

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES**

May 15, 2017

DRAFT

Members Present:

Seth Teel
Frank Quijano
Denise Ojeda
Maria Cruz
George Britton
Jay C. Gragg
Richard Acosta
Roger Martinez
Henry Rodriguez
John Kuderer
Mary Rogers

Staff:

Catherine Hernandez, Planning Manager
Ted Murphree, City Attorney
Margaret Pahl, Senior Planner
Oscar Aguilar, Planner

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.

Olga Valadez, Interpreter was present

Case #A-17-098 was postponed indefinitely.

Case Number: A-17-102

Applicant: Anna Pekarsky

Owner: Anna Pekarsky

Council District: 7

Location: 2414 W Gramercy Place

Legal Description: Lot 6, Block 3, NCB 9102

Zoning: "R-6 NCD-7 AHOD" Residential Single-Family Jefferson

Neighborhood Conservation Airport Hazard Overlay District

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a variance from the Jefferson Neighborhood Conservation District provisions, as described in UDC 35-335, which require that homes use solar shingles or similarly discreet materials, to allow traditional solar panels on the rear-facing slope of the roof.

Margaret Pahl: Senior Planner presented the background information and staff's recommendation of the variance. She indicated 23 notices were mailed, 1 returned in favor, 0 returned in opposition, and the Woodlawn Lake Neighborhood Association, Jefferson and Monticello.

Anna Pekarsky: applicant requested the Boards approval after going through all the proper channels all while having the support of the local Neighborhood Associations.

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-17-102 closed.

A motion was made by **Mr. Gragg**. "Regarding Appeal No. A-17-102, a request for a variance from the Jefferson Neighborhood Conservation District provisions, to allow traditional solar panels on the rear-facing slope of the roof, subject property being Lot 6, Block 3, NCB 9102, situated at 2414 W Gramercy Place, applicant being Anna Pekarsky.

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 public interest is represented by the provisions of the Conservation District which specify that solar panels be discreet. The proposed location of the panels will not be visible from the street.
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 property owner wait until solar shingles are generally available in the marketplace.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The intent of the Code is to preserve the original appearance of the roofline, which this variance will observe.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in "R-6 NCD-7 AHOD" Residential Single-Family Jefferson Neighborhood Conservation 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 applicant is requesting a variance to allow the installation of solar panels which are restricted in the "NCD-7" guidelines. The variance will authorize the installation on the rear facing slope of the roof and will not alter the character of the district.
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 plight of the owner is unique in that they are seeking approval to install energy efficient solar panels on a roofline not visible from the public right of way, in an area where many have been permitted to be installed.” Mr. Martinez seconded the motion.

AYES: Gragg, Martinez, Rodriguez, Teel, Cruz, Quijano, Acosta, Britton, Ojeda, Kuderer, Rogers

NAYS: None

VARIANCE IS GRANTED

Staff read into the record Item#3 A-17-099 and Item#4 A-17-100, they will be heard together but will be voted on separately.

Case Number: A-17-099

Applicant: Armando Sanchez

Owner: Armando Sanchez

Council District: 1

Location: 526 Weizmann Street

Legal Description: Lot E 35ft of 5 & W 25ft of 6, Block 16, NCB 9685

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

Case Manager: Oscar Aguilera, Planner

Request

A request for a special exception, pursuant to Section 35-399.04 of the UDC, to allow an 7.5 foot to allow up to a 7.5 foot fence in the rear yard and a portion of the front yard.

Oscar Aguilera: Planner presented the background information and staff’s recommendation of the variance. He indicated 31 notices were mailed, 2 returned in favor, 0 returned in opposition, and no response from the North Central Neighborhood Association.

Jaime Herrera: representative stated the fence provides safety and privacy for both neighbors and if needed modifications will be done.

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-17-099 closed.

MOTION

A motion was made by **Mr. Rodriguez**, “Regarding Appeal No., A-17-099, a request for a request for a variance from the provision that prohibits corrugated metal as a fencing material, subject property being Lot E. 35 ft. of 5 & W. 25 ft. of 6, Block 16, NCB 9685, situated at 526 Weizmann Street, applicant being Armando Sanchez.

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 public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by fence restrictions in order to provide orderly development and encourage a sense of community. The corrugated metal fence has a minimal view from the street, it is well built, it was built with a guard, and the design and color of the fence matches the home. The fence does not present a public safety issue and does not present a negative impact to the welfare of the public. Therefore, the variance request would not be contrary to the public interest.

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

The applicant has indicated that the soil underneath the fence is unstable and a wood fence can't withstand the movement from the ground. The corrugated metal fence will endure the movement from the ground a lot better than the wood fence. Therefore, allowing the applicant to be able to fence and protect his property.

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

The design of the fence has a minimal view from the street, is well built, was built with a guard, and the design and color of the fence matches the home.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted 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 proposed fence will meet the height requirements of the code. The corrugated metal fence is well built, it was built with a guard, and the design and color of the fence matches the home. The fence does not present a public safety issue and does not present a negative impact to the welfare of the public. By granting the applicant's request for a variance, the proposed fence will maintain the harmony and character of the district.

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 soil underneath the fence is unstable and a wood fence can't withstand the movement from the ground. The corrugated metal fence will endure the movement

from the ground a lot better. Therefore, allowing the applicant to be able to fence and protect his property.” Mr. Kuderer seconded the motion.

AYES: Rodriguez, Kuderer, Martinez, Britton, Acosta, Cruz, Ojeda, Teel, Gragg, Rogers

NAYS: Quijano

VARIANCE IS GRANTED.

Case Number: A-17-100

Applicant: Jaime Herrera

Owner: Jaime Herrera

Council District:1

Location: 530 Weizmann Street

Legal Description: Lot E. 40ft. of 4 & W. 20ft of 5, blk 16, NCB 9685

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

Case Manager: Oscar Aguilera, Planner

Request

A request for a special exception, pursuant to Section 35-399.04 of the UDC, to allow an eight foot wood privacy fence in the rear yard (behind the façade) of the property.

Oscar Aguilera: Planner presented the background information and staff’s recommendation of the variance. He indicated 28 notices were mailed, 2 returned in favor, 0 returned in opposition, and no response from the North Central Neighborhood Association.

Jaime Herrera: applicant stated the fence provides safety and privacy for both neighbors and if needed modifications will be done.

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-17-100 closed.

MOTION

A motion was made by **Mr. Kuderer**. “Regarding Appeal No., A-17-100, a request for a request for a variance from the provision that prohibits corrugated metal as a fencing material, subject property being Lot E. 40 ft. of 4 & W. 20 ft. of 5, Block 16, NCB 9685, situated at 530 Weizmann Street, applicant being Jaime Herrera.

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:

The variance is not contrary to the public interest.

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 restrictions in order to provide orderly development and encourage a sense of community. The corrugated metal fence has a minimal view from the street, it is well built, it was built with a guard, and the design and color of the fence matches the home. The fence does not present a public safety issue and does not present a negative impact to the welfare of the public. Therefore, the variance request would not be contrary to the public interest.

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

The applicant has indicated that the soil underneath the fence is unstable and a wood fence can't withstand the movement from the ground. The corrugated metal fence will endure the movement from the ground a lot better than the wood fence. Therefore, allowing the applicant to be able to fence and protect his property.

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

The design of the fence has a minimal view from the street, is well built, was built with a guard, and the design and color of the fence matches the home.

3. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District.

4. *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 fence will meet the height requirements of the code. The corrugated metal fence is well built, it was built with a guard, and the design and color of the fence matches the home. The fence does not present a public safety issue and does not present a negative impact to the welfare of the public. By granting the applicant's request for a variance, the proposed fence will maintain the harmony and character of the district.

5. *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 soil underneath the fence is unstable and a wood fence can't withstand the movement from the ground. The corrugated metal fence will endure the movement from the ground a lot better. Therefore, allowing the applicant to be able to fence and protect his property." Mr. Rodriguez seconded the motion.

AYES: Kuderer, Rodriguez, Martinez, Britton, Acosta, Cruz, Ojeda, Teel, Gragg, Rogers

NAYS: Quijano

VARIANCE IS GRANTED.

Case Number: A-17-107

Applicant: EIM Partners

Owner: Cosplus Investments, LLC

Council District: 1

Location: 131 Kearney Street

Legal Description: Lot S. 60 ft. of 8, NCB 2956

Zoning: "R-6 H AHOD" Residential Single-Family Lavaca Historic

Airport Hazard Overlay District

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 2,080 sq. ft. variance from the 6,000 sq. ft. minimum lot size requirement in the "R-6" zoning district to allow a lot 3,920 sq. ft. in area, as described in section 35-310.

Margaret Pahl: Senior Planner presented the background information and staff's recommendation. She indicated 36 notices were mailed, 0 returned in favor, 0 returned in opposition, and the Lavaca Neighborhood Association is in support.

Ashley Farman: applicant gave a brief presentation and asked for the Boards approval of the Variance.

Delma Juarez: 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-17-107 closed.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No. A-17-107, a request for a 2,080 sq. ft. variance from the 6,000 sq. ft. minimum lot size requirement to allow a lot 3,920 sq. ft. in area, subject property being S. 60 ft. of Lot 8, NCB 2956, situated at 131 Kearney Street, applicant being EIM Partners.

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 proposed construction of a detached single-family dwelling meets the intentions of the zoning district and is not contrary to the public interest.

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

The subject property is a 3,920 square foot lot that cannot be expanded as the surrounding lots are already developed.

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

Granting the request will result in substantial justice, because the proposed development of a detached single-family dwelling advances the efforts of the zoning designation.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in the “R-6 H AHOD” Residential Single-Family Lavaca Historic 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 applicant will be required to gain approval for the design from the HDRC, for evaluation of compatible design.

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 condition present is that the property has been in its current configuration since 1957 and was given the “R-6” zoning designation in 1965. The plight of this owner and every previous owner is that the property was deeded away with inadequate lot area.” The Motion was seconded by Mr. Teel.

AYES: Martinez, Teel, Cruz, Acosta, Britton, Rodriguez, Gragg, Quijano, Ojeda, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED

The Board of Adjustment convened for 10 minute break at 2:25pm

The Board of Adjustment reconvened at 2:35pm

Case Number: A-17-104

Applicant: Judy Garcia

Owner: Arthur and Elvira Winn

Council District: 2

Location: 3438 Willowwood Blvd

Legal Description: Lot 18, Block 2, NCB 13395

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

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 7 foot variance from the 30 foot platted front setback, as described in UDC 35-516 (o) to allow a carport 23 feet from the front property line.

Margaret Beamon: Planner presented the background information and staff's recommendation of the variances. She indicated 25 notices were mailed, 1 returned in favor, 0 returned in opposition, and no response United Homeowners Association.

President: of Green Energy Efficiency stated the carport was built to hold the solar panels. This was the best angle to harvest the energy of the sun permits were pulled for the electrical but missed pulling the carport permit.

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-17-104 closed.

A motion was made by **Mr. Quijano**. "Regarding Appeal No. A-17-104, a request a 7 foot variance from the 30 foot platted front setback, to allow a carport 23 feet from the front property line, subject property being Lot 18, Block 2, NCB 13395, situated at 3438 Willowwood Blvd, applicant being Judy Garcia.

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 public interest is represented by large open front yards, still provided by the 23 foot front setback. 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 property owner amend the plat to remove the building setback line, an unnecessary hardship. The carport was constructed to enhance the solar power and meets the side setback standards.

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

The intent of the Code is to provide a minimum front setback to create an open streetscape, provided by the current 23 foot front setback, observing the spirit of the Code.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district 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.*

The applicant is requesting a variance to allow the completion the solar panels installed on a new carport. The carport is wooden and could be painted to match the color of the primary home.

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 plight of the owner is not financial and was create over 50 years ago when large open front yards were highly valued. This applicant needed additional solar access than was possible on the existing roof, so the solar installer built a carport without permits.” The motion was seconded by **Mr. Martinez.**

AYES: Quijano, Martinez, Cruz, Teel, Rodriguez, Britton, Acosta, Gragg, Ojeda, Kuderer Rogers

NAYS: None

THE VARIANCE IS GRANTED

Case Number: A-17-106

Applicant: Jorge Rivera and Daniela Milan

Owner: Jorge Rivera and Daniela Milan

Council District: 4

Location: 7406 Bronco Lane

Legal Description: Lot 33, Block 12, NCB 15541

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

Case Manager: Margaret Pahl, Senior Planner

Request

A request for a 1) a 14 foot variance from the 30 foot platted front setback, as described in Section 35-516 (o) and 2) a 3 foot variance from the 5 foot side setback, as described in Table 35-310, to allow a carport 16 feet from the front property line and 2 feet from the side.

Margaret Pahl: Senior Planner presented the background information and staff's recommendation. She indicated 31 notices were mailed, 0 returned in favor, 1 returned in opposition, and no response from the Lackland Terrace Neighborhood Association.

Jorge Rivera and Daniella Milan: applicant requested Interpretation services. She stated the need for the carport due to heavy hail damage to their vehicle and husbands tools 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-17-106 closed.

A motion was made by **Mr. Teel**. “Regarding Appeal No. A-17-106, a request for 1) a 14 foot variance from the 30 foot platted front setback, and 2) a 3 foot variance from the 5 foot side setback, to allow a carport 16 feet from the front property line and 2 feet from the side, subject property being Lot 33, Block 12, NCB 15541, situated at 7406 Bronco Lane, applicants being Jorge Rivera and Daniela Milan.

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 public interest is represented by adequate setbacks to preserve an open front setback and provide a side setback to allow maintenance. Therefore, these requested variances are 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 property owner amend the plat to remove the building setback line, an unnecessary hardship. The requested variance to the side setback is minor in nature.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The intent of the Code is to provide a minimum front setback to create an open streetscape, provided by the current 16 foot front setback, observing the spirit of the Code.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in the “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District.*
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*
The applicant is requesting a variance to allow the completion of a carport, built without permits. If the requested variances are approved, the carport will not alter the character of the district, which has seen the addition of three or four carports on this block in the last two years.
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 plight of the owner is not financial and was created over 50 years ago when large open front yards were highly valued. More recently, weather abnormalities have increased the desire to have protection for vehicles, not the fault of the owner.”
 The motion was seconded by Mr. Rodriguez.

AYES: Teel, Rodriguez, Cruz, Britton, Quijano, Kuderer, Acosta, Gragg, Ojeda, Martinez, Rogers

NAYS: None

THE IS VARIANCE IS GRANTED

Case Number: A-17-103

Applicant: Juan Perez

Owner: Juan Perez

Council District: 4

Location: 11327 Valley Star Drive

Legal Description: Lot 12, Block 14, NCB 14564

Zoning: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 5.5 foot variance to allow a home addition 14.5 feet from the rear property line.

Margaret Pahl: Senior Planner presented the background information and staff’s recommendation. She indicated 35 notices were mailed, 0 returned in favor, 0 returned in opposition and no neighborhood association.

Adolpho Perez Jr: representative stated the addition is needed for his brothers growing family and will maintain the integrity of the home.

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-17-103 closed.

A motion was made by **Mr. Martinez**. “Regarding Appeal No. A-17-103, a request for a 5.5 foot variance from the minimum 20 foot rear setback, to allow a rear addition 14.5 feet from the rear property line, subject property being Lot 12, Block 14, NCB 14564, situated at 11327 Valley Star Drive, applicant being Juan Perez.

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 public interest is represented by a minimum rear setback, which is 10 feet in 9 of the 15 zoning districts, making this request not contrary to public interest.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
Literal enforcement would require that the owner reduce the depth of the 16 foot addition by 6 feet, an unnecessary hardship. The small addition retains a 14 foot rear setback.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The intent of the rear setback is to provide open space for air and light, allow rainwater to recharge the groundwater and provide for quiet enjoyment of the outdoor space. This goal can be satisfied with the proposed 14 foot setback.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in* **“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District.**
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

The applicant is requesting a variance from the minimum rear setback, after already having gotten permission from CPS to allow the addition of a small bedroom. The addition is not visible from the public right of way and still provides a 14 foot setback.

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 plight of the owner is unique in that they gained approval from CPS to encroach into their utility easement and was later given a building permit for the addition.” The motion was seconded by Rodriguez.

AYES: Martinez, Rodriguez, Britton, Gragg, Ojeda, Teel, Cruz, Acosta, Quijano, Kuderer, Rogers

NAYS: None

VARIANCE IS GRANTED.

Case Number: A-17-105

Applicant: Ricardo Lerma

Owner: Ricardo Lerma

Council District: 4

Location: 939 Santa Anna

Legal Description: Lot 1, Block C, NCB 8800

Zoning: “R-4” Residential Single-Family District

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 6 foot variance from the platted 18 foot rear setback line to allow a detached garage 12 feet from the rear property line.

Oscar Aguilera: Planner presented the background information and staff’s recommendation. He indicated 39 notices were mailed, 0 returned in favor, 0 returned in opposition and no neighborhood association.

Juan Perez: applicant stated the need for the garage for lack of parking and eventually turning the garage into a living dwelling.

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-17-105 closed.

A motion was made by **Mr. Teel**. “Regarding Appeal No. A-17-105, a request for a six (6) foot variance from the platted 18 feet rear setback line to allow a detached garage to be 12 feet from the rear property line, subject property being Lot 1, Block C, NCB 8800, situated at 939 Santa Anna Street, applicant being Ricardo Lerma.

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:

The variance is not contrary to the public interest.

The public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by setback limitations to protect property owners from the overcrowding of structures. The City's zoning setback of 5 feet for accessory structures provides this protection in other areas. Since the detached garage meets the side setback and the rear setback will be 12 foot from the property line and not within the recorded utility easement, the variance request from the recorded plat's setback would not be contrary to the public interest.

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

Literal enforcement of the platted setback would not allow any detached garage. Providing equal treatment of enforcing the 5 feet zoning setback is not a hardship.

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

The spirit of the ordinance represents the intent of the requirement. The City zoning setback is 5 feet and represents the ordinance and the proposed detached garage meets this spirit.

3. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-4" Residential Single-Family District.

4. *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 carport will meet the side setback of 5 feet. There are other detached garages prevalent in the area. A 6 foot variance from the 18 foot platted setback for a 5 foot rear setback for will be equivalent to the City's established standard for rear setback accessory structures.

5. *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 City of San Antonio has an established 5 feet rear setback for rear setback accessory structures applied in all residential districts, and the proposed detached garage meets this established setback." The motion was seconded by Ms. Cruz.

AYES: Teel, Cruz, Rodriguez, Britton, Ojeda, Martinez, Quijano, Gragg, Acosta, Kuderer, Rogers

NAYS: None

VARIANCE IS GRANTED.

The May 1, 2017 Board of Adjustment Minutes were approved.



Director's Report: none



There being no further discussion the meeting adjourned at 3:30pm.

APPROVED BY: _____ DATE: _____ Chairman

OR _____ DATE: _____ Vice-Chair

ATTESTED BY: _____ DATE: _____
Executive Secretary