

**DRAFT****BOARD OF ADJUSTMENT  
OFFICIAL MINUTES****January 9, 2017**

Members Present:	Staff:
Jay C. Gragg	Catherine Hernandez, Planning Manager
Frank Quijano	Ted Murphree, City Attorney
Jeff Finlay	Margaret Pahl, Senior Planner
Maria Cruz	Shepard Beamon, Senior Planner
Seth Teel	
Henry Rodriguez	
John Kuderer	
Roger Martinez	
Alan Neff	
Mary Rogers	
Denise Ojeda	

**Call to Order**

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

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

Arianne Villanueva, World Wide Translators, was present.

Jay C. Gragg entered the Meeting at 1:10 PM

Applicant: Pura Zavala

Owner: Jose & Pura Zavala

Council District: 5

Location: 2031 W. Pyron Avenue

Legal Description: Lots 46 & 47, Block 30, NCB 8523

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

Overlay District Case Manager: Margaret Pahl, AICP, Senior Planner

**Request**

A request for a special exception to allow a four-year renewal of a special exception granted on January 14, 2013 for a one-operator beauty shop.

Shepard Beamon: Senior Planner, presented the background information and staff's recommendation of the variance. He indicated 32 notices were mailed, 1 returned in favor, 0 returned in opposition, and no Neighborhood Association.

Pura Zavala: applicant, stated she has come to the board on many occasions and requests approval. (translation services requested)

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-030 closed.

## MOTION

A **motion** was made by **Mr. Rodriguez**. "Regarding Appeal No. A-17-030, a request for a special exception to allow a four-year renewal of a special exception for a one-operator beauty shop, subject property being Lots 46 & 47, Block 30, NCB 8523, situated at 2031 W. Pyron Avenue, applicant being Pura Zavala.

I move that the Board of Adjustment grant the applicant's request for the special exception to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The special exception will be in harmony with the spirit and purpose of the chapter. **The applicant has fulfilled all requirements for a one-operator shop as established in the Unified Development Code and the special exception will be in harmony with the purpose of the chapter.***
2. *The public welfare and convenience will be substantially served. **Public welfare and convenience will be served as it will provide a valuable service to the residents of the neighborhood.***
3. *The neighboring property will not be substantially injured by such proposed use. **The subject property will be primarily used as a single family residence. The beauty/barber shop will occupy only a small portion of the home, as required by the UDC. A neighboring property owner should not have any indication that a portion of the home is being used for this purpose.***
4. *The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought. **The requested special exception is not likely to negatively impact adjacent property owners as the home is in character with those around it. There is nothing visible from the street that would indicate the presence of a beauty/barber shop and there is a large driveway capable of providing any necessary parking for the proposed use.***
5. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district. **The primary use of the dwelling remains a single-family home. The granting of this special exception will not weaken the purposes of the residential zoning district.*** The motion was seconded by **Mr. Martinez**.

**AYES:Rodriguez, Martinez, Neff, Cruz, Finlay, Gragg, Teel, Quijano, Kuderer, Ojeda, Rogers**  
**NAYS: None**

## **THE VARIANCE IS GRANTED**

Case Number: A-17-025

Applicant: 401 San Pedro, LLC

Owner: 401 San Pedro, LLC

Council District: 1

Location: 401 San Pedro Avenue

Legal Description: Lots 1 and 2, Block 7, NCB 769

Zoning: "C-2P UC-6 AHOD" Commercial Pedestrian San Pedro Avenue Urban Corridor Airport Hazard Overlay District

Case Manager: Shepard Beamon, Senior Planner

### **Request**

A request for 1) a six foot variance from the maximum 24 foot tall freestanding pole sign height, as described in Section 28-239, to allow a sign 30 feet tall; 2) a 10 foot variance from the minimum 10 foot sign setback to allow a sign on the front property line, per Section 28-241(c)(1)(c).

Shepard Beamon: Senior Planner, presented the background information and staff's recommendation of the requested variance. He indicated 22 notices were mailed, 0 in favor, 0 in opposition, and no response from the Five Points Neighborhood Association.

Jeff Phillips: representative, stated he will work with the board and follow any recommendations. And stated he will move the sign 7 feet instead of the board recommendation of 5 feet.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-25 closed.

### **MOTION**

**A motion** was made by **Mr. Kuderer** "Regarding Appeal No. A-17-025, a request for 1) a six foot variance from the maximum 24 foot tall freestanding pole sign height to allow a sign 30 feet tall, subject property being Lots 1 and 2, Block 7, NCB 769, situated at 401 San Pedro Avenue, applicant being 401 San Pedro, LLC.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography;*
2. *A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property; and*

**Denial of the six foot variance would leave the signage susceptible to vandalism or defacing of property, as the area, according to the applicant, has a high crime rate. The bottom of the sign cabinet must be no lower than 14 feet when hung over a driveway. Therefore, the 30 foot sign height is needed to provide adequate clearance over the driveway.**

*The subject property has a small lot size and placement of the sign is limited on the site.*

3. *After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:*
  - A. *Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.*

**There are several similar businesses with similar freestanding pole signage heights along the San Pedro corridor. Granting the six foot variance will not provide special privilege and would be in character with the surrounding area.**

**Additional height would not hinder views for adjacent properties or visibility of other signs. It is unlikely that neighboring property owners will be negatively impacted by the proposed signage.**

- C. *Granting the variance will not substantially conflict with the stated purposes of this article.*

**The additional sign height does not exceed the allowed maximum sign height for the next intense street classification. The owner is proposing the variances to protect the property and provide safe and adequate traffic circulation and parking. Therefore, the request does not conflict.”** The motion was seconded by **Mr. Martinez**

**AYES: Kuderer, Martinez, Quijano, Neff, Finlay, Gragg, Cruz, Ojeda, Teel, Rodriguez, Rogers**

**NAYES: None**

**A second motion** was made by **Martinez**, Regarding Appeal No. A-17-025, a request for a **3** foot variance from the minimum 10 foot sign setback to allow a sign on the front property line, subject property being Lots 1 and 2, Block 7, NCB 769, situated at 401 San Pedro Avenue, applicant being 401 San Pedro, LLC.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography; or*  
***The subject property has a small lot size and placement of the sign is limited on the site. The sign setback requirement would not provide adequate spacing for traffic circulation and parking. Meeting the 10 foot setback is difficult given the lot size and layout. Therefore, strict enforcement prohibits the opportunity to provide adequate signs on the site.***
3. *After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:*
  - A. *Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.*

***Locating a sign 7 feet from the property line does not grant special privilege as similar businesses along the corridor include freestanding pole signage close to the front property line. Further, the sign will not be out of character with the surrounding community.***

- B. *Granting the variance will not have a substantially adverse impact on neighboring properties. Additional height would not hinder views for adjacent properties or visibility of other signs. It is unlikely that neighboring property owners will be negatively impacted by the proposed signage.*

***The elimination of the setback would not directly have a negative impact on the adjacent properties as it will not block any other signage along the corridor.***

- C. *Granting the variance will not substantially conflict with the stated purposes of this article.*

**The additional sign height does not exceed the allowed maximum sign height for the next intense street classification. The owner is proposing the variances to protect the property and provide safe and adequate traffic circulation and parking. Therefore, the request does not conflict.**

***The elimination of the sign setback does not create traffic hazards by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to read traffic signs.***” The motion was seconded by Mr. Rodriguez.

**AYES: Martinez, Rodriguez, Kuderer, Quijano, Neff, Finlay, Gragg, Cruz, Ojeda, Teel, Rogers**

**NAYES: None**

## **THE VARIANCES ARE GRANTED**

Case Number: A-17-033

Applicant: Greg Burkett

Owner: Brazos de Santos Partners, LTD

Council District: 9

Location: 18195 US Highway 281 North

Legal Description: Lots 38 & 39, Block 9, NCB 15760

Zoning: "C-3 R MLOD ERZD" General Commercial Restrictive

Alcohol Sales Military Lighting Overlay Edwards Recharge Zone District

Case Manager: Margaret Pahl, AICP, Senior Planner

### **Request**

A request for a 10 foot variance from the maximum 60 foot sign height, as described in Section 28-241, to allow a 70 foot tall freeway sign.

Margaret Pahl: Senior Planner, presented the background information and staff's recommendation of the requested variance. She indicated 7 notices were mailed, 4 in favor, 0 in opposition, and no neighborhood association.

Andrew Perez: Chief Sign Inspector, stated the size was a better option than having multiple signs in the already cluttered area.

Greg Burkett: applicant, stated combining the signs would look better and asked the request be granted.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-033 closed.

### **MOTION**

**A motion** was made by **Mr. Quijano**. "Regarding Appeal No. A-17-033, a request for a 10 foot variance from the maximum 60 foot sign height to allow a 70 foot tall freeway sign, subject property being Lots 38 & 39, Block 9, NCB 15760, situated at 18195 US Highway 281 North, applicant being Greg Burkett.

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. *The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography; or*
2. *A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property; and*  
***The existing sign is 70 feet in height and is directly adjacent to an elevated freeway interchange. Signage is permitted at that height when three tenants are being included, rather than the two as proposed. The signage is currently below the allowable square footage limitation for a single tenant.***
3. *After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:*
  - A. *Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.*  
***The businesses with freeway frontage are permitted 60 feet in height along this corridor and 375 square feet of sign area. Three tenants are permitted an additional ten feet to the requested 70 feet in height. The variance is being requested in conjunction with a sign master plan, which will reduce the overall signage on the two parcels.***
  - B. *Granting the variance will not have a substantially adverse impact on neighboring properties.*  
***The ordinance intends to protect the public from over-crowding of signage, while providing businesses the opportunity to advertise. The proposed variance, coupled with the sign master plan, will reduce the potential number of signs allowed and not have an adverse impact on neighboring properties.***
  - B. *Granting the variance will not substantially conflict with the stated purposes of this article.*  
***The requested variance does not conflict with the stated purpose of the chapter in that 70 feet is permitted for three or more tenants with freeway frontage. In this case, the sign has existed at this height and will include less than the permitted square footage for a single tenant. ” The motion was seconded by Ms. Cruz.***

**AYES: Quijano, Cruz, Neff, Martinez, Finlay, Kuderer, Gragg, Rodriguez, Ojeda, Teel, Rogers**

**NAYS: None**

**THE VARIANCE IS GRANTED**

Applicant: Michael Duffey  
 Owner: Michael & Ariana Duffey  
 Council District: 1  
 Location: 201 Delaware Street  
 Legal Description: Lot 1, Block 2, NCB 3004  
 Zoning: "R-6 H AHOD" Residential Single-Family Historic Airport  
 Hazard Overlay District  
 Case Manager: Margaret Pahl, AICP, Senior Planner and Lauren Sage,  
 Historic Preservation Specialist

### **Request**

An appeal of the Historic Preservation Officer's denial regarding an application for a Certificate of Appropriateness to allow the installation of 24 solar panels on the left slope of a hipped roof.

Margaret Pahl: Planner, presented the background information and staff's recommendation of the variances. She indicated 30 notices were mailed, 0 returned in favor, 0 returned in opposition, and no response from the Lavaca Neighborhood Association.

Kathy Rodriguez: Deputy Historic Preservation Officer, presented information as to why the applicants request was denied.

Michael Duffey: applicant, presented evidence of other homes with Solar Panels visible from the streets, and also stated in order to get maximum performance the panels need to face west for direct sunlight. Mr. Duffey was very detailed and read from the HDRC guidelines, which did not prevent him installing the solar panels.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-036 closed.

**A motion** was made by **Mr. Neff**. "Regarding Appeal No. A-17-036, an appeal of the Historic Preservation Officer's denial regarding an application for a Certificate of Appropriateness to allow the installation of 24 solar panels on the left slope of a hipped roof, subject property being Lot 1, Block 2, NCB 3004, situated at 201 Delaware Street, applicant being Michael Duffey.

I move that the Board of Adjustment grant the applicant's request for an appeal to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the decision made by the administrative official was flawed in the interpretation of the Code and that the correct interpretation would allow 24 number of SOLAR panels facing the public right of way on the West facing roof.

Specifically, we find that:

That the applicant has demonstrated through his review of the historic guidelines there is no interpretation of a corner lot being any different from other lots in regards to the character of the solar panels being added to historic homes roof. Also the applicant has demonstrated that the nature of solar panels needs to be placed in a way that efficiency is place in mind and that those panels are most efficient when facing west not east or north as recommended by the



H.D.R.C and H. P.O. The applicant has also demonstrated that there are other homes that exist in the historic district that have gained approval by the H.D.R.C. and H.P.O that are in the Line of view.” The motion was seconded by **Mr. Teel**.

**AYES: Neff, Teel, Gragg, Rodriguez, Cruz, Finlay, Ojeda, Quijano, Martinez, Kuderer, Rogers**

**NAYS: None**

**THE APPROVAL IS GRANTED.**

Case Number: A-17-034

Applicant: Bill Shown

Owner: Broadway SA Investors GP, LLC

Council District: 1

Location: 1825 Broadway

Legal Description:

Lots SE IRR 128.75FT OF 17 and NW IRR 90 FT OF 17, Block 1, NCB 969; Lots E 55 FT OF 8 & 9, Block 12, NCB 970; Lots 11 THRU 15 & S 40.5 FT OF 10 & P-100, Lots S IRR 36.10 OF 7, 4, 5, 3, 2, NCB 969

Zoning: "IDZ UC-2 RIO-2 AHOD" Infill Development Zone

Broadway Urban Corridor River Improvement Overlay

Airport Hazard Overlay District with uses permitted in "O-2"

High-Rise Office District, "C-2" Commercial District, "MF-40" Multi-Family District and Bar

Case Manager: Shepard Beamon, Senior Planner

### **Request**

A request for a 50 foot variance from the 120 foot maximum building height, as required in the “RIO-2” River Improvement Overlay District, to allow a mixed-use building to be 170 feet tall, as described in Section 35-675 (c)(1).

Shepard Beamon: Senior Planner, presented the background information and staff’s recommendation of the variance. He indicated 21 notices were mailed, 1 returned in favor, 1 returned in opposition, and no response from the Government Hill Neighborhood Alliance.

Frank Burney: representative: gave his presentation on behalf of the applicant and requested approval.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-034 closed.

**A motion** was made by **Mr. Quijano**. “Regarding Appeal No. A-17-034, a request for a 50 foot variance from the 120 foot maximum building height, as required in the “RIO-2” River Improvement Overlay District, to allow a mixed-use building to be 170 feet tall, subject property

being multiple lots out NCB 969 and NCB 970, situated at 1825 Broadway, applicant being Bill Shown.

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. *The variance is not contrary to the public interest in that the request does not produce any hindrance, visual or physical obstruction, or distractions for pedestrians, neighboring properties, or motorists.*
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship as the literal enforcement would eliminate three stories of the proposed building. This heavily restricts the amount of off-street parking, or the number of offices and businesses that can be located within the building.*
4. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. In this case, the intent of the Rive Improvement Overlay district height restriction is to protect the river from taller buildings and overshadowing. The subject property is located 1,100 feet from the river and is unlikely to have a significant negative impact on the river. Further, the elevated 281 highway is between the site and the river, which creates a buffer between the two, to further protect the river.*
5. *The variance will not authorize the operation of a use other than those uses specifically authorized in the "IDZ UC-2 RIO-2 AHOD" Infill Development Zone Broadway Urban Corridor River Improvement Overlay Airport Hazard Overlay District with uses permitted in "O-2", "C-2", "MF-40", and a Bar.*
6. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located as the surrounding area consists of an elevated highway and four to five story mixed-use residential/commercial buildings. The additional height will not conflict with the character of the district. Further, the project will provide off-street parking to alleviate the congestion on surrounding streets.*
7. *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. The unique circumstance is that the proposed building will incorporate off-street parking to relieve the street of traffic and congestion, which requires the offices to be located above. Further, the lot does have some irregularity and heritage tree preservation, which limits usable space on the site."* The motion was seconded by Ms. Cruz.

**AYES:** Quijano, Cruz, Neff, Teel, Rodriguez, Finlay, Gragg, Ojeda, Martinez, Kuderer, Rogers

**NAYS:** None

## **VARIANCE IS GRANTED.**

The Board of Adjustment took a 15 minute recess at 3:10 pm

The Board of Adjustment reconvened at 3:25pm

Case Number: A-17-032

Applicant: Eduardo Quintana

Owner: Eduardo Quintana

Council District: 9

Location: 11022 Baltic Street

Legal Description: Lot 6, Block 10, NCB 11726

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

Case Manager: Shepard Beamon, Senior Planner

### **Request**

A request for 1) a variance from the requirement that prohibits parking or drives be located within 20 feet of the front property line and 2) a five foot variance from the 10 foot rear setback to allow a multi-family dwelling to be five feet from the front property line, as described in Section 35-310-1.

Shepard Beamon: Senior Planner, presented background information, and staff's recommendation of the variance. She indicated 27 notices were mailed, 1 returned in favor (2 outside the 200sq ft.) and 0 returned in opposition and no Neighborhood Association.

Eduardo Quintana: applicant, stated that he is trying to beautify the area by being consistent with the neighborhood and asked for the Boards approval.

### **No citizens appeared to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-032 closed.

**A motion** was made by **Mr. Kuderer**. "Regarding Appeal No. A-17-032, a request for 1) a variance from the requirement that prohibits parking or drives be located within 20 feet of the front property line and 2) a five foot variance from the 10 foot rear setback to allow a multi-family dwelling to be five feet from the rear property line, subject property being Lot 6, Block 10, NCB 11726, situated at 11022 Baltic Street, applicant being Eduardo Quintana.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest. The requested variances are not contrary to the public interest as the rear setback provides adequate room for maintenance without trespass. Further, the site plan provides adequate parking stalls and circulation to avoid congestion and best meet the needs of the tenants and neighboring properties.*
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. It would be difficult for the owner to include adequate parking and circulation and respect the 25 foot platted building setback. Further, to include a 10 foot rear setback would significantly reduce usable space on the lot.*
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. The five foot setback does provide adequate space for maintenance and does produce water runoff on the adjacent property. Substantial justice will be served as the entire block includes paved parking within the front 20 feet of the property. To deny the request would not result in substantial justice.*
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the “MF-33 AHOD” Multi-Family Airport Hazard Overlay District.*
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located. The proposed parking will not detract from the character of the surrounding neighborhood as all the lots on the block have parking within the front 20 feet of the property and the dwelling units located farther away from the street. The five foot rear setback will not require trespass for maintenance, will not produce water runoff on the adjacent property, and is unlikely to have any other negative impact on adjacent properties.*
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner. The unique circumstances are both the 25 foot platted front setback and the prohibition of parking in the front 20 feet. This leaves a large amount of unusable space in the front of the property. In order to have the required number of stalls for the number of units, in addition to circulation for traffic and adequate living space in each unit, the applicant must use portions of the lot that are within the front and rear setback.”* The motion was seconded by **Mr. Rodriguez.**

**AYES: Kuderer, Rodriguez, Cruz, Martinez, Neff, Quijano, Finlay, Gragg, Ojeda, Teel, Rogers**

**NAYS: None**

**THE VARIANCE IS GRANTED.**

Case Number: A-17-027

Applicant: Moonlight Ridge Home Owner’s Association

Owner: Multiple Owners

Council District: 8  
 Location: 20842 Great Navajo  
 Legal Description: Lots 40, 41, 42, 43, and 44, Block A, NCB 16385  
 Zoning: "R-20 MLOD MSAO-1 AHOD" Residential Single-Family  
 Military Lighting Overlay Military Sound Attenuation Overlay  
 Airport Hazard Overlay District  
 Case Manager: Margaret Pahl, AICP, Senior Planner

### **Request**

A request for a three foot variance from the maximum five foot front fence height to allow a predominately open eight foot fence in the front yard.

Margaret Pahl: Senior Planner, presented the background information and staff's recommendation of the variance. She indicated 16 notices were mailed, 0 returned in favor, 1 returned in opposition outside of the 200sq. ft. radius, and no neighborhood association.

Denver and Buddy Cook: applicants, gave a presentation regarding the property, answered all questions and asked the board for their approval.

Sandra Econaga: spoke in opposition and stated the fence would block her scenic view.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-027 closed.

### **MOTION**

**A motion** was made by **Mr. Gragg** "Regarding Appeal No. A-17-027, A request for a three foot variance from the maximum five foot front fence height to allow a predominately open eight foot fence in the front yard, subject property being Lots 40, 41, 42, 43, and 44, Block A, NCB 16385, situated at 20844 Great Navajo, applicant being Moonlight Ridge Home Owner's Association.

I move that the Board of Adjustment grant the applicant's request for variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest. In this case, the public interest is represented by the need for enhanced security around the attractive mountain "lookout". Therefore, the variance is not contrary to the public interest.*
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. Literal enforcement of the ordinance would require that the applicant construct five-foot tall predominately open front yard fencing, adequate along residential neighborhood streets. The special condition however is the remote aspect of this location, along with the sinking grade beyond the street edge. This topography makes literal enforcement an unnecessary hardship.*

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. Front yard fencing is generally limited to open fencing to provide natural surveillance from inside the homes. In this case however, one of the lots is a flag lot, making the home site behind other homes. Other lots are sloping below the street edge, reducing the potential for meeting the intent of the fencing limitation. Therefore the variance observes the spirit.*
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the “R-20 MLOD MSAO AHOD” Residential Single-Family Military Lighting Overlay Military Sound Attenuation Overlay Airport Hazard Overlay District.*
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located. The proposed fencing is necessary given the remote location. The cul-de-sac created a park-like “overlook” at the expense of private property owners. The fencing and the new home construction will alter this character while respecting private property rights associated with the unique location.*
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property. The plight of the owner and the unique circumstance is due to the remote rural character of this unique location, along with the topography which makes the cul-de-sac the highest portion of the peak.”* The motion was seconded by **Mr. Rodriguez.**

**AYES:** Gragg, Rodriguez, Teel, Cruz, Neff, Finlay, Ojeda, Kuderer, Martinez, Quijano, Rogers

**NAYS:** None

### **THE VARIANCE IS GRANTED**

Case Number: A-17-035

Applicant: Juan and Juana M. Lopez

Owner: Juan and Juana M. Lopez

Council District: 4

Location: 8754 Seven Seas

Legal Description: Lot 32, Block 32, NCB 17512

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

Case Manager: Shepard Beamon, Senior Planner

### **Request**

A request for a special exception to allow a six foot solid wooden fence in the front yard, as described in Section 35-514 (c)(2).

Shepard Beamon: Senior Planner, presented the background information and staff’s recommendation of the variance. He indicated 42 notices were mailed, 0 returned in favor, 0 returned in opposition, and no response from the Southwest Community Association.

Juana Lopez: applicant, gave testimony regarding the tension between neighbors. She gave evidence of multiple police reports between the neighbors. Once the fence went up, things have calmed between the two neighbors. (Spanish translations requested)

Joel Tontia Gonzalez: Spoke in opposition

Leticia Magdalena Tonitia: Spoke in opposition

Stephanie Lopez: 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-17-035 closed.

## MOTION

**A motion** was made by **Mr. Martinez**. “Regarding Appeal No. A-17-035, a request for a special exception to allow a six foot solid wooden fence in the front yard, subject property being Lot 32, Block 32, NCB 17512, situated at 8754 Seven Seas Drive, applicant being Juana Lopez.

I move that the Board of Adjustment grant the applicant’s request for a special exception to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

- A. *The special exception will be in harmony with the spirit and purpose of the chapter. **The additional fence height is intended to provide safety, security, and privacy of the applicant. If granted, this request would be in harmony with the spirit and purpose of the ordinance.***
- B. *The public welfare and convenience will be substantially served. **A six foot fence was built to provide privacy for the family and their property. This is not contrary to the public welfare and justice will be served as the fence does not hinder the adjacent property line of vision from their driveway.***
- C. *The neighboring property will not be substantially injured by such proposed use. **The fence is highly unlikely to injure adjacent properties. The fence does not obscure the neighboring property’s vision from their driveway and does not interfere with the Clear Vision requirements.***
- D. *The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought. **The fencing does not detract from the character of the neighborhood. Several properties include six foot solid wood privacy screening on the lot. It is unlikely to go noticed by passersby.***
- E. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district. **The purpose of the fencing standards is to protect the health, safety and general welfare of the public, enhance property values, and improve the appearance of the community. The owner wishes to keep the six foot fencing to provide additional screening and privacy for their family. Therefore, the requested special exception will not weaken the general purpose of the district.”** The motion was seconded by **Mr. Neff**.*

**AYES: Martinez, Neff, Ojeda, Finlay, Rodriguez, Cruz, Gragg, Teel, Quijano, Kuderer, Rogers**  
**NAYS: None**

### **THE VARIANCE IS GRANTED**

Case Number: A-17-029

Applicant: Gilbert Resendez  
 Owner: Gilbert & Ysabel Resendez  
 Council District: 3  
 Location: 1719 Amanda Street  
 Legal Description:  
 Lot 11, Block 14, NCB 7532  
 Zoning: "R-6" Residential Single-Family District  
 Case Manager: Margaret Pahl, AICP, Senior Planner

#### **Request**

A request for a 10 foot variance from the minimum 20 foot rear setback, as described in Table 35-310, to allow an addition 10 feet from the rear property line.

Margaret Pahl: Senior Planner, presented the background information and staff's recommendation of the variance. She indicated 24 notices were mailed, 0 returned in favor, 0 returned in opposition, and no neighborhood association.

Gilbert Resendez: applicant, stated the rear addition is his best option. A front addition would triple the cost.

#### **No citizens appeared to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-029 closed.

#### **MOTION**

**A motion** was made by **Ms. Ojeda**, "Regarding Appeal No. A-17-029, a request for a 10 foot variance from the minimum 20 foot rear setback to allow an addition 10 feet from the rear property line, subject property being Lot 11, Block 14, NCB 7532, situated at 1719 Amanda Street, applicant being Gilbert Resendez.

I move that the Board of Adjustment grant the applicant's request for variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.



Specifically, we find that:

1. *The variance is not contrary to the public interest. In this case, the public interest is represented by the minimum setbacks, established to ensure adequate separation for maintenance and access to air and light. The request to reduce the rear setback to 10 feet is not contrary to public interest.*
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. Literal enforcement of the ordinance would require that the applicant construct a building addition to the front of the house. The special condition is that the rear property line is shared with a very deep residential lot, 250 feet deep. The existing house on this neighboring lot is over 150 feet from their rear property line, creating a special condition which makes literal enforcement an unnecessary hardship.*
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. In the UDC, 10 feet is an adequate rear setback in over 60% of the residential zoning districts. Given the adjacent depth of the rear setback, 10 feet observes the spirit of the Code.*
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the “R-6” Residential Single-Family District.*
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located. The building addition is proposed on an existing patio slab which has been in this location for years. In addition, it is in a location that was authorized up until 2009 when the zoning district was changed to permit single-family uses rather than multi-family uses.*
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property. The plight of the owner is due to the large front setback of 45 feet, placing the main structure, with only 700 square feet, 30 feet from the rear property line. A proposed building addition will replace a covered patio with 300 square feet of additional living area and a 10 foot rear setback.”* The motion was seconded by **Mr. Martinez**

**AYES: Ojeda, Martinez, Finlay, Rodriguez, Cruz, Teel, Gragg, Quijano, Kuderer, Neff, Rogers**

**NAYS: None**

### **THE VARIANCE IS GRANTED**

Case Number: A-17-028

Applicant: Jerry Esquivel, Jr.

Owner: Jerry Esquivel, Jr.

Council District: 5

Location: 329 W. Amaya Street

Legal Description: Lot 33 and 34, Block 17, NCB 11337

Zoning: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District  
Case Manager: Shepard Beamon, Senior Planner

### **Request**

A request for 1) a special exception to allow a six foot solid fence in portions of the front yard, as described in Section 35-514 (c)(2); 2) an 5 foot variance from the 15 foot platted front setback, as described in Section 35- 516 (o), to allow a carport to be four feet from the front property line; and 3) a two foot variance from the five foot side setback to allow a carport to be on the side property, as described in Section 35- 310.01(b).

Shepard Beamon: Senior Planner, presented the background information and staff’s recommendation of the variance. He indicated 42 notices were mailed, 1 returned in favor, 0 returned in opposition, and no neighborhood association.

Blanca & Jerry Esquivel Jr.: applicants, stated they will modify the carport as per the request of the Board and asked for approval.

Edward Rodriguez: spoke in favor

Alisa Ellis: spoke in opposition

Rosa Mandy: spoke in opposition

David and Maria Rodriguez: spoke in opposition

Juanita Magallanes: 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-17-028 closed.

### **MOTION**

**A motion** was made by **Mr. Martinez**, “Regarding Appeal No. A-17-028, a request by Jerry Esquivel, Jr. for 1) a special exception to allow a six foot solid fence in portions of the front yard; 2) an 5 foot variance from the 15 foot platted front setback to allow a carport to be 10 feet from the front property line; and 3) a 2 foot variance from the minimum five foot side setback to allow a carport on the side property line, subject property being Lot 33 and 34, Block 17, NCB 11337, situated at 329 W. Amaya Street, applicant being Jerry Esquivel, Jr.

I move that the Board of Adjustment grant the applicant’s request for variances as **modified** and a special exception to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest. The carport is intended to the provided protection of vehicles and personal property. The carport is not directly on the front property line and is not directly in the line of vision of the adjacent property’s driveway.*

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. **Literal enforcement would only grant the applicant a 10 foot wide carport and would not adequately provide enough coverage for all vehicles.***
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. **The spirit of the ordinance would be observed as the carport does not injure the rights of the adjacent property owners and substantial justice will be served. Further, the structure does not encroach in the public right-of-way or hinder motorists and pedestrians.***
4. *The 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. **The carport will not injure the adjacent property as the carport is composed of metal and poses little fire risk to adjacent properties. Further, the carport will not detract from the character of the neighborhood, as there are some carports within the same block, some of which also encroach in front and side setbacks.***
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located. **The owner has expressed concern of damage to their vehicles from inclement weather. Denial of the request would not allow a carport to be built of substantial use due to the lot dimensions and setback requirements.***

Additionally, we find that:

- A. *The special exception will be in harmony with the spirit and purpose of the chapter. **The additional fencing is intended to provide safety, security, and privacy of the applicant. If granted, this request would be in harmony with the spirit and purpose of the ordinance.***
- B. *The public welfare and convenience will be substantially served. **In this case, these criteria are represented by maximum fence heights to protect home owners, and also to provide for a sense of community. A six foot fence was built to provide privacy for the family and their personal property. This is not contrary to the public interest.***
- C. *The neighboring property will not be substantially injured by such proposed use. **The fence will create enhanced security for the subject property and is highly unlikely to injure adjacent properties. Further, the fence does not obscure the neighboring property’s vision from their driveway and does not interfere with the Clear Vision requirements.***
- D. *The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought. **The fencing does not detract from the character of the neighborhood. It is not directly on the front property line and is unlikely to go noticed.***
- E. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district. **The purpose of the fencing***

standards is to protect the health, safety and general welfare of the public, enhance property values, and improve the appearance of the community. The owner wishes to keep the six foot fencing to provide additional screening and privacy for their family. Therefore, the requested special exception will not weaken the general purpose of the district.” Mr. Finlay seconded the motion.

**AYES:** Martinez, Finlay, Ojeda, Rodriguez, Cruz, Teel, Gragg, Quijano, Kuderer, Neff, Rogers

**NAYS:** None

**THE VARIANCE IS GRANTED**

The December 19, 2016 Board of Adjustment Minutes were approved.

Director Report: Staff reminded the Board of the next meeting on February 6, 2017  
And will have a meeting on Presidents Day February 20, 2017.

There being no further discussion the meeting adjourned at 5:35pm.

APPROVED BY: \_\_\_\_\_ OR \_\_\_\_\_  
Chairman Vice-Chair

DATE: \_\_\_\_\_

ATTESTED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Executive Secretary