

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES**

March 20, 2017

DRAFT

Members Present:	Staff:
Seth Teel	Catherine Hernandez, Planning Manager
Frank Quijano	Ted Murphree, City Attorney
Denise Ojeda	Margaret Pahl, Senior Planner
Maria Cruz	Shepard Beamon, Senior Planner
George Britton	Oscar Aguilar, Senior Planner
Henry Rodriguez	
John Kuderer	
Roger Martinez	
Jesse Zuniga	
Mary Rogers	
Richard Acosta	
Alan Neff	

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.

Arianne Villanueva, Worldwide Languages, Interpreter, was present.

Case Number: A-17-070

Applicant: Myfe Moore

Owner: Ethel Moore

Council District: 1

Location: 603 River Road

Legal Description: Lot 14, Block 3, NCB 6202

Zoning: "R-4 H RIO-1 AHOD" Residential Single-Family River

Road Historic River Improvement Overlay 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 30 solar panels on the left slope of a hipped roof.

Margaret Pahl: Senior Planner presented the background information and stated that the applicant requested a continuance.

Mr. Martinez made a Motion to continue item A-17-070 until April 17, 2017. Ms. Cruz seconded the Motion. Ms. Rogers then asked for a voice vote and passed unanimously.

Case Number: A-17-071

Applicant: Jim Poteet

Owner: Laurel Heights Family Trust

Council District: 1

Location: 504 King William

Legal Description: Lot 17, Block 18, NCB 10798

Zoning: "RM-4 H HS RIO-4 AHOD" Residential Mixed King

William Historic Significant River Improvement Overlay Airport Hazard Overlay District

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 13 foot variance from the minimum 20 foot garage setback, as described in Section 35-516(g) to allow a 2-car garage/carriage house seven feet from the side 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, 1 returned in opposition, and no response from the King William Neighborhood Association.

Jim Poteet: Representative stated they wanted to go through all the proper channels to get approval from the City.

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-17-071 closed.

MOTION

A motion was made by **Mr. Kuderer**, "Regarding Appeal No. A-17-071, a request for a 13 foot variance from the minimum 20 garage driveway setback to allow a 2-car carriage house seven feet from the side property line, subject property being Portions of Lots 1 & 2, all of Lots 9 & 10, Block 8, NCB 749, situated at 504 King William, applicant being Jim Poteet.

I move that the Board of Adjustment grant the applicant's request for the 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 Historic District Guidelines. Since the Historic Design and Review Commission approved the request, 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 push the structure farther away from the street, making it inconsistent with the setbacks along the block, an unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The spirit of the ordinance is defined as the intention of the code rather than the exact letter of the law. The intention in this case is to prevent a vehicle from blocking the sidewalk. In this case, it is less likely that the vehicle could park between the garage and the sidewalk since the setback is so severely reduced.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the “RM-4 H HS RIO-4 AHOD” Residential Mixed King William Historic Significant River Improvement 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.*

It is very unlikely that adjacent, conforming property will be injured by the proposed garage. The detailed design was reviewed and approved by the HDRC, with a setback consistent with other structures on the block, a feature that is emphasized in historic districts.

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 unique circumstance on this property is its location in a historic district, with a significant historic structure on the property. Any additional structure should be carefully considered. The proposed location requires a variance from the minimum garage setback to allow the structure to be aligned with a setback similar to other buildings along the blockface.” Mr. Zuniga seconded the motion.

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

NAYS: None

VARIANCE IS GRANTED.

Case Number: A-17-067

Applicant: ACL Creek Ventures, LLC

Owner: ACL Creek Ventures, LLC

Council District: 10

Location: Generally located northwest of the Higgins Road and

Bromley Place Intersection

Legal Description: Lot P-6, NCB 15688

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

Case Manager: Shepard Beamon, Senior Planner

Request

A request for a five foot variance from the ten foot required side setback opposite a zero lot line property, as described in Section 35-373(c)(5)(A), to allow a proposed residential community with five foot side setbacks opposite a zero lot line rather than ten foot side setback.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation of the variance. He indicated 57 notices were mailed, 0 returned in favor, 3 returned in opposition, and no response from the El Chaparral/Fertile Valley Neighborhood Association.

Mr. Martinez: after reviewing the file, recused himself from the Meeting at 1:38pm and was replaced by Mr. Acosta for the remainder of this item.

Irving Aguilar: representative stated they worked hard with staff for this request and asked for the Boards 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-17-067 closed.

MOTION

A motion was made by **Mr. Teel**. "Regarding Appeal No. A-17-067, a request for a five foot variance from the ten foot required side setback opposite a zero lot line property to allow a proposed residential community with five foot side setbacks opposite a zero lot line rather than ten foot side setbacks, subject property being Lot P-6, NCB 15688, situated at northwest corner of the intersection of Higgins Road and Bromley Place, applicant being ACL Creek Ventures, 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 not contrary to the public interest.*

In this case, the public interest is represented by lot layout standards that ensure compatible development within the City of San Antonio. The request meets the minimum five foot spacing requirement to ensure fire separation safety, as required by the City's Fire Protection.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The special condition present in this case is the location of a retention pond on the site. If required to meet the 10 foot setback, the pond will create conditions that limit the spacing, number, and configuration of the homes on the site.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

Granting the requested variances will result in substantial justice in that the proposed development will still meet fire safety codes. Further, substantial justice will be observed as it will allow the applicant to complete the development in a uniform manner.

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.*

Since the request is similar to the previous request heard and approved by the Board and half of the development consists of zero-lot lines, it is unlikely the approval of the variance will result in the alteration of the essential character of the neighborhood. As the five foot setback provides adequate room for maintenance, the reduced setback is unlikely to injure the adjacent property owner.

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.*

Upon construction, the property will have to include a retention pond that will result in a loss of developable space on site to address drainage issues on the site. This is no fault of the owner. Mr. Zuniga seconded the motion.

AYES: Teel, Zuniga, Rodriguez, Neff, Britton, Cruz, Acosta, Ojeda, Quijano, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

Mr. Martinez re-entered the meeting at 1:51pm replacing Mr. Acosta.

Case Number:	A-17-062
Applicant:	Mary Lopez
Owner:	Mary Lopez
Council District:	4
Location:	8418 Windline St
Legal Description:	Lot 3, Block 7, NCB 18820
Zoning:	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Oscar Aguilera, Planner

Request

A request by Mary Lopez for; 1) a 3 foot special exception from the 3 foot limitation for solid screen fencing in the front yard, as described in sec 35-514, to allow a six (6) foot privacy fence along the south property line; and 2) a special exception to allow a seven and a half (7.5) foot fence in the rear yard, as described in sec 35-514.

Oscar Aguilera: Senior Planner presented the background information and staff's recommendation of the variance. He indicated 29 notices were mailed, 0 returned in favor, 3 returned in opposition, and no neighborhood association.

Mary and Roy Lopez: applicant stated they increased the size of the fence to keep their pet in their yard. They tried speaking to the neighbors about their concerns but the situation has escalated causing a need for the fence.

Alex Calderon: spoke in opposition

Sharon G Navarro: 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-17-062 closed.

MOTION

A motion was made by **Mr. Neff**. "Regarding Appeal No. A-17-062, a request for 1) a 3 foot special exception from the 3 foot limitation for solid screen fencing in the front yard to allow a six foot privacy fence along the south property line to **extend to approximately the planter boxes or 15 feet from the front property line**; and 2) a special exception to allow a seven and a half foot fence in the rear yard subject property being Lot 3, Block 7, NCB 18820, situated at 8418 Windline Street, applicant being Mary Lopez.

I move that the Board of Adjustment grant the applicant's request for two special exceptions 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 UDC allows eight (8) foot rear fences as a special exception, authorized under certain circumstances in accordance with specific factors as described in this report. The additional fence height is intended to provide safety, security, and privacy of the applicant; the owner is requesting less than the fence height allowed with a specific exception. This is within harmony with the purpose of the chapter.**
- 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. Allowing the six (6) foot side front fence and the seven and a half (7.5) rear fence heights will serve to provide increased security of the property, her dog, screening and reduce conflict with the neighbors. This is not contrary to the public interest.**

- C. The neighboring property will not be substantially injured by such proposed use. **The front and rear fence will create enhanced security for the subject property and is highly unlikely to injure adjacent properties. The fence will not be erected within the fence clear vision area.**
- 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 front and rear fence would not significantly alter the character of the community. Additionally, as the owners have a dog that could clear a six (6) foot fence, the additional rear fence height will reduce any safety risks the dog may potentially cause.**
- 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 special exception request is to add security for the owner and her neighbors.** Therefore, the requested special exception will not weaken the general purpose of the district.” **The Motion** was seconded by **Mr. Kuderer.**

Mr. Martinez made a motion to delete the front fence portion of the request and allow for the 7.5 special exception for the rear fence. Mr. Kuderer seconded the motion. Ms. Rogers called for a voice vote to amend the motion, with only Ms. Rogers voting Against, Motion Passes.

A roll call vote was taken for the Amended motion, A Special Exception to allow a seven and a half foot fence in the rear yard subject property.

AYES: Neff, Kuderer, Ojeda, Britton, Teel, Zuniga, Rodriguez, Cruz, Martinez, Quijano, Rogers
NAYES: None

THE REAR VARIANCE APPROVED.

Mr. Neff made a Motion for a Roll Call vote on the front yard fence using the findings of fact from the previous Motion. “Regarding Appeal No. A-17-062, a request for a 3 foot special exception from the 3 foot limitation for solid screen fencing in the front yard to allow a six foot privacy fence along the south property line to **extend to approximately the planter boxes or 15 feet from the street curb as stated by the applicant** subject property being Lot 3, Block 7, NCB 18820, situated at 8418 Windline Street, applicant being Mary 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 **according to the previous findings of fact.** **Mr. Kuderer** Seconded the motion.

AYES: Neff, Kuderer, Ojeda, Britton, Rogers
NAYES: Teel, Zuniga, Rodriguez, Cruz, Martinez, Quijano

THE FRONT VARIANCE FAILED.

The Board of Adjustment convened for 10 minute break at 2:55pm

The Board of Adjustment reconvened at 3:05pm

Case Number:	A-17-072
Applicant:	Kathy DeLeon
Owner:	Kathy DeLeon
Council District:	2
Location:	1903 Dellhaven
Legal Description:	Lot 5, Block 7, NCB 13176
Zoning:	"R-5" Residential Single-Family District
Case Manager:	Shepard Beamon, Senior Planner

Request

A request for 1) a 7 foot variance from the 10 foot front setback, as described in Section 35-310.01, to allow a carport 3 feet from the front property line, and 2) a variance from the distance restriction that requires that architectural features remain 3 feet from a property line, as described in Section 35-516 (j), to allow an eave overhang on the front property line.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation of the variances. He indicated 23 notices were mailed, 0 returned in favor, 0 returned in opposition, and no response from the Dellcrest Area Neighborhood Association.

Kathy De Leon: applicant stated she hired a contractor who failed obtain permits. She believed all construction was in compliance.

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-17-072 closed.

A motion was made by **Mr. Martinez**. "Regarding Appeal No. A-17-072, a request for a 7 foot variance from the 10 foot front setback to allow a carport 3 feet from the front property line, subject property being Lot 5, Block 7, NCB 13176, situated at 1903 Dellhaven, applicant being Kathy De Leon.

I move that the Board of Adjustment grant the applicant's request for the 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.*
The carport does not encroach into the public right-of-way and is made metal, reducing the risk of fire spread. The overhang will be removed to comply with the distance within the variance.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The literal enforcement will result in the removal of a significant amount of the carport, creating an unnecessary hardship.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
Substantial justice would be served as there are several metal carports within the subdivision.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the “R-5” 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.*
As the carport is constructed of metal and sits adjacent to a drainage easement, it is highly unlikely that the carport will have any negative impact on the adjacent properties. Also, metal carports are prevalent within the subdivision.
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 several vehicles that are in need of protection, the carport is necessary to accommodate the needs of the owner. The current setback reduces the amount of coverage the owner is able to have.” The motion was seconded by Mr. Neff.

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

NAYS: None

THE VARIANCE PASSES

A second motion was made by Mr. Neff, “Regarding Appeal No. A-17-072, a request for a variance from the distance restriction that requires that architectural features remain 3 feet from a property line to allow an eave overhang on the front property line, subject property being Lot 5, Block 7, NCB 13176, situated at 1903 Dellhaven, applicant being Kathy De Leon.

I move that the Board of Adjustment grant the applicant’s request for the 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.*
The carport does not encroach into the public right-of-way and is made metal, reducing the risk of fire spread.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The literal enforcement will result in the removal of a significant amount of the carport, creating an unnecessary hardship.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
Substantial justice would be served as there are several metal carports within the subdivision.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the “R-5” 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.*
As the carport is constructed of metal and sits adjacent to a drainage easement, it is highly unlikely that the carport will have any negative impact on the adjacent properties. Also, metal carports are prevalent within the subdivision.
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 several vehicles that are in need of protection, the carport is necessary to accommodate the needs of the owner. The current setback reduces the amount of coverage the owner is able to have.” Ms. Ojeda seconded the Motion.

Mr. Neff (Motion) and Ms. Ojeda (Second) withdrew their motion. A voice vote was taken and passed unanimously.

The Board of Adjustment convened for a 15 minute break at 2:40pm

The Board of Adjustment reconvened at 2:55pm

Case Number: A-17-068

Applicant: Tirso Zarate

Owner: Tirso Zarate

Council District: 5

Location: 711 Winnipeg Avenue

Legal Description: Lot 10 and East 16.66 feet of Lot 9, Block 8, NCB 7062

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

Case Manager: Shepard Beamon, Senior Planner

Request

A request for a four (4) foot variance from the minimum five (5) foot side setback, as described in Section 35-310, to allow an addition to the primary dwelling to be built one (1) feet from the side property line.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation of the variance. He indicated 31 notices were mailed, 0 returned in favor, 5 returned in opposition, and no neighborhood association.

Tirso Zarate: applicant stated he rebuilt the home with the same footprint of the previous home for his family. He stated the outside of the house is made of hardy plank and was going to live there with his family.

Maria Amador: spoke in opposition

Esteban Amador: spoke in opposition

Enjoli Todd: spoke in opposition

Sylvia A. Gonzalez: spoke in opposition

Delia Leon: 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-17-068 closed.

A motion was made by **Mr. Cruz**. "Regarding Appeal No. A-17-068, a request for a **two** foot variance from the five foot side setback to allow an **addition three feet** from the side property line, subject property being Lot 10 and a portion of Lot 9, Block 8, NCB 7062, situated at 711 West Winnipeg Street, applicant being Tirso Zarate.

I move that the Board of Adjustment grant the applicant's request for the 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.*

The variance request will allow for building maintenance without trespass and the owner could install a gutter to divert water runoff away from the adjacent property. The addition is being constructed in the same location of the previous garage built over 70 years ago.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The literal enforcement will result in the removal of a major portion of the addition, making it too small for livable space. The addition is in place of the previous garage that was beyond repair.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

Side setbacks were created to provide some separation between homes to prevent the spread of fire. If approved the applicant will have to ensure the structure meets

fire standards and that water runoff does not occur on the adjacent property. Granting the requested variance will result in substantial justice.

4. *The 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.*
The addition does not conflict with the character of the district as many homes have carports, garages, or home additions that encroach into a setback. The original structure was a part of the home for several years and provided no room for maintenance. The new addition allows for maintenance without trespass, and with a gutter, will deflect water runoff on the subject property only.
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 unique circumstance presented in this case is the original location of the previous garage. The original garage was located on the side property line for several decades and did not have any negative impact on the adjacent property.” The motion was seconded by Mr. Rodriguez.

AYES: Cruz, Rodriguez, Zuniga, Teel, Neff, Ojeda

NAYS: Britton, Martinez, Quijano, Kuderer, Rogers

VARIANCE FAILED.

The March 6, 2017 Board of Adjustment Minutes were approved.

Director’s Report: Staff informed the Board of an upcoming Work session regarding measurements of properties that come before the Board. Staff also will bring more information regarding Carport policy at a future date.

There being no further discussion the meeting adjourned at 4:50pm.

APPROVED BY: _____ OR _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: _____
Executive Secretary