

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
February 19, 2018**

**DRAFT**

Members Present:	Dr. Zottarelli Mary Rogers Jeff Finlay Donald Oroian Jay Gragg Roger Martinez Maria Cruz George Britton Jr. Seth Teel Maria Cruz	Staff: Catherine Hernandez, Planning Manager Joseph Harney, City Attorney Logan Sparrow, Principal Planner Debora Gonzalez, Senior Planner Dominic Silva, Planner
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**Call to Order**

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

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

Herman Perez, World Wide Languages-Interpreter, present.

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Mr. Oroian recused himself from case #A-18-047 at 1:10pm

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<b>Case Number:</b>	<b>A-18-047</b>
Applicant:	Yasaman Azima Living Trust
Owner:	Yasaman Azima Living Trust
Council District:	2
Location:	1434 East Commerce Street
Legal Description:	Lot 19, Block 3, NCB 598
Zoning:	“AE-1 AHOD” Arts and Entertainment Airport Hazard Overlay District
Case Manager:	Logan Sparrow, Principal Planner

**Request**

A request for 1) a five foot variance from the maximum 15 foot tall light pole height, as described in Section 35-358(c)(1)(A)(3), to allow light poles to be 20 feet tall and 2) a request for a variance from the “AE-1” design requirement that does not allow freestanding signs, as described in Section 35-358-(d)(5)(A), to allow a freestanding pole sign that is 24 feet tall.

Logan Sparrow, Principal Planner, presented the background information and staff's recommendation of the variance. He indicated 43 notices were mailed, 0 returned in favor, and 0 returned in opposition with no response from the Alamodome Gardens and Denver Heights Neighborhood Association is opposed.

Alfred Hernandez, applicant, stated they added 3 more poles on the property for added lighting which will face the property and not the neighborhood.

Lyndsey Thorn, architect stated they took the neighborhood in consideration so that it will not face the homes.

Yasaman Amima, owner, stated all codes will be followed and no issues will arise from the project.

### **No Citizen 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-18-047 closed.

### **MOTION**

A motion was made by **Mr. Teel**. "Regarding Appeal No A-18-047, a request for 1) a five foot variance from the maximum 15 foot tall light pole height to allow light poles to be 20 feet tall and 2) a request for a variance to allow for a 24 foot pole sign up to 150 square feet rather than an attached sign, subject property located at 1434 E. Commerce Street, applicant being Yasaman Azima Living Trust.

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 is seeking additional height for the light poles so that a lesser number of poles can provide an adequate amount of lighting for the property. During staff visits, it was noted that the City has installed 24 foot tall light poles along East Commerce Street. Because there are already light poles taller than those required by the "AE-1" District, and the proposed lighting will be shorter than those, the Board finds that the public interest is not harmed by the request.**

**Further, the applicant is seeking a variance to allow for the use of a freestanding pole sign to be visible after VIA installs a bus stop in front of the property. Because the request is minimal in nature, and because without a variance, the subject property will struggle to advertise, the Board finds that it, too, is not contrary to the public interest.**

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

**The Board finds that the special condition that warrants the additional light pole height is the applicant's need to illuminate the subject property for security concerns.**

**The special condition present that warrants the sign variance is the result of the placement of a VIA bus stop structure that would otherwise block the view to the applicant's signage.**

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 ensure that certain design elements are in scale with surrounding development along the East Commerce corridor. The corridor already has numerous examples of taller light poles, and the requested signage variance is necessary because the VIA stop would otherwise obscure the view to the sign.**

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 permit a use not authorized within the "AE-1 AHOD" Arts and Entertainment 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 Board cannot determine how either variance request would harm adjacent properties, nor can the Board determine how either request detracts from the essential character of the community.**

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 their need to secure the property through appropriate lighting conditions. Further, the plight of the owner of the property is that VIA is placing a bus stop that directly interferes with their ability to advertise. These issues are not merely financial in nature." The motion was seconded by Mr. Martinez.**

**AYES: Teel, Martinez, Cruz, Finlay, Britton, Gragg, Dr. Zottarelli, Rogers, Kuderer  
NAYS: None**

**THE VARIANCE IS GRANTED.**

**Mr. Oroian returned to the meeting at 1:30pm**

**Case Number:** A-18-035  
**Applicant:** Patrick Christensen  
**Owner:** Junior League of San Antonio  
**Council District:** 1  
**Location:** 819 Augusta Street  
**Legal Description:** Lot 6 and the North 14.9 Feet of the West 55.6 Feet of Lot 7, Block 25, NCB 821 and the West 50 Feet of A8, Block 6, NCB 821 and Lot 7 Except the North 14.9 Feet of the West 112.3 Feet, Block 25, NCB 821 and Lot 5 and the East 3.9 Feet of Lot 4 and the North 14.9 Feet of the East 58.90 Feet of the West 112.30 Feet of Lot 7, Block 25, NCB 821 and Lot A9, Block 6, NCB 821 and the East 83 Feet of Lot A8, Block 6, NCB 821  
**Zoning:** “FBZD T5-1 RIO-2 HE HS AHOD” Form Based Zone River North Calibration River Improvement Overlay Historic Exceptional Historic Significant Airport Hazard Overlay District  
**Case Manager:** Logan Sparrow, Principal Planner

### **Request**

A request for a variance from the Form Based Zoning regulations within the T5-1 River North Calibration that limit the maximum number of stories to four, as described in Section 35-209, Table 209-18A1, to allow a five story multi-family development with a six story parking garage.

Logan Sparrow, Principal Planner presented the background information and staff’s recommendation of the variance. He indicated 31 notices were mailed, 1 returned in favor, and 2 returned in opposition. No response from the Downtown Residents Association.

Patrick Christensen, applicant gave a presentation with all the details of the project. He stated they worked closely with the Historic District to stay within the guidelines of all codes and answered all of the Boards questions and asked for approval.

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

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-18-035 closed.

### **MOTION**

A motion was made by Dr. **Zottarelli**, “Regarding Appeal No. A-18-035, a request for a special exception from the Form Based Zoning regulations within the T5-1 River North Calibration that limit the maximum number of stories to four to allow a five story multi-family development with a six story parking garage, subject property situated at 819 Augusta Street, applicant being Patrick Christensen.

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:

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

The spirit of the ordinance is represented by design requirements intended to provide for consistent development within the Form Based Zoning area, and to discourage parking as a primary use within the zoning area. The “T5-1” River North Calibration transect limits the maximum number of stories to four. Generally, development within the transect zones occurs on a lot by lot basis. It is unique for a project to encompass the entire block. As the proposed six-story parking garage is surrounded by the proposed five story multi-family development, and because the scale of the project exceeds the typical development within this FBZD area, staff finds that permitting the requested heights are warranted.

- B. *The public welfare and convenience will be substantially served.*

The public welfare is served by providing for design regulations that mirror the scale of new development within the FBZD area. The applicant is not seeking variance to the required design aspects listed in the code, only seeking the additional height. Because there are no properties directly abutting this project, staff finds that the request for additional height observes the public welfare, especially considering that the project conceals the tallest element, the parking garage, of the project.

- C. *The neighboring property will not be substantially injured by such proposed use.*

Because the entire block is included within the project area, staff finds that the request for additional height is warranted and will not harm neighboring properties.

- 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 proposed development does not directly about any other properties. Any nearby uses will be buffered by at least the street right of way. The applicant is not seeking any variances from the required design criteria within the FBZD zone, only seeking the additional height.

- E. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*

The subject property is located within the “FBZD” Form based Zone District. The applicant is merely seeking additional building height, and is not seeking to vary from the design requirements of the code.” The motion was seconded by Mr. Martinez.

**AYES: Dr. Zottarelli, Oroian, Britton, Martinez, Cruz, Finlay, Gragg, Teel, Kuderer**

**NAYS: Rogers**

**THE VARIANCE HAS BEEN GRANTED.**

**Case Number:** A-18-029  
**Applicant:** Michael Lockridge  
**Owner:** 546 Pershing Land Trust  
**Council District:** 2  
**Location:** 546 Pershing Avenue  
**Legal Description:** Lots 23-25, Block 2, NCB 6525  
**Zoning:** “R-4 NCD-6 AHOD” Residential Single-Family Mahncke Park  
Neighborhood Conservation Airport Hazard Overlay District  
**Case Manager:** Logan Sparrow, Principal Planner

### **Request**

A request for a variance from the Mahncke Park Neighborhood Conservation District design guideline that limits single-family dwellings to two stories in height to allow for three stories.

Logan Sparrow, Principal Planner, presented background, and staff’s recommendation of the variance requests. He indicated 9 notices were mailed, 4 returned in favor, and 0 returned in opposition and no neighborhood association.

Michael Lockridge, applicant distributed a packet showing unanimous support from his block and gave his historical view of Mahnke Park while giving examples of other similar buildings in the area. The applicant then showed slides of the various views of his proposed property from all three levels and asked for the Boards approval.

### **The following citizens appeared to speak.**

Polly Noel – spoke in opposition.  
Joanie Brooks – spoke in opposition.  
Lori Sherwood – spoke in opposition.  
Francielle Radmon – conceded time to George Grimes.  
George Grimes – spoke in opposition.  
Paul Trappe – spoke in opposition.  
Gary W. Cox – spoke in favor.  
Anna K. Lockridge – spoke in favor.  
Melanie Fry- 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-18-029 closed.

### **MOTION**

A motion was made by Dr. Zottarelli. “Regarding Appeal No. A-18-029, a request for a variance from the Mahncke Park Neighborhood Conservation District design guideline that limits single-family dwellings to two stories in height to allow for three stories, subject property at 546 Pershing Avenue, applicant being Michael Lockridge.

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 is not contrary to the public interest because the slope of the property warrants the additional height.**

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 elevation change on the subject property.**

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

**Substantial justice will be done in that property, which is currently vacant, can proceed with the project to build two single-family homes.**

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 variance will not authorize the operation of a use other than those uses specifically authorized in the "R-4 NCD-6" Residential Single-Family Mahncke Park Neighborhood Conservation 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 variance will not substantially injure adjacent property because homes along Pershing Avenue are situated upon large lots. The spacing between homes is adequate to buffer any negative effects of the proposed development.**

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 existing on this property is the elevation change from the street to the developable portion of the lot."** Mr. Teel seconded the motion.

**Mr. Oroian** made an **amendment** to restrict the 3 stories only to the rear of the structure. Dr. Zottarelli accepts the amendment. A voice vote was taken and the **Amendment passes 9-1** with Ms. Rogers voting in opposition. Main motion as follows:

**AYES: Dr. Zottarelli, Teel, Cruz, Oroian, Britton, Finlay, Gragg, Kuderer**  
**NAYS: Martinez, Rogers**

### **THE VARIANCE FAILS**

<b>Case Number:</b>	<b>A-18-036</b>
Applicant:	Paul Rocha
Owner:	Paul Rocha
Council District:	3
Location:	431 Conner St.
Legal Description:	Lot 39, Block 4, NCB 6081
Zoning:	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Dominic Silva, Planner

### **Request**

A request for a special exception, as described in Section 35-514, to allow a five foot tall solid screen fence in the front of the property.

Dominic Silva, Planner, presented the background information, and staff’s recommendation of the variance request. He indicated 34 notices were mailed, 1 returned in favor, 0 returned in opposition and no response from the Lonestar Neighborhood Association.

Paul Rocha, applicant stated the fence is for safety and protection. The home is in a high crime area and has been a victim of theft. (Their AC unit was stolen).

Chris Thompson, spoke in favor.

### **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-18-036 closed.

### **MOTION**

A motion was made by **Mr. Finlay**, “Regarding Appeal No. A-18-036, a request for a special exception, to allow a fence to be as tall as five foot tall solid screen fence in the front of the property, subject property situated at 431 Conner Street, applicant being Paul Rocha.



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:

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

**The request for a five foot tall fence in the front yard is in harmony with the spirit of the chapter. No portion of the fence is in violation of the Clear Vision field and serves as adequate protection for the subject property.**

B. *The public welfare and convenience will be substantially served.*

**In this case, the subject property welfare, convenience, and safety will be enhanced by the increased height of the front fence.**

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

**No portion of the fence is in violation of the Clear Vision field. No adjacent property owner, nor the traveling public, will be harmed by the proposed fence.**

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 yard fence will create enhanced security for subject property and is highly unlikely to injure adjacent properties.**

E. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*

**The property is located within the "R-6" Residential Single-Family Airport Hazard Overlay District and permits the current use of a single-family home. Therefore, the requested special exception will not weaken the general purpose of the district." Mr. Martinez seconded the motion.**

**AYES: Finlay, Cruz, Teel, Britton, Oroian, Rogers, Dr. Zottarelli, Gragg, Kuderer**

**NAYS: Martinez**

**THE SPECIAL EXCEPTION IS GRANTED**

**The Board of Adjustment recessed for a 10 min break at 3:00pm and reconvened and returned at 3:10pm.**

**Case Number:** A-18-033  
**Applicant:** Beatriz Reyes  
**Owner:** Beatriz Reyes  
**Council District:** 2  
**Location:** 4341 Seabrook Drive  
**Legal Description:** Lot 9, Block 5, NCB 12254  
**Zoning:** "R-5" Residential Single-Family District  
**Case Manager:** Debora Gonzalez, Senior Planner

### **Request**

A request for 1) a special exception to allow front yard fencing as tall as 6 feet and six inches tall and 2) a request for a six foot variance from the six foot maximum rear yard fence height to allow a rear yard fence to be twelve feet tall.

Debora Gonzalez, Senior Planner, presented background information, and staff's recommendation of the variance requests. She indicated 30 notices were mailed, 1 returned in favor, 0 returned in opposition and no neighborhood association.

Beatriz Reyes, applicant stated the tall fence was needed for the security and privacy of her clients who are on medication. She explained her reasoning to the Board and asked for their approval.

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

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-18-033 closed.

### **MOTION**

A motion was made by **Mr. Teel**. "Regarding Appeal No A-18-033, a request for a special exception to allow front yard fencing as tall as six feet and six inches tall and **11 foot 11 inch rear**, subject property being Lot 9, Block 5, NCB 12254, situated at 4341 Seabrook Drive, applicant being Beatriz Reyes.

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:

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

**The request for solid six foot and six inch fence in the front and 11 foot 11 inch in the rear of the property is in harmony with the spirit and purpose of the chapter as the fence is intended to provide safety, security, and privacy of the applicant. The front yard fence has existed since 2014.**

B. *The public welfare and convenience will be substantially served.*

**Allowing the property owner to keep a six foot and six inch solid fence on the front and side and 11 foot 11 inch in the rear of the property will help create a private environment to protect the public from view to her clients. Therefore, the public welfare and convenience will be substantially served.**

C. *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 enhance security for the subject property and is highly unlikely to injure adjacent properties. Further, both fences do not obscure the neighboring property's vision from their driveway.**

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 six foot and six inch solid front and side fence would not significantly alter the overall appearance of the district and would be able to provide added security and protection for the property owner.**

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. The special exception request is to allow a six foot and six inch tall solid front and side fence and 11 foot 11 inch in the rear in order to add security for the owner. Therefore, the requested special exception will not weaken the general purpose of the district.” The motion was seconded by Dr. Zottarelli.”**

**Mr. Teel then amended his motion to only include the front and side and not the rear. Dr. Zottarelli accepted the amendment.**

**AYES: Teel, Dr. Zottarelli, Cruz, Britton, Finlay, Gragg, Martinez, Oroian, Rogers, Kuderer**

**NAYS: None**

## **THE SPECIAL EXCEPTION PASSES**

**No Motion was made for the 11 foot 11 inch rear variance, motion dies.**

<b>Case Number:</b>	<b>A-18-037</b>
<b>Applicant:</b>	David Starr
<b>Owner:</b>	David Starr
<b>Council District:</b>	2
<b>Location:</b>	227 Rittiman Road
<b>Legal Description:</b>	Lot 46, NCB 8693
<b>Zoning:</b>	“MF-33” Multi-Family District
<b>Case Manager:</b>	Debora Gonzalez, Senior Planner

**Request**

A request for a special exception, as described in Section 35-514, to allow an eight foot tall solid screen fence in the rear and side of the property.

Debora Gonzalez, Senior Planner, presented background information, and staff's recommendation of the variance request. She indicated 11 notices were mailed, 0 returned in favor, 0 returned in opposition and no response from the Terrell Heights Neighborhood Association.

Adam Moncada, representative stated the fence was for added security and to match the north and west side 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-18-037 closed.

**MOTION**

A motion was made by **Ms. Cruz**. "Regarding Appeal No A-18-037, a request for a special exception, to allow a fence to be as tall as eight foot tall solid screen fence in the rear and side of the property, subject property situated at 227 Rittiman Road, applicant being David Starr.

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:

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

**The spirit of the chapter is represented by reasonable fence height restrictions to provide for adequate security and privacy, but to also encourage a sense of community. The board finds the additional fence height is intended to provide safety, security, and privacy of the applicant. This is in harmony with the spirit and purpose of the chapter.**

*B. The public welfare and convenience will be substantially served.*

**In this case, the welfare, convenience, and safety will be enhanced by the increased height of the rear and side of the property.**

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

**No portion of the fence is in violation of the Clear Vision field. No adjacent property owner, nor the traveling public, will be harmed by the proposed fence.**

- 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 rear and side yard fence will create enhanced security for subject property and is highly unlikely to injure adjacent properties.**

- E. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*

**The property is located within the “MF-33” Multi-Family District and permits the current use of a single-family home. Therefore, the requested special exception will not weaken the general purpose of the district.” Mr. Martinez seconded the motion.**

**AYES: Cruz, Martinez, Finlay, Teel, Rogers, Oroian, Britton, Dr. Zottarelli, Gragg, Kuderer**

**NAYS: None**

#### **THE VARIANCE PASSES**

**Case Number:** A-18-034  
**Applicant:** Irma Silva  
**Owner:** A Est. of Elida Sanchez  
**Council District:** 5  
**Location:** 829 South San Bernardo  
**Legal Description:** East 86.65 feet of Lot 15 and 16, Block 14, NCB 8979

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

**Case Manager:** Debora Gonzalez, Senior Planner

#### **Request**

A request for five foot six inch variance from the twenty foot rear setback to allow an addition to be fifteen feet and six inches from the rear property line, as described in Section 35-310.01.

Debora Gonzalez, Senior Planner, presented background, and staff’s recommendation of the variance requests. She indicated 38 notices were mailed, 1 returned in favor, and 0 returned in opposition and no neighborhood association.

Irma Silva, applicant stated she needs the room to house all the medical supplies she needs due to her illness.

**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-18-034 closed.

**MOTION**

A motion was made by **Mr. Finlay** “Regarding Appeal No. A-18-034 a request for a 5 foot and six inch variance from the 20 foot rear setback to allow an addition to be 14 feet and six inches from the rear property line, situated at 829 South San Bernardo Street, applicant being Irma Silva.

I move that the Board of Adjustment grant the applicant’s request for the variances to the subject property 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.*

**Most residential zoning districts require only a ten foot rear setback. Further, allowing this request to be 14 feet and six inches of the requirement is unlikely to be noticed. The Board finds that neither request is contrary to the public interest.**

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

**The special condition present in this case is that the reduction would only be applicable along the rear property line, which still provides ample room for maintenance.**

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

**Substantial justice will be done as the requested setbacks will still provide for a safe development pattern. The request provides fair and equal access to air and light, and provides for adequate fire separation.**

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

**The variance will not authorize the operation of a use other than those uses specifically authorized in the "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District.**

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

**The 14 foot and six inch rear setback variance is highly unlikely to injure adjacent property owners as these lots are similar to other lots in the subdivision. The rear setback provides adequate room for maintenance without trespass and will not create any health or safety hazards.**

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 in this case is the small lot size which restricts the owner's ability to construct any addition without encroaching into the rear setback."** The motion was seconded by **Mr. Martinez**.

**AYES: Finlay, Martinez, Oroian, Gragg, Teel, Cruz, Dr. Zottarelli, Britton, Rogers, Kuderer**

**NAYS: None**

## **THE VARIANCE IS GRANTED**

<b>Case Number:</b>	<b>A-18-031</b>
Applicant:	Felix Ziga
Owner:	DL Investment Properties, LLC
Council District:	2
Location:	1130 Wyoming Street
Legal Description:	Lot 21, Block 21, NCB 619
Zoning:	"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District
Case Manager:	Debora Gonzalez, Senior Planner

### **Request**

A request for a two foot and nine inch variance from the three foot rear setback requirement, as described in Section 35-370, to allow a carport to be three inches from the rear property line.

Debora Gonzalez, Senior Planner, presented background, and staff's recommendation of the variance requests. She indicated 27 notices were mailed, 0 returned in favor, and 0 returned in opposition and no response from the Denver Heights Neighborhood Association.

Felix Ziga, representative gave a visual presentation and displayed plans explaining the reasoning for the Carport. He also mentioned because a heritage tree on the property that triggered the variance. The Applicant answered all questions and asked for the Boards approval.

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

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-18-031 closed.

### **MOTION**

A motion was made by **Mr. Oroian**. "Regarding Appeal No A-18-031, a two foot and nine inch variance from the three foot rear setback requirement to allow a carport to be three inches from the rear property line, subject property being Lot 21, Block 21, NCB 619, situated at 1130 Wyoming Street, applicant being Felix Ziga.

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 is seeking to build a metal carport that will have minimal impact on neighboring property because the subject location of the carport doesn't back up to any structures other than the applicant's fence. 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 present in this case is that the applicant has a small lot and the literal enforcement of the ordinance would not allow the applicant to build the carport. A literal enforcement of the ordinance may result in 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 for consistent development and to establish room for maintenance, and to reduce the threat of fire spread. The structure still provides ample room for fire separation and maintenance. 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 for the district in which the property for which the variance is sought is located.*

**The variance will not authorize the operation of a use other than those uses specifically authorized by 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. In that other homes within the neighborhood enjoy reduced setbacks, and because only the carport will be located within restricted setbacks, the Board finds that the essential character of the community is unlikely to be negatively affected.*

7. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner 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 that the applicant has a small lot; this request is not merely financial in nature, nor is it the fault of the owner of the property."**

Before the motion was seconded, Mr. Martinez moved that the motion be ***changed to 2 feet and remove the 9 inch from the record.*** Mr. Oroian accepted the amendment. The motion was seconded by **Mr. Martinez.**

**AYES: Oroian, Martinez, Finlay, Gragg, Teel, Cruz, Dr. Zottarelli, Britton, Rogers, Kuderer**

**NAYS: None**

**THE VARIANCE IS GRANTED**



**Case Number:** A-18-032  
**Applicant:** Oscar Giraldo  
**Owner:** Oscar Giraldo  
**Council District:** 10  
**Location:** 16807 Winding Oak Drive  
**Legal Description:** Lot 5 and 6, Block 4, NCB 17721  
**Zoning:** "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District  
**Case Manager:** Debora Gonzalez, Senior Planner

### **Request**

A request for an nine foot eleven inch variance from the ten foot front setback, as described in Section 35-310.01, to allow a carport to remain one inch from the front property line.

Debora Gonzalez, Senior Planner, presented background, and staff's recommendation of the variance requests. She indicated 31 notices were mailed, 2 returned in favor, and 4 returned in opposition and no neighborhood association.

Oscar and Betty Giraldo, applicant gave his interpretation of the measurements for the variance. He also stated he needs the carport due to high traffic on his street. He continued to inform the board he is in need of the carport due to his pending knee replacement surgery and protection from the weather. Mr. Giraldo also stated he needs a larger vehicle because small vehicles cause him problems when getting on. If he does not get the carport then he would have to wait for the rain to stop before going inside. If he were to walk in the rain he could hurt himself. Ms. Giraldo spoke of her neighbor not liking them and having a large dog and letting them bark at her and her husband.

### **The Following Citizens appeared to speak.**

Keven W. London, 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-18-032 closed.

### **MOTION**

A motion was made by Mr. Martinez. "Regarding Appeal No. A-18-032, a request for a nine foot and eleven inch variance form the required ten foot front setback to allow a carport to be one inch from the front property line, situated at 16807 Winding Oak Drive, applicant being Oscar Giraldo.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property 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.*

**Allowing a carport to be built within the front setback of the subject property allows increased space within Winding Oak Drive by removing cars from the street. 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*

**If enforced, the ordinance would significantly increase physical hardship for the subject owner and promote increased roadside parking.**

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

**Substantial justice will be done as the requested setbacks will still provide for a safe development pattern. The request provides adequate protection for the owner, and no storm water runoff will drain onto adjacent property.**

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

**The variance will not authorize the operation of a use other than those uses specifically authorized in the "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District.**

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

**The carport does not encroach into the side setback, so trespass and water runoff are not a concern. The Board finds that construction of the carport is highly unlikely to injure the essential 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 unique circumstance existing on the site was created by the original design of the lots within the subdivision, which creates decreased room for accessory structures." Mr. Oroian seconded the motion.**

**AYES: Cruz**

**NAYS: Oroian, Martinez, Finlay, Gragg, Teel, Dr. Zottarelli, Britton, Rogers, Kuderer**

## **THE VARIANCE FAILED**

Mr. Kuderer made a motion to approve the February 5, 2018 minutes with all members voting in the affirmative.



Manager's report: None



There being no further discussion, meeting adjourned at 4:45 p.m.



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

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

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