
Lot 1, NCB 171919315
2623 N St. Mary's Street
Zoning: "C-3 AHOD" General Commercial Airport Hazard Overlay District

The applicant is requesting 1) the elimination of the required off-street parking, as described in Table 35-526- 3b on the subject property to allow a food service establishment with no parking; 2) the elimination of the 15 foot wide buffer yard on the south and west property lines, as described in Table 35-510-1; and 3) the elimination of the minimum 30 foot side building setback, as described in Table 35-310, to allow the existing building to remain on the property line.

Margaret Pahl, Senior Planner, presented background, and staff's recommendation of approval for the variance. She indicated 26 notices were mailed, 4 returned in favor, 4 returned in opposition, and The Tobin Hills Neighborhood Association is in favor.

Laurence Seiterle, applicant, stated the need for the variance is to establish a restaurant on the property.

Mark Manuelle, property owner, stated a restaurant establishment would be beneficial to the community.

The following citizens appeared to speak:

Bruce Baham, citizen, spoke in opposition.

Martin Kishner, President of Tobin Hills Neighborhood Association, citizen, spoke in favor.

Robyn Baham, 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-15-134 closed.

MOTION

A motion was made by **Mr. Camargo**. "I move in case **A-15-134**, the request of **Laurence Seiterle**, on property described at **2623 N St. Mary's Street**, also legally described as **Lot 1, NCB 1719**, propose the Board of Adjustment grant a variance for item # 2 and #3; which is a side yard and a buffer yard for the following reasons, the variance will not be contrary to the public interest in that these structures of existence for many years have been used for different businesses, so the yard requirement is not anything it was required at the time of construction. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the buildings will need to be demolished, in order to reconstruct any development on this property to be compliant with the setbacks. The spirit of the ordinance is observed and substantial justice is done in that these are existing non conforming structures that would be no benefit to demolishing and reconstructing, and that has been pointed out in the staff recommendations, that only a ten (10) foot wide

building can be constructed. 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 **other than those specifically permitted in items #2 and #3, pertaining to the buffer yard and the side yard, and not the use of the property.** The plight of the owner of the property for which the variance is sought is due to unique circumstances **that constructions on these structures likely were in agreement in concurrence with the regulations that existed."**

The motion was seconded by **Mr. Martinez.**

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

NAYS: None

THE VARIANCE IS GRANTED.

Re Appeal No. A-15-134, variance application for 1) the elimination of the required off-street parking, as described in Table 35-526- 3b on the subject property to allow a food service establishment with no parking. The concern is the public interest and this board is asked to evaluate the benefit of having this building occupied or vacant. This case the parking is instrumental to its being accepted or not accepted. The neighborhood association has come forth and has stated this is not a problem with the neighborhood, so long as it's a restaurant, the public interest would be served. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. **If a business, such as this restaurant, which is accepted by the neighborhood, is not accepted the building will remain vacant. This will create a hardship on the owner. Due to location and the configuration of the building on the property, street parking is needed.** By granting the ordinance, the spirit of the ordinance is observed and substantial justice is done. **The spirit of the ordinance is represented by requiring parking on each site associated with the demands for parking generated by the proposed use, which is a restaurant as stated by the applicant. Some areas however were originally improved without space for parking, as is the case along this corridor. People frequenting businesses along here expect to have to search for parking and walk a distance to their destination. Therefore, the variance will observe the spirit of the ordinance. The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-3 AHOD" General Commercial Airport Hazard Overlay District. It is stated by the applicant that it will be a restaurant only. 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 variance will allow the building, which has not been used for ten years, to be re-opened as very nice, as shown in the plans presented, restaurant, along with other food services along the corridor.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, **though the building is not designated historic, it still contributes to the character of the corridor. Having the use of the building, requires this parking. Without the variances, the only option for the property would be to demolish all structures and build a small 10 foot wide building, observing the minimum 30 foot setback, with a few parking stalls. The constraints on the property were not created by the applicant and are not merely financial."** The motion was second by **Mr. Kuderer.**

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

NAYS: None

THE VARIANCE IS GRANTED.

Board members recessed for 10 minutes.

Ms. Cruz departed at 2:50 pm

Ms. Fehr entered panel at 2:50 pm

CASE NO. A-15-137

Applicant – Amelia Ibarra
Lots 24 & 25, Block 15, NCB 3614
2206 Delgado Street
Zoning: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay
District

The applicant is requesting 1) a 2 foot variance from the minimum 5 foot side yard setback, as described in Table 35-310.01, to allow a carport to remain 3 feet from the property line; 2) a 4 foot variance from the minimum 5 foot side yard setback, as described in Table 35-310.01, to allow a home with an eave overhang to remain 1 foot from the property line.

Kristin Flores, Planner, presented background and staff’s recommendations of the requested variances. She indicated 25 notices were mailed, 0 returned in favor, and 1 returned in opposition. No response from the Westover Hills Neighborhood Association.

Amelia Ibarra, applicant, stated she wanted to expand the living room for her family use.

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-15-137 closed.

MOTION

A motion was made by **Mr. Martinez**. “Re Appeal No. **A-15-137**, variance application for **1) a 4 foot variance from the minimum 5 foot side yard setback, as described in Table 35-310.01, to allow a home with an eave overhang to remain 1 foot from the property line**, subject property description **Lots 24 & 25, Block 15, NCB 3614**, situated at **2206 Delgado Street**, applicant being **Amelia Ibarra**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-137**, 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 minimum side setbacks to protect home owners, and also to provide for a sense of community. The minimum setbacks are in place to protect the neighbor from fire hazard.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **While the neighboring property is currently 15 feet from the shared property line if, in the future, the owner of the adjacent property chooses to build a carport five feet from the property line there will only be six feet of space between the neighboring properties.** The spirit of the ordinance is observed and substantial justice will be served by granting the staff's alternative of allowing the home addition to be located three feet from the side property line in that, if the neighbor chooses to add a carport at the five foot setback, there would still be eight feet of spacing between the two 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 request is not asking for a use outside of the "R-4 AHOD" Residential Single-Family Airport Hazard Overlay.** 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. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located." The motion was seconded by **Ms. Rogers.**

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-138

Applicant – Juan Garcia
Lot F, Block 15A, NCB 576
316 N. Mesquite Street
Zoning: "RM-4 H AHOD" Residential Mixed Dignowity Hill Historic Airport
Hazard Overlay District

The applicant is requesting 1) a 5 foot variance from the minimum 10 foot front yard setback, as shown in Table 35-310-1 to allow a new home 5 feet from the front property line; 2) a 5 foot variance from the minimum 10 foot reverse corner side setback to allow a house 5 feet from the corner property line; and 3) the elimination of off-street parking, as described in Table 35-526-3a, required for a single-family home.

Margaret Pahl, Senior Planner, presented the background and staff's recommendation of approval for the variances. She indicated 25 notices were mailed, 0 returned in favor, 0 returned in opposition and no response from the Dignowity Hills Neighborhood Association.

Juan Garcia, stated he is familiar with the historic value of the neighborhood, and will attempt to replicate the style for the home.

The following citizens appeared to speak:

Ruth Holmes, 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-15-138 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Re Appeal No **A-15-138**, variance application for **1) a 5 foot variance from the minimum 10 foot front yard setback, as shown in Table 35-310-1 to allow a new home 5 feet from the front property line; 2) a 5 foot variance from the minimum 10 foot reverse corner side setback to allow a house 5 feet from the corner property line; and 3) the elimination of off-street parking, as described in Table 35-526-3a, required for a single-family home**, subject property description **Lot F, Block 15A, NCB 576**, situated at **316 N. Mesquite Street**, applicant being **Juan Garcia**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-138**, 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 is requesting the variances to allow a large porch to encroach 5 feet into this setback. On the Glorietta frontage, the wide public right of way includes almost 9 feet of grass between the sidewalk and the property line, which will give the appearance of a larger setback. In addition, on-street parking is typical in older neighborhoods.** 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 lot originated prior to 1912 and is less than 30 feet wide. 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 spirit of the ordinance is defined as the intent of the code rather than the letter of the law. Front setbacks were created to provide some separation when walking, while allowing residents to keep an eye on outdoor activities. These variances observe the spirit of the code.** 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 H AHOD" Residential Mixed Dignowity Historic 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 surrounding**

neighborhood will benefit from reinvestment. The requested variance will allow outdoor living space, increasing potential community interaction. Since porches are a character defining feature in older historic neighborhoods, the variance will not alter the 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 UDC has only one zoning district, "IDZ" In-Fill Development zone, which allows a lot area under 2,000 square feet, and it includes only one setback in the rear of 5 feet. The subject lot, and those similarly situated to the north, was legally established prior to zoning, making the circumstance unique.** The motion was seconded by **Mr. Martinez.**

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

NAYS: None

THE VARIANCES ARE GRANTED.

CASE NO. A-15-139

Applicant – Roberto Marquez
Lot 13, Block 2, NCB 3856
6324 Les Harrison Drive
Zoning: "R-4" Residential Single-Family District

The applicant is requesting 1) the elimination of the 5 foot minimum side setback, as described in Table 35-301-1, to allow for the construction of a carport on the property line; 2) a variance to allow an increase of the maximum 50% impervious cover in the front yard, as described in Table 35-515-1.

Kristin Flores, Planner, presented the background and staff's recommendation of the variances. She indicated 39 notices were mailed, 0 returned in favor, and 2 returned in opposition. No responses from the Hidden Meadow Neighborhood Association or the Great Northwest Neighborhood Association.

Ernest Vera on behalf of Robert Marquez, stated the need for the variances are for the safety of unloading himself and his wheelchair from automobiles.

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-15-139 closed.

A motion was made by **Ms. Martinez to continue this case until the next regularly scheduled meeting on October 19, 2015.** The motion was seconded by **Mr. Camargo.**

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

NAYS: None

THE CONTINANCE WAS GRANTED.

CASE NO. A-15-140

Applicant – Guadalupe & Juana Mendoza

Lot 5, Block 42, NCB 8929

1118 King Avenue

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

The applicant is requesting 1) a four foot variance from the four foot maximum predominately open fence height limit, as described in Section 35-514, to allow a wrought iron fence up to eight feet tall in the front yard of the property and 2) a four foot variance from the five foot side setback requirement, as described in Section 35-310.01, to allow an attached carport to remain one foot from the side property line and 3) a one foot variance from the three foot setback, as described in Section 35-370, to allow an accessory structure to be located two feet from the side property line.

Logan Sparrow, Senior Planner, presented the background and staff’s recommendation of the variances. He indicated 26 notices were mailed, 1 returned in favor, 0 returned in opposition and no response from the Quintana Community Neighborhood Association.

Roxana Mendoza on behalf of Juana Mendoza, stated the need for the variances due to theft and vandalism.

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-15-140 closed.

MOTION

A motion was made by **Mr. Martinez. “Re Appeal No A-15-140, variance application for 1) a four foot variance from the four foot maximum predominately open fence height limit, as described in Section 35-514, to allow a wrought iron fence up to eight feet tall in the front yard of the property and 2) a four foot variance from the five foot side setback requirement, as described in Section 35-310.01, to allow an attached carport to remain one foot from the side property line and 3) a one foot variance from the three foot setback, as**

described in Section 35-370, to allow an accessory structure to be located two feet from the side property line, subject property description Lot 5, Block 42, NCB 8929, situated at 1118 King Avenue, applicant being Guadalupe & Juana Mendoza. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-15-140, 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 fence height limitations to protect property owners and to contribute to a sense of community. The public interest is further represented by minimum setbacks to provide for privacy and to established safe distances between structures in the event of a fire. During visits to the site, staff noted that the eight foot fence was the only fence of its kind within the community. However, it is in a treacherous area of San Antonio with high crimes rates, and the homeowner has the right to defend themselves from that type of situation. The scale of the fence is noticeably out of character, however, such a fence is attractive and adds a distinct design to the property. The attached carport was also built without a permit and currently extends to one foot from the side property line. The carport is designed with a roof pitch that does not drain water onto the adjacent property. Staff finds that, based upon the unique development of the property to the east, which has a home set back from the street 91 feet, the existing attached, carport does not introduce a threat of fire, either. The distance from the carport to the neighbors home is 15 feet, more than what code generally requires. As such, staff finds that granting a four foot variance from the five foot required side yard setback to allow the carport to remain one foot from the property line is not contrary to the public interest. Lastly, staff finds that the accessory structure in the rear yard is also not contrary to the public interest. Accessory structures need only a three foot side and rear setback. The existing, unfinished structure is located two feet from the side property line. The neighboring home, set back 91 feet from the street, is located eight feet from the property line. Thus, the neighbors eight foot setback coupled with the accessory structures two foot setback, provides the same separation distance generally required by code, being five feet from each side, and thus provides adequate separation for fire safety. It should be noted that, because the structure is less than the required three foot setback, the applicant will need to establish a fire-rated wall to pass inspection. Staff finds that a one foot reduction in the side yard setback for the accessory structure is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that staff is unable to determine any special condition to warned an eight (8) foot fence except for what is noted in the crime for that particular area. By granting the variance the spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance is represented by limiting those inconsistent designs within this community. The existing fence is twice the permitted height; however it is attractive and does add to the character of the home. Granting the requested setback variances will result in substantial justice as the carport, although they are in violation, still provide safe separation distances in the event of a fire. Both structures will be required to install a fire-rated wall to pass inspection because they are within the required minimum setbacks. 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 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. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located." The motion was seconded by **Mr. Zuniga.**

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

NAYS: Camargo

THE VARIANCES ARE GRANTED.

CASE NO. A-15-141

Applicant – Lowell Goodman

Lot 13, Block 2, NCB 3856

2424 Broadway

Zoning: "C-2 CD NCD-9 RIO-1 AHOD" Commercial Shop Westfort Alliance Neighborhood Conservation River Improvement Overlay Airport Hazard Overlay District with a Conditional Use for a Muffler

The applicant is requesting 1) a 29 foot variance from the 30 foot minimum rear setback, as described in Table 35-310.01, to allow an open structure to remain 1 foot from the rear property line and 2) a variance from the prohibition against corrugated metal roofs, as described in the Westfort Alliance Neighborhood Conservation District (NCD) design standards Section 2.2.3, to allow the corrugated metal roof to remain.

Kristin Flores, Planner, presented background and staff's recommendations of the requested variances. She indicated 18 notices were mailed, 0 returned in favor, and 0 returned in opposition. No response from the Westfort Alliance Neighborhood Association.

Lowell Goodman, applicant, explained the need for the variances for the best use of his business.

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-15-141 closed.

MOTION

A motion was made by **Mr. Garcia**. “Re Appeal No. **A-15-141**, variance application for 1) a **27 foot variance from the 30 foot minimum rear setback**, as described in **Table 35-310.01**, to allow an open structure to remain 1 foot from the rear property line and 2) a variance from the prohibition against corrugated metal roofs, as described in the **Westfort Alliance Neighborhood Conservation District (NCD) design standards Section 2.2.3**, to allow the corrugated metal roof to remain. Subject property description **Lot 13, Block 2, NCB 3856**, situated at **2424 Broadway**, applicant being **Lowell Goodman**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-141**, 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 minimum side setbacks to protect home owners, and also to provide for a sense of community. The minimum setbacks are in place to protect the neighbor from fire hazard and other possible nuisances. The open structure, with an eave overhang one foot from the rear property line, is made largely of metal. While there is a decreased risk of fire spreading to adjacent structures there is an increased risk of water runoff and possible damage to the adjacent property. There also appears to be little room for maintenance of the structure, however it is a metal structure that would that is more robust than wooden materials. The corrugated metal roof is consistent with the design of the building. Continuing the aesthetic of the building will only enhance the property and, in turn, the neighborhood. This commercial property is uniquely situated on the edge of the historic district and along a busy commercial corridor. Allowing the open structure to retain the corrugated metal roof 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 design standards are commercial and not residential. In addition, the property is located at the edge of the Westfort Alliance NCD along Broadway, a busy commercial corridor, not the inner streets of the neighborhood. The open structures commercial use and unique location at the edge of the Westfort Alliance NCD provides a special condition for the structure to retain the corrugated metal roof. By granting the ordinance, the spirit of the ordinance is observed and substantial justice will be done. The continued quality of the historical housing stock however the subject property is not residential in nature and is located along a busy commercial corridor at the edge of the Westfort Alliance NCD. Substantial justice will be served by granting the open structure to retain the corrugated metal roof due to the unique location and commercial nature of the structure. 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 “C-2 CD NCD-9 RIO-1 AHOD” Commercial Westfort Alliance Neighborhood Conservation River Improvement Overlay Airport Hazard Overlay District with a Conditional Use for a Muffler Shop. 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 use of corrugated metal as a roof material will not substantially injure the adjacent property or alter the essential character of the district. The entire subject property, as it stands now, is constructed of metal.**

Continuing the aesthetic of the building will only enhance the property and, in turn, the neighborhood. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located. **The unique circumstance present in this case is the subject property's location at the edge of the Westfort Alliance NCD and along a busy commercial corridor. Many of the Westfort Alliance NCD guidelines were established to ensure the quality of the historical housing stock. However, the current use and appearance of the structure is not residential in nature."** The motion was seconded by Mr. Zuniga

AYES: Garcia, Zuniga, Rogers, Quijano, Finlay, Britton, Fehr, Kuderer, Ozuna

NAYS: Martinez, Camargo

THE VARIANCE IS GRANTED.

CASE NO. A-15-142

Applicant – David Moreno

Lot 12, Block 10, NCB 481

1819 North Hackberry Street

Zoning: "RM-6 AHOD" Residential Mixed Airport Hazard Overlay District

The applicant is requesting a 10 foot variance from the 20 foot minimum rear setback requirement, as described in Table 35- 301-1, to allow a home to be constructed 10 feet from the rear property line.

Kristin Flores, Planner, presented background and staff's recommendations of the requested variance. She indicated 29 notices were mailed, 1 returned in favor, and 0 returned in opposition. No response from the Government Hill Neighborhood Association.

David Moreno, applicant, explained the need for the variance to build a duplex and to live on the 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-15-142 closed.

MOTION

A motion was made by **Mr. Camargo** to postpone the case in order for discussion between the applicant and the staff, with a recommendation to the Director to waive the postponement fee.

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

NAYS: None

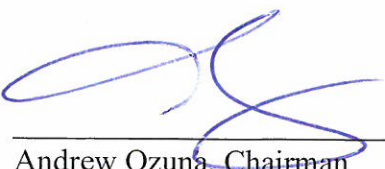
THE POSTPONEMENT IS GRANTED.

Mr. Ozuna made a motion approve to approve the August 17, 2015 minutes with all members voting in the affirmative.

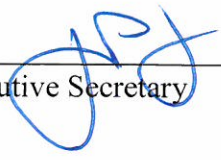
There being no further discussion, meeting adjourned at 5:08 pm.

September 21, 2015

17

APPROVED BY:  OR _____
Andrew Ozuna, Chairman Mary Rogers, Vice-Chair

DATE: 10/5/15

ATTESTED BY:  DATE: 10-5-15
Executive Secretary