

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
November 6, 2017**

Members Present:

Mary Rogers
Jay Gragg
Donald Oroian
Denise Ojeda
Roger Martinez
Maria Cruz
Alan Neff
Dr. Lisa Zottarelli
Jesse Zuniga
Jeff Finlay
Richard Acosta
John Kuderer

Staff:

Catherine Hernandez, Planning Manager
Joseph Harney, City Attorney
Logan Sparrow, Principal Planner
Oscar Aguilera, 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.

Herman Perez, World Wide Languages-Interpreter, present.

Case A-17-181 has been withdrawn.

Case A-17-194 has been postponed.

Case Number:	A-17-178
Applicant:	Carter Thurmond
Owner:	Cavender Holdings LTD
Council District:	7
Location:	5730 NW Loop 410
Legal Description:	Lot 6, Block 1, NCB 15053
Zoning:	"I-1 AHOD" General Industrial Airport Hazard Overlay District
Case Manager:	Oscar Aguilera, Planner

Request

A request for 1) a 15 foot variance from the 150 foot minimum required distance between two signs, as described in Chapter 28, Section 28-47(D), to allow two signs to be 135 feet apart and 2) a 7.5 foot variance from the maximum 37.5 foot tall sign height, as described in Chapter 28, Section 28-47(D), to allow a second sign to be 45 feet tall.

Logan Sparrow, Principal Planner presented the background information and staff's recommendation of the variance. He indicated 6 notices were mailed, 0 returned in favor, and 0 returned in opposition. No response from the Thunderbird Neighborhood Association.

Andrew Perez, Chief Sign Inspector, verified the sign content will change.

Carter Thurmond, representative stated the applicant was merely updating the sign. He also stated the property was recently platted requiring the variance.

No one 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-17-178 closed.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No A-17-178, a request for 1) a 15 foot variance from the 150 foot minimum required distance between two signs, as described in Chapter 28, Section 28-47(D), to allow two signs to be 135 feet apart and 2) a 7.5 foot variance from the maximum 37.5 foot tall sign height, as described in Chapter 28, Section 28-47(D), to allow a second sign to be 45 feet tall, subject property being Lot 6, Block 1, NCB 15053, 5730 NW Loop 410, applicant being Carter Thurmond.

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 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 proposed signs will replace the current signage and, when completed, the new signs will be identical in height and size to the existing signs. The new signage will comply with Toyota's new requirements in order to better promote the business and increase visibility.

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 property owner is replacing the existing signs. The request is not out of character with the surrounding commercial properties.

B. Granting the variance will not have a substantially adverse impact on neighboring properties.

The proposed variance will not have an adverse impact on neighboring properties as many of the properties surrounding the subject property are also auto dealers or other commercial properties with similar signage. The height and size will be similar to the existing signage.

C. 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 the request will not exceed the maximum 50 foot sign height for the street classification, Expressway. The requested minimum distance and height provides reasonable limits on signage to help preserve economic cornerstones. Further, the request will 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. Kuderer.

AYES: Martinez, Kuderer, Gragg, Finlay, Cruz, Ojeda, Neff, Zottarelli, Oroian, Zuniga, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

Case Number:	A-17-173
Applicant:	Eco Site LLC.
Owner:	Eco Site LLC.
Council District:	7
Location:	2814 Majestic Dr
Legal Description:	
Zoning:	Zoning: "C-2 NCD-3 AHOD" Commercial Ingram Hills Neighborhood Conservation Airport Hazard Overlay District
Case Manager:	Logan Sparrow, Principal Planner

Request

A request for a 135 foot variance from the 200 foot distance requirement between a wireless communication tower and all residential zoning districts to allow a distance of 65 feet.

Logan Sparrow, Principal Planner presented the background information and staff's recommendation of the variance. He indicated 27 notices were mailed, 4 returned in favor, and 3 returned in opposition. No response from the Ingram Hills Neighborhood Association.

Bebb Francis, representative gave an extensive presentation with detailed information as to his clients reasons for the need of the cell tower. Mr. Francis also answered all questions from the Board. He then introduced Mr. David Orris who also answered questions.

The Following citizens appeared to speak.

Jodi Groff, spoke in opposition

Patrick Groff, spoke in opposition

Donald V. Varella, spoke in opposition

Mike Phillips, spoke in opposition

After further discussion the **Ms. Rogers** read the following statement:

"The time is now 2:40. The City of San Antonio Board of Adjustment, in accordance with Section 551.071 of the Texas Government Code, shall now go into executive session for the purpose of a confidential Attorney/Client discussion of legal issues related to items: Case A-17-173. After such deliberation, the Commission will reconvene in Open Session."

The Board returned at 3:09 p.m. Ms. Rogers read the following statement into the record:

"The time is now 3:10 p.m. The Board of Adjustment met in Executive Session and is now reconvening in Open Session."

Bebb Francis, continued his presentation and answered more questions.

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-17-173 closed.

MOTION

A motion was made by **Ms. Ojeda**. "Regarding Appeal No A-17-173, a request for a 135 foot variance from the 200 foot distance requirement between a wireless communication tower and all residential zoning districts to allow a distance of 65ft subject property being lot 28, Block 2, NCB 14144, situated at 2814 Majestic Drive, applicant being Eco-Site, LLC.

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 been 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 is not contrary as the tower is necessary to provide adequate radio frequency signal strength to better serve those individuals within close proximity. Per the applicant, the applicant, the location selected is the best location to achieve this goal.

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

Literal enforcement would result in an unnecessary hardship as the wireless provider cannot collocate on an existing tower as there are no suitable structures within a ½ mile radius that could be reasonably altered for a substantial additional height to meet the engineering requirement.

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

As the tower will meet all other requirements required for a wireless communications tower and is permitted by right in the "C-2" zoning district, the request respects the spirit of the ordinance.

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 variances will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-2 NCD-3 AHOD" commercial Ingram Hills 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 requested 65 foot distance should not negatively impact the adjacent residential properties as the tower will be small in overall footprint. The requested distance is adequate room to maintain the structure without trespass on any adjacent property.

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 *in nature* and are not due to or the result of general conditions in the district in which the property is located.

As the lot measures less than 165 feet wide, there is no possible way to meet the distance requirement. End of motion. **Mr. Martinez** seconded the motion.

Ms. Rogers: Discussion, Ms. Ojeda since you started it Roberts Rules allows you to be the first to discuss it.

Ms. Ojeda: Thank you. I will not be supporting this motion and my reason is I am an Analyst by trade and I am also a technologist meaning I work for a technology company. I have an understanding of how technology works and in big building coverages our behavior is such that companies will purchase their own internal wireless systems to improve wireless coverage for their employees. I also understand that as an analyst you can make a projection, you can make an assumption for how a trend is going to lay out in the future but at the end of the day customer behavior and in this case Mother Nature, natural disasters are very, very, very unpredictable. The biggest concern I have with this variance is its close proximity to a neighboring property and even the engineering letter states that an approximately a 60 foot piece of tower would have to land perfectly within a 35 foot radius based on the modeling that they used. Their model makes a very specific as an analyst when you create these types of models you enter very specific circumstances and you just wait for an output. Again, Mother Nature, people are all factors that can never be controlled for. Therefore it is my opinion that granting a 135 foot radius for this tower I am just not simply not comfortable with that from a safety perspective.

Ms. Rogers: Who did the second? Mr. Martinez, go ahead.

Mr. Martinez: this is a very interesting case because there was a lot of information was tossed about suggesting some sort of fact but what we are actually looking at here is a variance on the existing UDC and in this particular instance the radius is actually 65 feet not 135 because the motion was for 135 variance the from 200 which would make it 65 feet. The reality is the UDC was designed originally and I understand people think they were a part of this, but this actually comes from national standards and is applied differently in different residences for different purposes, for instance a problem in New York City you can't drop a rock without being 20 feet from a residence so you have different codes there. But here in San Antonio we have a vast amount of property around and to choose one particular location in this particular instance it looks to me that there's not a hardship in regards to the property as more as a hardship in regard to the operators. As for the financial nature of this and this is only a financial nature for the operators has nothing to do with the property what so ever. Therefore for that particular reason again I will be voting against this measure.

Ms. Rogers: Thank you. Anyone else? Mr. Neff.

Mr. Neff: I will not be able to support this applicants request today. To request a 135 foot variance from the 200 foot requirement I believe is excessive when you have neighbors that will be 65 feet away many of which are in opposition to the applicant's request. As was already stated the engineers letters state there is about 59.9 feet of a tower would likely would fall within a 35 foot radius. That is simple too close to the limits that we would be establishing of 65 feet from a neighboring property and therefore I am not comfortable with approving this variance today. Thank you.

Ms. Rogers: Anyone else? I hear dead silence. Alright in that case. Hector would you take the roll?

Hector Hernandez: called for a roll call.

Hector Hernandez: Ms. Ojeda?

Ms. Ojeda: I do not concur with the findings of fact.

Hector Hernandez: Mr. Martinez?

Mr. Martinez: No.

Hector Hernandez: Mr. Zuniga?

Mr. Zuniga: (voted No, inaudible)

Hector Hernandez: Mr. Oroian?

Mr. Oroian: No.

Hector Hernandez: Mr. Gragg?

Mr. Gragg: I do concur with the findings of fact.

Hector Hernandez: Ms. Cruz?

Ms. Cruz: I do not concur.

Hector Hernandez: Mr. Finlay?

Mr. Finlay: I concur with the findings of fact.

Hector Hernandez: Mr. Neff?

Mr. Neff: I do not concur with the findings of fact.

Hector Hernandez: Dr. Zottarelli?

Dr. Zottarelli: I do not concur with the findings of fact.

Hector Hernandez: Mr. Kuderer?

Mr. Kuderer: I do concur with the findings of fact.

Hector Hernandez: Madam Chair?

Madam Chair Rogers: And I also concur with the findings of fact. However this motion has failed it was 7 opposed and 4 in favor of. Are we ready for the next case? Oh and you may get with the staff, you should call them and make an appointment to see what your options are.

THE VARIANCE FAILED

Case Number:	A-17-188
Applicant:	Jeffry Post
Owner:	Jeffry Post
Council District:	1
Location:	946 West Lullwood Avenue
Legal Description:	Lots 47 and 48, Block 7, NCB 3106
Zoning:	"R-6 NCD-5 AHOD" Residential Single-Family Beacon Hill Neighborhood Conservation Airport Hazard Overlay District
Case Manager:	Logan Sparrow: Principal Planner

Request

A request for a ten percent variance from the limitation that an accessory dwelling unit not exceed 40 percent the size of the primary dwelling to allow an accessory dwelling unit to be 50 percent the size of the primary dwelling.

Logan Sparrow, Principal Planner presented background, and staff's recommendation of the variance request. He indicated 29 notices were mailed, 0 returned in favor, and 0 returned in opposition and no response from the Beacon Hill Neighborhood Association.

Jeffrey Post, applicant stated he bought the property when it was being used as a residence and has brought the property up to code since purchasing the property.

No one 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-17-188 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Regarding Appeal No A 17-188, a request for a ten percent variance from the limitation that an accessory dwelling unit not exceed 40 percent the size of the primary dwelling to allow an accessory dwelling unit to be 50 percent the size of the main dwelling, subject property being Lots 47 and 48, Block 7, NCB 3106, situated at 946 W. Lullwood Avenue, applicant being Jeffrey Post.

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 been 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 limitations on accessory structure size to prevent each single-family lot from having two houses. The applicant wishes to convert what was originally built as a garage in an accessory dwelling unit. The unit will exceed the limitation by 63 square feet. Because the applicant is not proposing to enlarge the footprint of the structure, which has remained in the current footprint for 92 years, the Boards find that the request is not contrary to the public interest.

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

The Special condition present in this case is that the structure has existed in the current footprint since 1925. A literal enforcement of the ordinance would require that either the primary dwelling or the accessory unit be shrunk to accommodate the 40 percent size limitation.

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 the intent of the requirements rather than the strict letter of the law. The intent of the limitation is to prevent each single family lot from having two full-sized homes. As the proposed accessory dwelling unit is only 360 square feet, the Board finds that the spirit of the ordinance will be upheld.

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-6 ncd-5 AHOD" Residential Single-Family Beacon Hill Neighborhood Conservation Airport Hazard Overlay District.

5. Such a 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 structure has been in same configuration for 92 years, the Board finds that the variance request is unlikely to harm adjacent property owners.

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 circumstances present in this case is that the structures is being renovated, but not enlarged. Because there is no expanded footprint, it is difficult to establish how the request could harm adjacent owners or detract from the character of the community." The motion was seconded by **Mr. Martinez.**

AYES: Kuderer, Martinez, Oroian, Neff, Zuniga, Gragg, Cruz, Finlay, Ojeda, Zotarelli, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

Mr. Oroian recused himself from Item A-17-180 at 3:35pm and Mr. Acosta sat in for the item.

Case Number:	A-17-180
Applicant:	Alvin Peters
Owner:	Islamic Center of San Antonio
Council District:	8

Location: 8638 Fairhaven Street
Legal Description: Lots 14, Block 6, NCB 14445
Zoning: "O-2" High Rise Office District and "O-2 AHOD" High Rise Office
Airport Hazard Overlay District
Case Manager: Oscar Aguilera, Planner

Request

A request for a 7.5 foot variance from the 15 foot landscape buffer to allow a 7.5 foot landscape buffer.

Oscar Aguilera, Planner, presented background, and staff's recommendation of the variance requests. He indicated 12 notices were mailed, 0 returned in favor, and 0 returned in opposition and no neighborhood association.

Alvin Peters, applicant/architect, stated the applicant needs addition space for prayer, weddings, and others events. He also stated after completion of the addition they will add vegetation to enhance the beauty of the property.

No one 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 17-180 closed.

MOTION

A motion was made by **Mr. Neff. "Regarding appeal No A-17-180, a request for a 7.5 foot variance from the 15 foot landscape buffer to allow a 7.5 foot landscape buffer, subject property being lot 14m Block 6, NCB 14445, 8638 Fairhaven Street, Applicant being Alvin Peters."**

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 applicant will provide a 7.5 foot bufferyard and a six foot tall fence along the property line being affected. The adjacent property is developed as an apartment complex and there are several trees between the properties. The trees created an approximately 30 foot buffer between the residential buildings and the proposed building. Therefore, granting the variance for a seven and a half foot bufferyard requirement along the northwest property will not be 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 15 foot landscape bufferyard would make the addition impossible. The owner will be unable to build since this is the only location for the proposed building and the applicant will be unable to provide the required circulation and fire department accessibility requirements.

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

The intent of the bufferyard is to reduce conflicts between different land uses. The Existing vegetation, proposed fence, and proposed vehicular circulation, in addition to the proposed 7.5 foot bufferyard, will accomplish the intent of the bufferyard requirement.

4. The variance will not authorize the operation of a use on the subject property 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 "o-2" High Rise Office District and :O-2 ahod" High Rise Office 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 seeking a new building addition to an existing religious center, originally constructed in 1996. The new project intends to better serve the community and improve the services for the youth in the community. The effect of the additional building will be mitigated by the location of the multi-family building, the existing trees, the proposed fence, and the proposed vehicular circulation.

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 the unique circumstances present in the case that the structure is being renovated, but not enlarged. Because there is no expanded footprint, it is difficult to establish how the request could harm adjacent owners or detract from the character of the community." **Mr. Martinez** seconded the motion.

AYES: Neff, Martinez, Kuderer, Acosta, Zuniga, Gragg, Cruz, Finlay, Ojeda, Zotarelli, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

Mr. Oroian reentered the meeting at 3:53pm and replaced Mr. Acosta.

Mr. Martinez made a motion to move up item #8, Case A-17-197 ahead of Case A-17-203. Mr. Neff seconded the motion. Ms. Rogers then took a voice vote which passed unanimously.

Case Number: A-17-197
Applicant: David Darr
Owner: VP Huebner LLC
Council District: 8
Location: 12058 Vance Jackson Road
Legal Description: Lot 9, Block 22, NCB 14732
Zoning: "C-2 S CC MLOD-1 ERZD" Commercial Camp Bullis Military Lighting Overlay Edwards Recharge Zone District with Specific Use Authorization and Special City Council approval for a small animal clinic with overnight boarding on the property.
Case Manager: Logan Sparrow, Principal Planner

Request

An appeal by David Darr of the Director's decision to issue a Zoning Verification Letter that allows for outdoor recreational activity for animals at an Animal Clinic.

Applicable Code References

- (a) UDC 35-A101. Animal Clinic. A facility for the prevention, treatment, minor surgery, cure, or alleviation of disease and/or injury in small domestic animals, with all care conducted within a completely enclosed building, provided that noise or odors created by activities within the building are not perceptible beyond the property line, and that no animals are kept outside the building at any time. Overnight boarding of animals is permitted unless expressly prohibited by the zoning district regulations.
- (b) UDC 35-481. Appeals to the Board of Adjustment. The Board of Adjustment is empowered to consider an appeal of a decision by an administrative official, in this case, the Development Services Director. The appeal must be submitted by a person aggrieved the decision. The appeal must include details regarding the incorrect interpretation made by the administrative official, along with any supporting evidence. The Board must consider the appeal at a quasi-judicial public hearing, pursuant to UDC Section 35-404. Their authority allows the Board to affirm, modify or reverse the Director's determination from which the appeal is taken and make the correct order, requirement, decision or determination, with the concurring vote of 75% of its members.

Background

Development Services Department received an application for a Zoning Verification Letter on August 1, 2017. The application included three requests:

- 1) Confirmation of the current zoning of the property.
- 2) Confirmation that the current zoning permits “a facility for the prevention, treatment, minor surgery, cure, or alleviation of disease and/or injury in small domestic animals.”
- 3) And “formal verification that animals are allowed outside for recreational time that is supervised by employees in a designated area under the current zoning designation stated above. San Antonio’s Unified Development Code (“UDC”) definition of “small animal clinic” states that, “no animal may be kept outside the building”. However, the animal’s supervised outdoor recreation time does not translate to being “kept” outdoors as there will not be any boarding or boarding structures (cages) onsite.”

The Zoning Verification Letter issued by staff concluded that the current zoning of the property allows an animal clinic for the prevention, treatment, minor surgery, cure, or alleviation of disease and/or injury in small domestic animals. Further, staff concluded that allowing supervised, outdoor recreation time does not equate to being “kept” outside, so long as there were no outdoor training, boarding, runs, pens, or paddocks.

Catherine Hernandez, Development Services Land Entitlement Administrator presented the background information, and staff’s recommendation of the variance request. She indicated 8 notices were mailed, 0 returned in favor, 1 returned in opposition.

Carl Baker, representative gave an extensive presentation regarding case #A-17-197. Mr. Baker gave his interpretation regarding sections of the Unified Development City Code and read except and definitions from the Webster’s dictionary and the UDC. He went on to repeat excerpts from the code and focused on the words “kept” and the section “no animals kept at any time”. Mr. Baker then gave examples of other animal clinics in the city of San Antonio that do not have outdoor areas.

The following Citizens appeared to speak.

Ken Brown: spoke in opposition.

Caroline Brown: yielded time to Ken Brown

Jason Linehan: spoke in favor.

David Darr: spoke in favor.

Carolyn Monroe: spoke in favor.

Michelle Haussman: spoke in favor.

Summer Greathouse: spoke in favor.

Kris Bentkowski: 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-17-197 closed.

MOTION

A motion was made by **Mr. Martinez**, “Regarding appeal No A-17-197, an appeal of the Director’s decision to issue a Zoning Verification Letter that allows for outdoor recreational

activity for animals at an Animal Clinic, subject property being Lot 9, Block 22, NCB 14732 situated at 12058 Vance Jackson Road, applicant being David Darr.

I move that the Board of Adjustment grant the applicants 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 not allow for outdoor recreational activity for animals at an Animal Clinic." Mr. Oroian seconded the motion.

AYES: Martinez, Gragg, Cruz, Finlay, Ojeda, Zottarelli,

NAYS: Oroian, Zuniga, Neff, Kuderer, Rogers

THE APPEAL HAS BEEN DENIED

Dr. Zottarelli left the Board of Adjustment meeting at 5:13pm and was replaced by Mr. Acosta and convened for a 7 minute break and returned at 5:20pm.

Case Number:	A-17-203
Applicant:	Patrick Christensen
Owner:	Prince Sameer, LTD
Council District:	8
Location:	17818 La Cantera Parkway
Legal Description:	Lot 3, Block 3, NCB 14747
Zoning:	"MPCD MLOD-1 AHOD ERZD" Master Planned Community Camp Bullis Military Lighting Overlay Airport Hazard Overlay Edwards Recharge Zone District
Case Manager:	Logan Sparrow, Principal Planner

Request

A request for an 83 foot variance from the 136 foot distance requirement, as described in section 35-345 (k)(1) to allow a new development to be 53 feet from an adjacent condominium property.

Logan Sparrow, Principal Planner, presented background information, and staff's recommendation of the variance requests. He indicated 93 notices were mailed, 3 returned in favor, 7 returned in opposition and no neighborhood association.

Patrick Christensen, representative presented the applicants case for the variance and answered all of the Boards questions then asked for the Boards approval.

The following Citizens appeared to speak.

Olga Fernandez, requested interpreter services, 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-17-203 closed.

MOTION

A motion was made by **Mr. Finlay**. "Regarding appeal No A17-203, a request for an 83 foot variance from the 136 foot distance requirement to allow a new development to be 53 feet from an adjacent condominium property, subject property being lot 3, Block 3, NCB 14747, situated at 17815 La Cantera Parkway, applicant being Patrick Christensen.

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 setbacks to provide separation between incompatible uses and to ensure fair and equal access to air and light. The purpose of the required setback within the MPCD regulations is to protect adjacent single-family uses. The intention was to provide ample separation between a commercial or multifamily development within a Master Planned Community District and a single-family home, less so far a five story condominium building. As the proposed development is the height as the condo building, and because there will be nearly 160 feet of distance between the two structure, the Board finds that the request is not contrary to the public interest.

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

The special condition in this case is the type of adjacent single-family development. While condominiums are single-family uses, they are not the traditional single-family, detached construction typically afforded strict single-family protections. The require setback within the MPCD is substantial, and the Board finds that it was intended to provide ample separation between detached single-family uses and intense commercial developments.

- 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 the intent of the requirements rather than the strict letter of the law. The intent of the setbacks is to provide sufficient separation between incompatible uses. As the distance, structure to structure, proposed by the applicant is about 160 feet, the Board finds that the intent of the ordinance is upheld.

- 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 "MPCD MLOD-1 AHOD ERZD" Master Planned Community Camp Bullis Military Lighting Overlay Airport Hazard Overlay Edwards Recharge Zone District.

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

The proposed height identical to that of the condominium buildings, and because the two structures will be 160 feet apart, the Board finds that the adjacent property is unlikely to be harmed by the proposal.

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 present in this case is the type of adjacent single-family use. While condominiums are classified as single-family, their layout does not lend to the same need for substantial setbacks.” The motion was seconded by Mr. Martinez.

AYES: Finlay, Martinez, Cruz, Zuniga, Oroian, Ojeda, Gragg, Acosta, Neff, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

At 5:48 pm Mr. Oroian recused himself from Case A-17-193

Case Number:	A-17-193
Applicant:	Jose Cueva
Owner:	Gonzalo Pozo
Council District:	1
Location:	2121 North Saint Mary's Street
Legal Description:	East Irregular 106 Feet of Lot 6 and the East Irregular 118.4 Feet of Lot 7 and the East Irregular 131 Feet of Lot 8, Block 15, NCB 1742
Zoning:	"C-3 H UC-4 AHOD" General Commercial Tobin Hill Historic Urban Corridor Overlay Airport Hazard Overlay District.
Case Manager:	Oscar Aguilera, Planner

Request

A request for a special exception, as described in Section 35-399.04, to allow a predominantly open six foot tall fence in the front yard.

Oscar Aguilera, Planner, presented background information, and staff's recommendation of the variance request. He indicated 28 notices were mailed, 0 returned in favor, 0 returned in opposition and no response from the Tobin Hill Neighborhood Association.

Jose Cuerva, representative explained that while pulling a permit was informed he needed to appear before the Board for a special exception for his proposed fence. He then provided proof of other properties with higher fences.

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-17-193 closed.

MOTION

A motion was made by Ms. Ojeda. **“Regarding Appeal No A-17-193, a request for a special exception to allow a predominantly open six foot tall fence in the front yard, subject property being East Irregular 106 Feet of Lot 6 and the East Irregular 118.4 Feet of Lot 7 and the East Irregular 131 Feet of Lot 8, Block 15, NCB 1742, situated at 2121 North Saint Mary's Street, applicant being Jose Cueva.**

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:

The special exception will be in harmony with the spirit and purpose of the chapter.

The request for a six foot predominantly open fence along the front property line is in harmony with the spirit and purpose of the chapter as the fence is intended to protect the staff and clients and the property owner is replacing an existing six foot tall fence. In addition the Historic Design and Review Commission have approved the proposed design for the six foot front fence.

A. The public welfare and convenience will be substantially served.

Allowing the property owner to replace his existing six foot fence along the front property line will help to prevent acts of trespass in the future and ensure the safety of staff and clients and will comply with the Historic Design and Review Commission requirements. Therefore, the public welfare and convenience will be substantially served.

B. The neighboring property will not be substantially injured by such proposed use.

Granting the requested special exception will not substantially injure the neighboring properties as the fence will be able to protect the subject property from trespass and ensure the safety of employees and clients. In addition there are similar fences in height within the neighboring district.

C. 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 predominately open six foot fencing along the front site property line would not significantly alter the overall appearance of the district since the applicant is complying with the historic design of the district.

D. 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. The special exception request is to allow the same height for the fence in order to add security for the staff and clients. Therefore, the requested special exception will not weaken the general purpose of the district.” Mr. Gragg seconded the motion.

AYES: Ojeda, Gragg, Zuniga, Martinez, Acosta, Neff, Cruz, Finlay, Kuderer, Rogers

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED

Mr. Oroian reentered the meeting at 6:00pm. And Mr. Kuderer left the meeting.

Case Number:	A-17-192
Applicant:	Antonio A. Martinez
Owner:	Antonio A. and Maria D. Martinez
Council District:	6
Location:	5438 Joslyn Lane
Legal Description:	Lot 18, Block 5, NCB 13956
Zoning:	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager:	Oscar Aguilera, Planner

Request

A request for 1) a two foot variance from the ten foot front setback, as described in Table 35-310.01, to allow a carport to be eight feet from the front property line and 2) a four foot and eleven inch variance from the 5 foot side setback, as described in Table 35-310.0 I, to allow a carport to be one inch from the side property line.

Oscar Aguilera, Planner, presented background, and staff's recommendation of the variance requests. He indicated 41 notices were mailed, 1 returned in favor, and 0 returned in opposition and no neighborhood association.

Antonio Martinez, applicant, **requested Interpreter services** stated all he did was rebuild his existing carport after damage from hail and will do what the Board decides.

The following citizens appeared to speak.

Lidia Santiago, 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 17-192 closed.

MOTION

A motion was made by **Mr. Neff**. “Regarding Appeal No A-17-192, a request for 1) a two foot variance from the ten foot front setback to allow a carport to be eight feet from the front property line and 2) a four foot and eleven inch variance from the 5 foot side setback to allow a carport to be one inch from the side property line, subject property being Lot 18, Block 5, NCB 13956, situated at 5438 Joslyn Lane, applicant being Antonio A. Martinez.

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 adequate setbacks to preserve an open streetscape setback and to allow maintenance without trespass. As the proposed carport satisfies these principles, the requested variances are not contrary to public interest. Since the carport already was one inch from the side property line when the owner bought the property twenty years ago, the structure does not represent a safety issue for the adjacent property.

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 and locate the carport elsewhere on the property, which would result in an unnecessary hardship.

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 setback to establish safe and uniform development for the City of San Antonio. As the request does not interfere with Clear Vision along the alley, the applicant has provided gutter for the carport draining away from the adjacent property and the adjacent property is vacant, so the structure does not presents a fire hazard. Therefore, the spirit of the ordinance is upheld.

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

The variance will not authorize the operation of a use other than those uses specifically authorized in the “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District.

5. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.

If the requested variances are approved, the carport will not alter the character of the district, which has seen the addition of several carports over the years. Further, as the requested carport existed at its current location, the request has not affect neighboring properties for the twenty year existence of the carport.

- 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 is that the property owner purchased the property twenty years ago with the existing carport. The carport structured deteriorated and the applicant repaired the non-conforming structure in order to provide coverage for his property and family during inclement weather. During that time the owner expanded the carport into the front setback.” The motion was seconded by Mr. Martinez.

AYES: Neff, Acosta, Oroian, Ojeda, Gragg, Zuniga, Martinez, Cruz, Finlay, Rogers

NAYS: None

THE VARIANCE HAS BEEN GRANTED

Ms. Rogers made a motion to approve the 2018 City of San Antonio Board of Adjustment Meeting Schedule with all members voting in the affirmative.

Ms. Rogers made a motion to approve the October 16, 2017 minutes with all members voting in the affirmative.

Manager’s report: The Board was informed of future meetings for new Members.

There being no further discussion, meeting adjourned at 6:45 pm.

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

DATE: 11-20-17

ATTESTED BY: M. Luff DATE: 11/21/17
Executive Secretary