

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
May 18, 2015**

Members Present:

Andrew Ozuna
Mary Rogers
Frank Quijano
Alan Neff
Gabriel Velasquez
George Britton
Maria Cruz
John Kuderer
Roger Martinez
Gene Camargo
Christopher Garcia

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Logan Sparrow, Planner
Ted Murphree, City Attorney

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.

CASE NO. A-15-080

Applicant – Leo Perron
Lot 53, Block 2, NCB 8417
5616 IH 10 W
Zoning: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting a 33 foot variance from the minimum 150 foot spacing requirement between two signs, as stated in Section 28-241 (d) to allow two signs to be 117 feet apart.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 7 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Dellview Neighborhood Association.

Wes Putman, representative, stated they are trying to raise the sign for the visibility over the highway. The sign was constructed before the ordinance went into effect and before the highway was raised up. He stated the sign will several feet less than they are allowed to. He further stated they will not be adding additional tenants.

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-15-080 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-15-080**, variance application for a **33 foot variance from the minimum 150 foot spacing requirement between two signs, as stated in Section 28-241 (d) to allow two signs to be 117 feet apart**, subject property description **Lot 53, Block 2, NCB 8417**, located at **5616 IH 10 W**, applicant **Leo Perron**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-080**, application for a sign 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 Chapter 28 Sign Code, as amended, would result in an unnecessary hardship. Specifically, we find that 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. A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. **The applicant states that the freeway visibility is limited for the existing sign and has submitted photographs of the signage from the freeway to demonstrate the constraints. The sign could be raised about twenty feet taller under current sign allowances, however the minimum distance between signs cannot be satisfied on the site. As a result, the applicant is requesting a variance of 33 feet to allow the second sign 117 feet from the proposed location. As with many developed sites, the sign location is pre-determined by the existing infrastructure, including underground power and internal parking circulation, making the variance critical.** After seeking one or more of the findings set forth the board finds that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated. **The applicant asserts that since the sign does not exceed the allowed height or square footage, there is no special privilege.** Granting the variance will not have a substantially adverse impact upon neighboring properties. **The sign is being raised and may have an impact on the visibility of the “Uniforms for Everyone” sign. This business however does not rely on impulse purchases. Instead, its customers determine its location beforehand. Therefore, while there may be a change in its visibility, it will not have a substantial negative impact.** Granting the variance will not substantially conflict with the stated purposes of this article. **The legislative purposes of the adopted sign regulations are to provide minimum standards to protect the general public by regulating the design, construction, location, use and maintenance of out-door advertising signs. The requested variance is minimal in nature and will not conflict with the purpose of the regulations.”** The motion was seconded by Ms. Cruz.

AYES: Quijano, Cruz, Neff, Velasquez, Britton, Garcia, Kuderer, Martinez, Camargo, Rogers, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-084

Applicant – Shannon Goodman
Lot 30, Block 1, NCB 11555
2 Sleepy Cove
Zoning: “R-5” Residential Single-Family District

The applicant is a special exception, as described in Section 35-399.01, to allow a one-operator beauty/barber shop within a single-family home.

Logan Sparrow, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 16 notices were mailed, 2 were returned in favor and none were returned in opposition and no response from the Vance Jackson Neighborhood Association.

Shannon Goodman, applicant, stated she is able to provide her clients with more attention. She also stated she previously has had a special exception at another location but since has moved to a new location and would like to continue her special exception. She further stated working from home allows her to be with her two young children.

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-15-084 closed.

MOTION

A motion was made by **Ms. Cruz**. “Re Appeal No. **A-15-084**, variance application for a **special exception, as described in Section 35-399.01, to allow a one-operator beauty/barber shop within a single-family home**, subject property description **Lot 30, Block 1, NCB 11555**, located at **2 Sleepy Cove**, applicant being **Shannon Goodman**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-15-084**, application for a Special Exception for the subject property s described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UDC 35-399.01. Specifically, we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **the public interest in this case is represented by minimum requirements to ensure that the operation of one-operator beauty/barber shop does not negatively impact the character of the community**. Staff noted that **nothing about the shop distinguishes it from other homes in the community**. Also, the applicant has fulfilled all requirements for a one-operator shop as established in the UDC. As such, staff finds that the special exception is not contrary to the public interest. The public welfare and convenience will be substantially served in that **the applicant has already constructed the beauty/barber shop within her home**. As she has complied with all of the requirements established by the UDC a literal enforcement of the code and not granting the exception may result in unnecessary hardship. The neighboring property will not be substantially injured by such proposed use in

that the special exception request may be considered consistent with the spirit of the ordinance because the minimum requirements for a one-operator beauty/barber shop have been met by the applicant. 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 in that the requested special exception is not likely to negatively impact adjacent property owners because the home is in character with those around it. During field visits staff noted nothing visible from the street that would indicate the presence of a barber shop. Furthermore the applicant has limited the hours of operation to only five days a week at 8 hours per day. Also, during staff field visits staff noted a large driveway capable of providing any necessary parking for the proposed use. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that the primary use of the dwelling remains a single-family home. The one-operator barber/beauty shop will have restricted hours, which are established by the Board of Adjustment. The applicant has met all requirements established by the Unified Development Code. The applicant has proposed hours of operation to be from Monday to Friday from 9:00 am until 5:00 pm and to be closed on the weekends for a total of forty hours a week. This special exception is for a period of four years." The motion was seconded by Mr. Martinez.

AYES: Cruz, Martinez, Quijano, Neff, Velasquez, Britton, Garcia, Kuderer, Camargo, Rogers, Ozuna

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED.

CASE NO. A-15-075

Applicant – Chris Klebba

Lot 1, Block 1, NCB 17729

5711 Seguin Road

Zoning: "C-3 AHOD" General Commercial Airport Hazard Overlay District

The applicant is requesting a ten foot variance from the 30 foot front building setback, as described in Section 35-310.01, to allow a structure to remain 20 feet from the front property line.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 15 notices were mailed, one was returned in favor and none were returned in opposition.

David Arciniega, Parks & Recreation, stated the property adjacent is part of the department and contains equipment along with mulch for the park.

Chris Klebba, applicant, stated he constructed the fence and was not aware permits were needed to be obtained to construct the 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-15-075 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Re Appeal No. **A-15-075**, variance application for a **two foot variance from the six foot maximum rear yard fence height, as described in Section 35-514 (d) to allow an eight foot tall wood fence in the rear yard of the property**, subject property description the **Lot 87, Block 2, NCB 17122**, situated at **13302 Gable Village Drive**, applicant being **Chris Klebba**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-075**, application 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 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. The applicant asserts that the fence is required to secure the property from daily park activities. The fence, installed only on the shared boundary lines, is not contrary to public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement would result in the reduction of two feet in fence height along the shared property boundary line, an unnecessary hardship. The additional two feet in fence height is needed to screen the applicant from the heavy equipment used in the maintenance of the park as we heard testimony thereof.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance provides for privacy fencing in the rear yard to allow for quiet enjoyment and seclusion in this portion of your property. The additional fence height is required to mitigate the negative impacts from a public maintenance yard immediately adjacent to the applicant's property. Therefore the variance would be consistent with the spirit of the ordinance.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-5 PUD AHOD" Residential Single-Family Planned Unit Development Airport Hazard Overlay District.** 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 additional fence height is isolated to the shared boundaries between a private rear yard and a regional park. It is only visible from inside the specific park area, an area generally secluded from public visitors to the park. Therefore, it will not alter the character of the district.** 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 motion was seconded by **Mr. Martinez**.

AYES: Kuderer, Martinez, Quijano, Neff, Velasquez, Britton, Cruz, Garcia, Camargo, Rogers, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-082

Applicant – Luisa Munoz

Lot 2, Block 12, NCB 17872

8626 Midnight Moon

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

The applicant is a one foot variance from the four foot front yard, predominately open fence height, as described in Section 35-514, to allow a five foot tall wrought-iron fence in the front yard of the property.

Logan Sparrow, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 40 notices were mailed, one was returned in favor and none were returned in opposition.

Luisa Munoz, applicant, stated the crime rate in the neighborhood has increased and has witnessed a neighbor's home being broken into. She also stated the fence would provide security and protection for her home.

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-15-082 closed.

MOTION

A motion was made by **Mr. Camargo**. "I would move that in Case No **A-15-082**, applicant being **Luisa Munoz**, on property located at **8626 Midnight Moon**, legally described as **Lot 2, Block 12, NCB 17872**, be granted a **one foot variance from the four foot front yard, predominately open fence height, as described in Section 35-514, to allow a five foot tall wrought-iron fence in the front yard of the property**. Specifically, we find that such variance will not be contrary to the public interest in that **no opposition was returned to the requested variance. One of the notices that were returned in fact favored the construction a five foot fence in the front yard setback and cited various instances of break ins in the neighborhood**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special condition present in this case is the occurrence of criminal activity in the area**. The spirit of the ordinance is observed and substantial justice is done in that **granting the requested variance would result in substantial justice as the variance would allow the family adequately protection in this area**. Such variance will not

authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of use that is not currently permitted within this zoning classification which is that of single family.** 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 **staff noted that the neighboring property immediately to the east of the subject property and also in the surrounding area have similarly constructed fencing around the property.** 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 in that **the unique circumstance present in this case is that the neighborhood has been negatively affected by criminal activity in the area."** The motion was seconded by Mr. Rogers.

AYES: Camargo, Rogers, Quijano, Neff, Velasquez, Britton, Cruz, Garcia, Kuderer, Martinez, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-15-083

Applicant – Leticia Hinojosa

Lot 61, Block 44, NCB 15490

7907 Westshire Drive

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

The applicant is a two foot variance from the maximum four foot front yard predominately open fence height, as described in Section 35-514 (d), to allow a six foot tall wrought-iron fence in the front yard of the property.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 22 notices were mailed, none were returned in favor and one was returned in opposition.

Leticia Hinojosa, applicant, stated she has had numerous vandalisms on her property. She also stated trespassers will ring the doorbells at all hours of the day and there also has been an attempted break-in into her home while her family was at house. She further stated she was not aware of the permits need for the construction of the 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-15-083 closed.

MOTION

A motion was made by **Mr. Velasquez**. "Re Appeal No. **A-15-083**, variance application for a **two foot variance from the maximum four foot front yard predominately open fence height, as described in Section 35-514 (d), to allow a six foot tall wrought-iron fence in the front yard of the property**, subject property description the **Lot 61, Block 44, NCB 15490**, situated at **7907 Westshire Drive**, applicant being **Leticia Hinojosa**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-083**, application 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 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, these criteria are represented by fence height limitations to provide for safety, and also to promote a sense of community. The applicant asserts that the fence is required to secure the property from park patrons. Reducing crime is well within the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **staff finds that the special condition present in this case is that the request serves to mitigate criminal activities which have been inflicted upon the applicant's property in the past. A literal enforcement would result in the reduction in fence height along the front property line and result in an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance provides fencing height and design requirements to protect homes and also to encourage a sense of community. This fence does not detract from the residential nature of the community, nor does its design conflict with the spirit of the ordinance. Therefore, the variance would be consistent with the spirit of the ordinance.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District.** 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 fence is actually exactly the same as the neighbor's fence to the west. It is 5 feet in height along its length, except for the gates. Therefore, it will not alter the character of the district.** 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 in that **the applicant's property is affected by its proximity to a park, creating the need for additional property barriers. This circumstance was not created by the applicant.**" The motion was seconded by **Mr. Garcia**.

AYES: Velasquez, Garcia, Quijano, Neff, Britton, Cruz, Kuderer, Martinez, Camargo, Rogers, Ozuna
NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-081

Applicant – JoAnn Alonzo
Lots 58 & 59, Block 8, NCB 7871
620 W Harlan Avenue
Zoning: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay

The applicant is requesting the elimination of the five foot side yard setback, as described in Section 35-310.01, to allow a carport that is attached to a home to remain on the side property line.

Logan Sparrow, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 35 notices were mailed, none were returned in favor and none were returned in opposition.

JoAnn Alonzo, applicant, stated she is requesting this variance to keep her carport. She also stated her brother and neighbor constructed the carport. She further stated she was not aware that she needed permits because the carport was attached to the home.

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-15-081 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-081**, variance application for the **elimination of the five foot side yard setback, as described in Section 35-310.01, to allow a carport that is attached to a home to remain on the side property line**, subject property description the **Lots 58 & 59, Block 8, NCB 7871**, situated at **620 W Harlan Avenue**, applicant being **JoAnn Alonzo**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-081**, application 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 such variance will not be contrary to the public interest in that **ordinarily, staff would find that allowing a carport to remain on the property line would be contrary to the public interest**. In this case, there are several conditions that result in staff finding that the requested variance is not contrary to the public interest. First, the carport is made entirely

of metal and, thus, does not pose a large fire risk to adjacent properties. Also, as a result of its metal construction, maintenance will not be needed as frequently. There is enough room between the posts and the fence to allow for painting without trespass onto adjacent property. Lastly, the neighboring property has a large driveway and parking area on the east side of that property. As a result, the existing carport is 35 feet from the nearest adjacent structure; a safe distance for fire protection. As a result of these findings, staff has determined that the requested variance is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the special conditions present in this case are that the carport is entirely made of metal, which relaxes the need for maintenance and reduces the threat of fire spread. Also, the location of the home on adjacent property creates conditions by which air and light are not compromised as a result of the requested variance. Additionally, the lot has been developed in such a way that the addition of any carport would likely be in violation of the side yard setback. If the five foot setback were in place, a car could not fit in the carport. The spirit of the ordinance is observed and substantial justice is done in that granting the requested variance would result in substantial justice as the carport would remain 35 feet from the nearest adjacent structure. At 35 feet, it is unlikely that adjacent properties will be negatively affected by the requested variance. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District. 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 staff noted that many homes within this community benefit from carports of similar design. Granting the requested variance is not likely to result in an alteration to the essential character of the district. 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 in that the unique circumstance present in this case is that the carport will remain 35 feet from the nearest structure based upon the lot development of the adjacent property. Also, the lot dimensions of the subject property force the need for a variance for any carport construction." The motion was seconded by Mr. Quijano.

AYES: Velasquez, Quijano, Neff, Britton, Cruz, Garcia, Kuderer, Martinez, Camargo, Rogers, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-085

Applicant – Karla & Cesar Lopez
Lot 15, Block 10, NCB 7478
251 Paramount Avenue

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

The applicant is requesting for the elimination of the required five foot side yard setback, as described in Section 35-310.01, to allow an existing carport to remain on the side property line.

Logan Sparrow, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 51 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Memorial Heights Neighborhood Association.

Edward Arredondo, representative, 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-15-085 closed.

MOTION

A motion was made by **Mr. Velasquez**. "Re Appeal No. **A-15-085**, variance application for a **three foot variance from the five foot required setback allow it two feet from the property line for a carport to remain**, subject property description the **Lot 15, Block 10, NCB 7478**, situated at **251 Paramount Avenue**, applicant being **Karla & Cesar Lopez**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-085**, application for a variance to the subject property as described above as previously stated, 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 such variance will not be contrary to the public interest in that **the carport is of wooden construction and as per building code would be required to meet fire code in order to remain but be altered no less than two feet from property line at property being a single family home. The adjacent property owner is in attendance with the owner of the applicant property and is in accord with this request.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the existing carport would be reduced in size in order to allow further infiltration of light and air. The requested variance gives sufficient space and prevents any trespassers and maintenance from the structure therefore no unnecessary hardship exists by the alteration.** The spirit of the ordinance is observed and substantial justice is done in that **the structure will be required to go before the building to meet necessary fire code and will be a reasonable distance for water drainage and not affect the adjacent property.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **language in this motion is for a carport only.** 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 in that **the previous setback for the property and**

building in this community was three feet. The existing character in this community the variance is more consistent with the 12 inch request as oppose to a three foot alteration.” .

A motion was by **Mr. Camargo** to reconsider the motion. **Mr. Velasquez** seconded the motion with all members voting in the affirmative.

SUBSTITUTE MOTION

A motion was made by **Mr. Camargo**. “I would like to move that in Case No. **A-15-085**, applicant being **Karla & Cesar Lopez**, on property at **251 Paramount Avenue**, legally described as **Lot 15, Block 10, NCB 7478**, be granted a **two foot variance to allow a three foot setback from the property line**. It may or may not be something that the applicant can live with but I think it gives them that option for them and something to work towards if we approve it. This is and has been pointed out typically a three foot setback area constructed prior to 1955 therefore a three foot setback would not be out of order. The construction regulations are much more updated than they were back in 1955 so I think we can be assured that upon plan review the appropriate sizing of material and fire rating would be accomplished at that time. Specifically, we find that such variance will not be contrary to the public interest in that we did not have any opposition to this request. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the condition being that the fact these are narrow lots constructed in a manner that did not allow much room for carports or garages on the site would justify this variance being granted. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **this is a single family use in a single family classification**. The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance would be followed and justified in the fact that this would be the setback that would be in keeping in that specific neighborhood**. 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 **once the appropriate codes are applied to this variance I think the safety of the community would be met**. 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 in that **the unique circumstances being in this case that it is limited in size, with or without knowledge this was constructed without a permit and obviously with this violation I feel that if we at least grant a two foot variance to allow a three foot setback it certainly is going to be in keeping with the surrounding neighborhood**. The motion was seconded by **Mr. Martinez**.”

AYES: Camargo, Martinez, Quijano, Neff, Velasquez, Britton, Cruz, Garcia, Kuderer, Rogers, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-086

Applicant – Felipe Chapa

W 25 ft of Lot 13 & E 37.5 ft of Lot 14, Block 176, NCB 9088

1611 Alhambra Street

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

The applicant is requesting 1) an eight foot variance from the ten foot front setback requirement to allow a carport two feet from the front property line and 2) a two foot variance from the five foot side setback requirement both as shown on Table 35-310-1 to allow a carport three feet from the side property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the side yard variance and denial of the front yard variance. She indicated 35 notices were mailed, one was returned in favor and none were returned in opposition.

Felipe Chapa, applicant, stated he is requesting the variance to keep the carport. He also stated the carport allows him to park to vehicles side by side. He further stated he was not aware of permits or setbacks when he constructed 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-15-086 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-15-086**, variance application for **1) an eight foot variance from the ten foot front setback requirement to allow a carport two feet from the front property line and 2) a two foot variance from the five foot side setback requirement both as shown on Table 35-310-1 to allow a carport three feet from the side property line**, subject property description the **W 25 ft of Lot 13 & E 37.5 ft of Lot 14, Block 176, NCB 9088**, situated at **1611 Alhambra Street**, applicant being **Felipe Chapa**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-086**, application 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 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, these criteria are represented by minimum setbacks to protect equal access to air and light and provide fire separation. The applicant installed the wooden carport with 3 feet of the side property line, adequate to properly maintain it. The carport also protrudes into the minimum 10 foot front setback 2 feet from the front property line, according to the submitted site plan.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **staff finds that**

the special condition present in this case is that the applicant constructed the carport not knowing that a building permit was required. Had the applicant sought a building permit, the setbacks could have been explained. Staff finds that the three foot side setback provides adequate room for long term maintenance and that a literal enforcement of the ordinance would result in an unnecessary hardship to increase the distance to 5 feet. The spirit of the ordinance is observed and substantial justice is done in that **the ordinance requires setbacks to allow for long term maintenance without trespass and fire separation. The spirit of the ordinance is observed when the setback provided is adequate to accomplish these goals in a smaller area. The three feet on the side, though it is heavily vegetated, allows room to maintain the carport. Fire separation methods will be required during permitting to reduce the threat of fire.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District.** 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 **carports are often found over driveways and close to property lines. Recent fire prevention codes updates have become more restrictive on structures closer than 5 feet to a property line. As such, this structure will require some retrofitting to increase fire resistance.** 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 in that **the unique circumstance present on the side setback is that the structure maintains a greater than 15 foot separation from the neighboring home, and will eventually include fire retardation construction."** The motion was seconded by Mr. Neff.

Mr. Quijano made a motion to withdraw his motion. Mr. Neff seconded the motion.

1st MOTION

A motion was made by Mr. Camargo. "I would move that in case No A-15-086, the applicant being Felipe Chapa, on located at 1611 Alhambra Street, legally described as the W 25 ft of Lot 13 & E 37.5 ft of Lot 14, Block 176, NCB 9088, be granted a two foot variance from the five foot side setback requirement both as shown on Table 35-310-1 to allow a carport three feet from the side property line. Specifically, we find that such variance will not be contrary to the public interest in that **the adjacent property owner that is most affected by the side yard setback has submitted a letter in favor of that particular variance.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special condition that exists on this particular case is the fact that this is an area that was developed on three foot side yard setbacks were allowed by code.** The spirit of the ordinance is observed and substantial justice is done in that **granting the variance to this curb setback requirement would be observing the intent of the ordinance and the substantial justice would be done.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **this is a single family district and this is a single family use on the property.** 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 **due to recent fire prevention codes updates have become more restrictive on structures closer than 5 feet to a property line and gives the adjacent property the necessary protection.** 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 in that **the unique circumstance present on the side setback is that the structure maintains a greater than 15 foot separation from the neighboring home, and will eventually include fire retardation construction.** The motion was seconded by Mr. Martinez."

AYES: Camargo, Martinez, Quijano, Neff, Velasquez, Britton, Cruz, Garcia, Kuderer, Rogers, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

2nd MOTION

A motion was made by Mr. Martinez. "Re Appeal No. A-15-086, variance application for a **four foot variance from the ten foot front setback requirement to allow a carport six feet from the front property line**, subject property description the **W 25 ft of Lot 13 & E 37.5 ft of Lot 14, Block 176, NCB 9088**, situated at **1611 Alhambra Street**, applicant being **Felipe Chapa**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-15-086, application 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 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, these criteria are represented by minimum setbacks to protect equal access to air and light and provide fire separation. The applicant installed the wooden carport with 2 feet of the front property line. The carport, according to the submitted site plan, also protrudes into the minimum 10 foot front setback 2 feet from the front property line. The minimum front setback is important feature in urban design and there are no other structures this close to the front sidewalk. Therefore, the variance from the front setback of 8 feet would contrary to the public interest and the four feet setback might comply best with the needs. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that staff finds that the special condition present in this case is that the applicant constructed the carport not knowing that a building permit was required. Had the applicant sought a building permit, the setbacks could have been explained therefore we are recommending the carport be brought back to at least six feet from the front property line therefore allowing a four foot variance from the ten foot setback.** The spirit of the ordinance is observed and substantial justice is done in that **the ordinance requires setbacks to allow for**

long term maintenance without trespass and fire separation. The spirit of the ordinance is observed when the setback provided is adequate to accomplish these goals in a smaller area. A minimum front setback is required in every residential zoning district and has been respected by residential development patterns for centuries. The requested front variance of four feet does honor the spirit of the ordinance because it allows the owner of the property to have a carport that could be allowed to cover the cars shown in the photograph to be covered. Right now the photograph shows the carport is much longer than it really needs to be to cover that car. 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 **that front setback however does have a negative impact on the streetscape protruding out to within 2 feet of the property line therefore that's why we are recommending a four foot variance from the ten foot setback.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District.** 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 in that **the unique circumstance here is that he wants to provide protection for his vehicle and the carport that he has constructed is too far forward therefore I am recommending a four foot variance from the ten foot which would require the property owner to reduce the length toward the street of the existing carport."** The motion was seconded by Mr. Neff.

AYES: Martinez, Neff, Quijano, Velasquez, Britton, Cruz, Garcia, Kuderer, Camargo, Rogers, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-087

Applicant – Allan Young

Lot 1, Block 1, NCB 17729

5711 Seguin Road

Zoning: "I-1 AHOD" General Industrial Airport Hazard Overlay District

The applicant is requesting a ten foot variance from the 30 foot front building setback, as described in Section 35-310.01, to allow a structure to remain 20 feet from the front property line.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 12 notices were mailed, one was returned in favor and none were returned in opposition.

James McKnight, representative, stated the building has been in existence before the property was annexed into the city. He also stated because the property has been abandoned for several years a nonconforming use would not be applicable. He further stated the variance would allow for them to sell the property.

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-15-087 closed.

MOTION

A motion was made by **Mr. Neff**. "Re Appeal No. **A-15-087**, variance application for a **ten foot variance from the 30 foot front building setback, as described in Section 35-310.01, to allow a structure to remain 20 feet from the front property line**, subject property description the **Lot 1, Block 1, NCB 17729**, situated at **5711 Seguin Road**, applicant being **Allan Young**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-087**, application 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 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, these criteria are represented by setback requirements to ensure equal access to air and light. The subject property has been located in its current location since 1982. Granting a variance to recognize the structure as legal, non-conforming is unlikely to represent any challenge to the public health, safety, or welfare. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the special condition present in this case is that the building has been non-conforming for 25 years. Over those years, staff has been unable to determine even one case where the location of the structure has presented a problem to the public. A literal enforcement of the ordinance would require that the applicant remove ten feet of the structure to create the 30 foot setback. Staff finds that this would constitute an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that granting the requested variance would result in substantial justice as the variance would allow the warehouse to be purchased and used once again. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "I-1 AHOD" General Industrial Airport Hazard Overlay District. 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 building retains a 20 foot setback from the property line, and about 30 feet from the street. As such, the building does not encroach to**

an unsafe degree. The applicant is not requesting any expansion of the structure further into the setback, only seeking assurance that the existing conditions are recognized by the city as a legal, non-conforming structure. 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 in that the unique circumstance present in this case is that the building has been non-conforming for 25 years. This problem is not merely financial in nature, nor is it the fault of the applicant.” The motion was seconded by **Mr. Garcia**.

AYES: Neff, Garcia, Quijano, Velasquez, Britton, Cruz, Kuderer, Martinez, Camargo, Rogers, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

Mr. Britton made a motion to approve the May 4, 2015 minutes. **Mr. Garcia** seconded the motion with all members voting in the affirmative.

Mr. Britton departed at 3:56 p.m.

APPROVED BY:

OR

DATE:

ATTESTED BY:

Executive Secretary

DATE:

6-1-15