

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
August 22, 2016**

Members Present:

Mary Rogers
John Kuderer
Roger Martinez
Frank Quijano
Denise Ojeda
George Britton
Maria Cruz
Jesse Zuniga
Christopher Garcia
Henry Rodriguez
Paul Klein

Staff:

Catherine Hernandez, Planning Manager
Logan Sparrow, Senior Planner
Shepard Beamon, Planner
Paul Wendland, City Attorney

Call to Order

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

Mrs. Rogers, called the meeting to order and called roll of the applicants for each case.

Arianne Villanueva, from World Wide Translators was present.

CASE NO. A-16-136

Applicant – Tom Oliver
Lot NW 457.63 ft of 26, Block 10, NCB 13110
45 NE Loop 410
Zoning: “C-3 AHOD” General Commercial Airport Hazard Overlay District

Request

The applicant is requesting a 50 foot variance from the 150 foot minimum spacing requirement, as described in Section 28-241(d)(1), to allow two (2) monument signs to be 100 feet apart.

Shepard Beamon, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 19 notices were mailed, none were returned in favor and none were returned in opposition.

Tom Oliver, applicant, stated the second sign will be used to identify the building and will not be used a tenant sign. He also stated sign is located on a one way street. He further stated the height of this sign will be smaller than originally anticipated.

Dennis Attard, Chief Sign Inspector, stated there will be two monuments sign that are allowed. He also stated there should be no visual obstructions at the proposed location.

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-16-136 closed.

MOTION

A motion was made by **Mr. Quijano**. Regarding Appeal No **A-16-136**, variance application for a **50 foot variance from the 150 foot minimum spacing requirement, as described in Section 28-241(d)(1), to allow two (2) monument signs to be 100 feet apart.**, subject property description **Lot NW 457.63 ft of 26, Block 10, NCB 13110**, situated at **45 NE Loop 410**, applicant being **Tom Oliver**. I move that the Board of Adjustment grant the applicant's request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that:

- A) Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated in that **businesses along freeways around the city are afforded reasonable signage opportunities. Staff finds that the applicant's request does not grant a privilege not enjoyed by other similarly situated businesses.**
- B) Granting the variance will not have a substantially adverse impact upon neighboring properties in that **it is unlikely that adjacent properties will be negatively affected by the requested variance. The sign does not interfere with clear vision, nor does the proposed sign package detract from the community.**
- C) Granting the variance will not substantially conflict with the stated purposes of this article in that **the proposed sign is not significantly larger than those other, similarly situated businesses enjoy. The applicant does not have the option of providing a separate sign on the property 150 feet away from the existing sign.**

The motion was seconded by **Mr. Garcia**.

AYES: Quijano, Garcia, Ojeda, Klein, Zuniga, Rodriguez, Cruz, Martinez, Britton, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.



CASE NO. A-16-140

Applicant – Marc Toppel

Lot 27, Block 1, NCB 18338

812 South Alamo Street

Zoning: Lots 3, 4, 17, and W IRR 56.1 FT of 1, Block 4, NCB 782 Conservation Airport Hazard Overlay District

Request

The applicant is requesting variances from the design regulations described in the South Presa/South St. Mary's Neighborhood Conservation District, UDC 35-335: 1) the provision that only permits side yard parking when the building façade occupies 50% of the street frontage and prohibits side yard parking longer than 65 feet along the street frontage to allow parking that is no more than 167 feet long; 2) the signage limitations to allow a rooftop sign that is 60 square feet in area; 3) signage limitations to allow both awning and blade signage for each tenant totaling no more than 10 square feet; and 4) two way-finding signs as large as 24 square feet.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variances. She indicated 34 notices were mailed, none were returned in favor and none were returned in opposition and the Lavaca and King William Neighborhood Associations are in opposition.

Marc Toppel, applicant, stated they will provide with as much parking possible. He also stated they will be replacing the garage building with a new building that is up to code. He further stated there are similar signs within the neighborhood.

The following citizens appeared to speak:

Cherise Bell, representative from the King William Neighborhood Association, stated the neighborhood is in opposition. She also stated the neighborhood association was not aware of the signage. She further stated she would like for the case to be postponed so that they may get with the applicant to discuss these variances.

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-16-140 closed.

MOTION #1

A motion was made by **Mr. Klein**. Regarding Appeal No **A-16-140**, a request variances from the design regulations described in the South Presa/South St. Mary's Neighborhood Conservation District, UDC 35-335: the provision that only permits side yard parking when the building façade occupies 50% of the street frontage and prohibits side yard parking longer than 65 feet along the street frontage to allow parking that is no more than 167 feet long, subject property description Lots 3, 4, 17, and W IRR 56.1 FT of 1, Block 4,

NCB 782, situated at 812 S. Alamo, applicant being Marc Toppel. I move that the Board of Adjustment grant the applicant's request for 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) Such variance will not be contrary to the public interest in **that the public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by design limitations that enhance and preserve the pedestrian streetscape by restricting the percentage of parking along the frontage and limiting sign clutter and area. The proposed renovation of this historic building into retail and restaurant uses will activate both frontages. The proposed sign package compliments the driving and the walking experience while allowing the architectural features of the historic building to remain prominent.**
- 2) Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special condition in the case is the shape of the property with frontages on both South Presa Street and South St. Mary's Street. The 250 foot long, narrow parking area is currently improved as parking with no changes proposed. In addition, adequate parking is a community priority. A literal enforcement of the ordinance would result in the property losing many of its existing parking spaces, further complicating parking needs in the community.**
- 3) The spirit of the ordinance is observed and substantial justice is done in **that granting the requested variance will result in substantial justice by allowing the applicant to keep the existing parking spaces for the proposed development. Parking is a priority in this community, which is attracting more and more people to the local restaurants and businesses. The intent of the sign limitation is to restrict visual clutter and prevent obstruction of existing architectural features of historic buildings. The requested sign variances will observe the spirit of the code.**
- 4) Such variance will not authorize the operation of a use **other than those specifically permitted in the "IDZ NCD-1 AHOD" Infill Development Zone South Presa/South St. Mary's Neighborhood Conservation Airport Hazard Overlay District with uses permitted in C-2 Commercial District other than those uses specifically authorized in the "RM-4 H AHOD" Residential Mixed 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 in that **the requested variance from the parking limitation along the frontages will allow the redevelopment and reuse of the historic building without disruption of the existing parking lot.**

- 6) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, which in this case is the elongated shape of the property with 400 feet of frontage on St. Mary's, much of which is less than 70 feet wide.

The motion was seconded by Mr. Zuniga.

AYES: Klein, Zuniga, Quijano, Ojeda, Britton, Cruz, Garcia, Rodriguez, Martinez, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

Motion #2

A motion was made by Mr. Martinez. Regarding Appeal No. A-16-140, a request variances for the signage limitations to allow a rooftop sign that is 60 square feet in area; signage limitations to allow both awning and blade signage for each tenant totaling no more than 10 square feet; and two way-finding signs as large as 24 square feet on property located at 812 S. Alamo, I move for a continuation of this case to the October 2, 2016 meeting.

The motion was seconded by Mr. Garcia.

AYES: Martinez, Garcia, Zuniga, Rodriguez, Cruz, Britton, Klein, Ojeda, Quijano, Kuderer, Rogers

NAYS: None

THE MOTION PASSES.

CASE NO. A-16-133

Applicant – Roger R. Jimenez

Lot E 119.25 FT of 4, NCB 10761

4235 Boxwood Road

Zoning: "R-20 AHOD" Residential Single-Family Airport Hazard Overlay District

Request

The applicant is requesting a 1,832 square foot variance from the 2,500 square foot maximum floor area for accessory structures on a residential lot, as described in Section 35-370(b)(3), to allow a residential lot with 4,332 square feet of accessory structure floor space.

Shepard Beamon, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 17 notices were mailed, none were returned in favor and 2 were returned in opposition and no response from the Comanche Community Neighborhood Association.

Roger Jimenez, applicant, stated there are two structures which were used for gymnastics equipment and currently the owner will use it for storage of vintage cars. He also stated the owner has an air condition and heating business located on Rigsby.

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-16-133 closed.

MOTION

A motion was made by **Mr. Rodriguez**. Regarding Appeal No. A-16-133, variance application for a **1,832 square foot variance from the 2,500 square foot maximum floor area for accessory structures on a residential lot, as described in Section 35-370(b)(3), to allow a residential lot with 4,332 square feet of accessory structure floor space**, subject property description **Lot E 119.25 FT of 4, NCB 10761, situated at 4235 Boxwood Road**, applicant being **Roger R. Jimenez**. I move that the Board of Adjustment grant the applicant's request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that:

- 1) Such variance will not be contrary to the public interest in that **the structures, in their current location, will not disrupt the character of the surrounding neighborhood, has minimal visibility from the street, and does not encroach into any setbacks.**
- 2) A literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance will force the applicant to remove the some of the structures and will not provide the owner with enough space to care for all vehicles and as we have heard here today are very expensive vehicles.**
- 3) The spirit of the ordinance is observed and substantial justice is done in that **the additional square footage included in the accessory structure is not visible from the public way. The additional height and square footage do not seem overwhelming as the lot is large in size, and the structures allow for adequate air and light in the yard.**
- 4) Such variance will not authorize the operation of a use other than those uses specifically authorized in the **"R-20 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 in that **the structures are well within the required side and rear setbacks and will not produce any water runoff on the adjacent property. The structures can also be maintained with no trespassing and will not increase fire hazard.**
- 6) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property **in that the addition is to provide adequate storage space for his large collection of vintage automobiles. The primary dwelling's design does not provide any attached garages or storage for vehicles, thus resulting in a unique circumstance and forcing the owner to construct detached accessory structures for his vehicles in the rear of the property.**

The motion was seconded by **Mr. Zuniga.**

AYES: Rodriguez, Zuniga, Britton

NAYS: Martinez, Garcia, Cruz, Ojeda, Klein, Quijano, Kuderer, Rogers

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-16-134

Applicant – Eric Watson

Lot 11 and 12, Block 179, NCB 9463

3422 Commercial Avenue

Zoning: "C-3NA AHOD" General Commercial Non-Alcoholic Sales Airport Hazard Overlay District

Request

The applicant is requesting 1) a 20 foot variance from the 30 foot side setback requirement, as described in Section 35- 310.01, to allow for a commercial development with a ten foot side yard setback and 2) a ten foot variance from the Type C, 15 foot deep bufferyard requirement, as described in Section 35-510, to allow a bufferyard to be five feet deep.

Shepard Beamon, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 17 notices were mailed, none were returned in favor and one was returned in opposition.

Eric Watson, applicant, stated there is a fire buffer on Formosa leaves 10 feet of usable space. He also stated there is a small structure will replace the deteriorated structure currently on the lot and will be moved two feet. He further stated currently there is chain link fence between the property and residential property and will construct a private fence.

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-16-134 closed.

MOTION

A motion was made by **Mr. Kuderer**. Regarding Appeal No. A-16-134, variance application for **1) a 20 foot variance from the 30 foot side setback requirement, as described in Section 35-310.01, to allow for a commercial development with a ten foot side yard setback and 2) a ten foot variance from the Type C, 15 foot deep bufferyard requirement, as described in Section 35-510, to allow a bufferyard to be five feet deep**, subject property description **Lot 11 and 12, Block 179, NCB 9463, situated at 3422 Commercial Avenue**, applicant being **Eric Watson**. I move that the Board of Adjustment grant the applicant's request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that:

- 1) Such variance will not be contrary to the public interest in that **if the bufferyard and setback were established, the commercial development would lose a large amount of developable space, pushing the development out of compliance with the parking requirements. The applicant is proposing a reduced landscape bufferyard and an adequate side setback.**
- 2) A literal enforcement of the ordinance would result in unnecessary hardship in that **with the commercial zoned property abutting a residential zoned property, a 30 foot setback is triggered. If the ordinance is enforced, the new construction must comply with all required setbacks and current development standards limiting the ability to construct a building.**
- 3) The spirit of the ordinance is observed and substantial justice is done in that **the applicant has designed a site plan to provide both setbacks and a bufferyard to protect neighboring properties. Staff finds the proposed landscape plan, five feet of the required bufferyard, and ten feet of the required setback, meets the spirit of the ordinance.**
- 4) Such variance will not authorize the operation of a use other than those uses specifically authorized in the **"C-3NA AHOD" General Commercial Non-Alcoholic Sales 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 **since the owner is still providing a landscape bufferyard and setback, the adjacent property will have adequate separation and space to prevent any water runoff, fire hazard, or trespassing for maintenance.**

- 6) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property **in that with such a small lot, and the triggered large bufferyard and setback requirements between residential and commercial zones, the developable space is very limited. This is not the fault of the owner and is not merely financial in nature.**

The motion was seconded by **Mr. Martinez.**

AYES: Kuderer, Martinez, Quijano, Klein, Ojeda, Britton, Cruz, Zuniga, Garcia, Rodriguez, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-16-132

Applicant – Michael G. Miles
Lot 20, Block 8, NCB 15910
10214 Prescott Drive
Zoning: “R-6 AHOD” Residential Single-Family Airport Hazard

Request

The applicant is 1) a 15 foot variance from the 20 foot platted front setback, as described in Section 35-516(o), to allow a carport to be five feet from the front property line and 2) a four foot variance from the required five foot side yard setback, as described in Section 35-310.01, to allow a carport with an eave overhang to be one foot from the side property line.

Logan Sparrow, Senior Planner, presented background and staff’s recommendation of denial of the requested variance with an alternate recommendation of the carport to be ten feet from the side property line. He indicated 18 notices were mailed, one was returned in favor and none were returned in opposition.

Michael Miles, applicant, stated the variance would provide protection for his vehicles from trespassers and inclement weather. He also stated he has had personal items stolen from his property. He further stated

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-16-132 closed.

MOTION

A motion was made by **Mr. Kuderer**. Regarding Appeal No **A-16-132**, a request for 1) a 10 foot variance from the 20 foot platted front setback to allow a carport to be ten feet from the front property line and 2) a two foot variance from the required five foot side yard setback to allow a carport with an eave overhang to be three foot from the side property line, subject property description **Lot 20, Block 8, NCB 15910**, situated at **10214 Prescott Road**, applicant being **Michael G. Miles**. I move that the Board of Adjustment grant the applicant's request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that:

- 1) Such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by minimum setbacks that help to establish uniform and safe development within the City of San Antonio. We find that the applicant's carport helps to protect their vehicles and that that need does not conflict with the public interest.**
- 2) Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the literal enforcement of the ordinance would result in the applicant having to remove large portions of the existing carport in which we are asking him to do.**
- 3) The spirit of the ordinance is observed and substantial justice is done in that **the granting the requested variance will result in the property owner being able to protect their vehicles and as well as the trailer.**
- 4) Such 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 in that **the adjacent dwelling is set back far from the shared property line. As such, the carport is unlikely to harm the 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, **in that the plight of the owner of the property is the platted front setback. The plight of the owner is not merely financial in nature.**

The motion was seconded by **Mr. Garcia**.

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

NAYS: Klein

THE VARIANCE IS GRANTED.

CASE NO. A-16-135

Applicant – Arturo Lara, Jr.

Lot 27, Block 19, NCB 16008

5923 Stoney Creek

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

Request

The applicant is requesting 13 foot variance from the platted 20 foot front setback, as described in Section 35-516(o), to allow a carport to be seven (7) feet from the front property line.

Shepard Beamon, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 28 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Southwest Community Association

Arturo Lara, applicant, stated there are similar carports in the neighborhood.

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-16-135 closed.

MOTION

A motion was made by **Mr. Martinez**. Regarding Appeal No. **A-16-135**, variance application for an **13 foot variance from the platted 20 foot front setback, as described in Section 35-516(o), to allow a carport to be seven (7) feet from the front property line**, subject property description **Lot 27, Block 19, NCB 16008**, situated at **5923 Stoney Creek**, applicant being **Arturo Lara, Jr.** I move that the Board of Adjustment grant the applicant’s request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that:

- 1) Such variance will not be contrary to the public interest in that **the request for a carport is not contrary to the public interest as the carport does not encroach into the side setback and does not interfere with Clear Vision. Additionally, many property owners in this community benefit from carports.**

- 2) A literal enforcement of the ordinance would result in unnecessary hardship in that **due to the fact that several other residents are able to enjoy carports, the literal enforcement of the ordinance will not allow the owner to have the same privileges.**
- 3) The spirit of the ordinance is observed and substantial justice is done in that **granting the requested variance will result in substantial justice as the proposed design will only encroach three feet into the UDC required setback and would uphold the spirit of the ordinance. Additionally, the carport is not likely to cause an increase in fire spread to adjacent properties.**
- 4) Such 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 in that **the proposed carport will not alter the essential character of the district as there are many other carports within the neighborhood, some of which are built up to the front property line. Further, the carport does not encroach into the side setback, will not increase fire hazard or water runoff on the adjacent property, and can be maintained without trespassing.**
- 6) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property **the plight of the owner is due to the 20 foot platted front setback, which would not allow any room for a carport. This hardship was not caused by the owner and is not merely financial in nature.**

The motion was seconded by **Mr. Rodriguez.**

AYES: Martinez, Rodriguez, Quijano, Klein, Ojeda, Britton, Cruz, Zuniga, Garcia, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-16-137

Applicant – Dena Schmidt Chenault
Lot 3, Block 1, NCB 13636
9711 Astronaut Drive

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

Request

The applicant is requesting a ten foot variance from the platted 30 foot front setback, as described in Section 35-516(o), to allow a carport to be 20 feet from the front property line.

Logan Sparrow, Senior Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 16 notices were mailed, 3 were returned in favor and one was returned in opposition.

Dena Schmidt Chenault, applicant, stated the carport would provide protection for her vehicle. She also stated the carport would have a metal roof and match the home. She further stated the contractor will obtain permits required to construct the carport.

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-16-137 closed.

MOTION

A motion was made by **Mr. Garcia**. Regarding Appeal No. **A-16-137**, a request for a ten foot variance from the **platted 30 foot front setback to allow a carport to be 20 feet from the front property line**, subject property description **Lot 3, Block 1, NCB 13636**, situated at **9711 Astronaut Drive**, applicant being **Dena Schmidt Chenault**. I move that the Board of Adjustment grant the applicant's request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that:

- 1) Such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by minimum setbacks that help to establish uniform and safe development within the City of San Antonio. We find that the applicant's carport helps to protect their vehicles and because it is 20 feet from the front property line, unlikely to harm the public.**
- 2) Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the literal enforcement of the ordinance would result in the applicant having a carport too small to protect their vehicles.**
- 3) The spirit of the ordinance is observed and substantial justice is done in that **granting the requested variance will result in the property owner being able to protect their vehicles.**

- 4) Such 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 in that **the carport is located further from the front property line than most other carports. Also, it meets the side setback. As such, it is unlikely that the carport will detract from 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, **in that the plight of the owner of the property is the platted front setback. The plight of the owner is not merely financial in nature.**

The motion was seconded by Ms. Cruz.

AYES: Garcia, Cruz, Quijano, Klein, Ojeda, Britton, Zuniga, Rodriguez, Martinez, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-16-139

Applicant – Deborah Evans

Lot 10, Block 25, NCB 13282

219 Fantasia

Zoning: "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District

Request

The applicant is requesting 1) a 15 foot variance from the 20 foot zoning rear setback, per Section 35-310, to allow a home to be five feet from the rear property line and 2) a variance from the "R-4" Residential Single-Family zoning maximum of two and a half story construction, per Section 35-310, to allow three habitable levels.

Shepard Beamon, Planner, presented background and staff's recommendation of approval of the requested variances. He indicated 29 notices were mailed, one was returned in favor and one was returned in opposition and no response from the Greater Harmony Hills Neighborhood Association.

Art Vela, representative, stated there is another residential structure on Fantasia that has a carport. He also stated the carport would provide protection for the homeowner's vehicle. He further stated the carport is structurally sound.

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-16-139 closed.

MOTION

A motion was made by **Mr. Kuderer**. Regarding Appeal No **A-16-139**, variance application for a **20.5 foot variance from the 30 foot platted front setback, as described in Section 35-516 (O), to allow a carport to be 9.5 feet from the front property line**, subject property description **Lot 10, Block 25, NCB 13282**, situated at **219 Fantasia**, applicant being **Deborah Evans**. I move that the Board of Adjustment grant the applicant's request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that:

- 1) Such variance will not be contrary to the public interest in that **the carport, as it stands now, is not contrary to the public interest. The carport is within the side setbacks and only encroaches into the UDC front setback by six inches.**
- 2) A literal enforcement of the ordinance would result in unnecessary hardship in that **the special condition in the case is the location of the home and the availability to store and protect vehicles as we heard in the testimony today relating to the hail storm we have had recently.. The home is located in such that it does not allow for parking along the side or in the rear. Also, the garage has been converted into additional family living space which leaves the owner's vehicles exposed to the elements in the uncovered front driveway.**
- 3) The spirit of the ordinance is observed and substantial justice is done in that **granting the requested variance will result in substantial justice as the carport complies with the side and all but six inches of the front setback established by the UDC. Additionally, water runoff is unlikely to occur on to the neighboring property.**
- 4) Such variance will not authorize the operation of a use other than those uses specifically authorized in the **"R-5 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 in that **the carport is being constructed to encroach six inches into the UDC required 10 foot front setback, and will not interfere with the vision and safety of the neighboring property. Further, the carport does not encroach into the side setback. Staff finds this carport will not alter the essential character of the district as there have been previous requests for carports approved by the Board.**

- 6) The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property **in that the configuration of the home does not permit parking on the side or rear of the property, and the home is built up to the 30 foot platted setback, leaving no options but to build a carport within this platted front setback.**

The motion was seconded by **Mr. Rodriguez.**

AYES: Kuderer, Rodriguez, Quijano, Ojeda, Britton, Cruz, Zuniga, Garcia, Rogers

NAYS: Klein, Martinez

THE VARIANCE IS GRANTED.

The August 8, 2016 Board of Adjustment minutes with Ms. Cruz and Mr. Kuderer abstaining.

Director's Report

There being no further discussion, meeting adjourned at 3:46 pm.

APPROVED BY: Mary Rogers OR _____
Mary Rogers, Chairwoman John Kuderer, Vice-Chair

DATE: 9-19-16

ATTESTED BY: William Ray DATE: Sept. 21, 16
Executive Secretary