

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
June 1, 2015**

Members Present:

Andrew Ozuna
Mary Rogers
Frank Quijano
Alan Neff
Gabriel Velasquez
George Britton
Maria Cruz
John Kuderer
Roger Martinez
Gene Camargo
Henry Rodriguez
Lydia Fehr

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Logan Sparrow, Planner
Paul Wendland, 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.

Mr. Velasquez made a motion to move case No A-15-097 to the beginning of the agenda. **Mr. Kuderer** seconded the motion with all members voting in the affirmative.

CASE NO. A-15-097

Applicant – Brown and Ortiz PC

P 11A, P 12C, NCB 15069

12305 SW Loop 410

Zoning: Zoning: “UD AHOD” Urban Development Airport Hazard Overlay District

The applicant is requesting 1) variance from the development standards specific to the Urban Development District including block lengths and internal streets, building orientation, and buffers; and 2) a variance from the prohibition against gated access, as specified in Section 35-310.15, to allow a gated multi-family apartment complex served by private driveways with up to 322 units on a 17.3 acre parcel.

James McNight, representative, stated they are requesting a continuance until the July 6, 2015 Board of Adjustment meeting

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-15-096 closed.

MOTION

A motion was made by **Mr. Martinez to continue this case until next regularly scheduled meeting on July 6, 2015.** The motion was seconded by **Mr. Kuderer.**

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

NAYS: None

THE MOTION PASSES.

CASE NO. A-15-068

Applicant – Roberto Gallardo
Lot 20, Block 4, NCB 7444
4939 Fortuna Street
Zoning: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay

The applicant is requesting 1) a four and a half foot variance from the five foot side setback requirement, as described in Section 35-310.01, to allow a carport with an eave overhang that is two and a half feet from the side property line and 2) a seven foot variance from the ten foot front setback requirement, also described in Section 35-310.01, to allow the carport three feet from front property line.

Logan Sparrow, Planner, presented background and staff’s recommendation of denial of the variance #1 and approval of variance #2. He indicated 38 notices were mailed, 2 were returned in favor and none were returned in opposition.

Roberto Gallardo, applicant, stated the carport would shelter his family from bad weather. He also 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-15-068 closed.

1st MOTION

A motion was made by **Mr. Velasquez.** “Re Appeal No. A-15-068, variance application for 1) **a four and a half foot variance from the five foot side setback requirement, as described in Section 35-310.01, to allow a carport with an eave overhang that is two and a half feet from**

the side property line and 2) a seven foot variance from the ten foot front setback requirement, also described in Section 35-310.01, to allow the carport three feet from front property line, subject property description Lot 20, Block 4, NCB 7444, situated at 4939 Fortuna Street, applicant being Roberto Gallardo. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-15-068, 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 reduce the threat of fire and to provide equal access to air and light. Staff finds that having a wooden structure only six inches from the side property line create conditions that might be conducive to fire spread this structure will have to go before building code. Building code will prescribe the appropriate fire controls for the architectural assemblage. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that staff is unable to determine any special conditions present on the subject property however it does seem to be a part of the urban design pattern as other structures have been identified to match the conditions of this particular environment while still subject to building fire requirements. The spirit of the ordinance is observed and substantial justice is done in that the area community does seem to have a particular urban pattern and constructed property as the examples that have been shown to us today do not detract from the general characteristics of that community. 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 other than that specifically permitted in the "R-4". Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located in that aerial photography indicates that there is also a parking house relationship pattern that should future cases come before this board, respectful of that existing urban pattern, that offers a future solution for adjacencies and proximity based on concerns for fire spread. If the patter that is shown is followed the distance from new construction to existing residential is likely not to promote fire spread. 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 owner has indicated that he will be going before the city for replatting to create alterations that will allow the construction of his carport that is different on the existing plat so the city will be looking at the platting opportunities but also the fire criteria will have to be met in the planning stages."** The motion was seconded by Ms. Rogers.

AYES: Velasquez, Rogers, Neff, Britton, Cruz, Rodriguez, Kuderer, Ozuna

NAYS: Quijano, Martinez, Camargo

THE VARIANCE WAS NOT GRANTED.

Mr. Camargo made a motion to reconsider the motion. Mr. Rodriguez seconded the motion.

2nd MOTION

A motion was made by **Mr. Camargo**. "I would move that in Case No. **A-15-068**, applicant being **Roberto Gallardo**, at **4939 Fortuna Street**, on property legally described as **Lot 20, Block 4, NCB 7444**, be granted 1) a two foot variance from the five foot side yard setback requirement to allow a structure three foot from the side property line and 2) a seven foot variance from the ten foot front setback requirement, also be granted. Specifically, we find that such variance will not be contrary to the public interest in that **from all the notices that were mailed to the property owners within two hundred feet, two notices were returned in favor and none in opposition**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the spirit of the ordinance will be maintained in that this area, which was constructed many years ago, it is an area where three foot side yard setbacks are not uncommon**. Secondly, staff is recommending the three foot setback at this particular location. 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 residential use and in compliance as far as uses are concerned**. 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 majority of this carport is located adjacent to a large front yard on the property immediately to the west**. 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 **it is not necessary due to unique circumstances in that the individuals that are hired to construct this structure very bluntly failed to obtained a permit where at the time there would have been advised to what the requirements are.**" The motion was seconded by **Mr. Martinez**.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-090

Applicant – Elizabeth Perez

Lot 60, Block 3, NCB 11215

375 Doolittle

Zoning: "R-6 MAOZ AHOD" Residential Single-Family Military Airport

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

Logan Sparrow, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 31 notices were mailed, one was returned in favor and one was returned in opposition.

Hector Garza, applicant, stated the carport has been in existence for about ten years. He also stated there are several houses in the neighborhood with similar carports. He further stated the existing carport was in need of repairs due to deterioration over the years.

Elizabeth Peralez, applicant, stated she constructed the carport years ago and was not aware of permits not being obtained. She also stated the constructor informed her that he would obtain permits needed to construct the carport. She also stated the carport provided shelter from the trees that come over into her property.

The following citizens appeared to speak:

Leticia Gutierrez, citizen, spoke in opposition.

Ernest Castoreno, citizen, spoke in opposition.

Joe Gutierrez, citizen, spoke in opposition.

Luis Gutierrez, citizen 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-15-090 closed.

MOTION

A motion was made by **Mr. Martinez**. "Re Appeal No. **A-15-090**, variance application for **elimination of the required five foot side yard setback, as described in Section 35-310.01, to allow a carport on the property line**, subject property description **Lot 60, Block 3, NCB 11215**, situated at **375 Doolittle**, applicant being **Elizabeth Peralez**. I move that the Board of Adjustment grant the applicant a **two-foot side setback variance to the above appeal No. A-15-090**, 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 reduce the threat of fire and to provide equal access to air and light. The structure currently in place poses little fire threat as a result of its metal construction. However, as the adjacent property has a home only three feet from the side property line, staff finds that permitting a large, metal carport along the property

line pose a number of adverse affects to this adjacent property including compromised access to air and light, and a crowded feel for the adjacent property owner. These are contrary to the interests of the public. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that staff is unable to determine any special conditions present on the subject property to grant variances to the side setback requirement of the full five feet therefore a reduction of the side setback of two feet would be more reasonable to allowing the carport to exist. Had the applicant applied for a building permit, the setback violation would have been addressed and plans altered to account for it. Not obtaining a building permit does not constitute a special condition and a literal enforcement of the ordinance would mandate that the structure be relocated, not eliminated. This would not result in a substantial hardship. The spirit of the ordinance is observed and substantial justice is done in that granting the requested side setback variance to two feet instead of five feet would not result in eliminating justice in the situation. Because being located along the property line adjacent to a home with a three foot setback, the crowding effect, and the compromise to air and light for the adjacent property, would supply some justice in the situation. 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 MAOZ AHOD" Residential Single-Family Military Airport Overlay 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 is it likely that granting the requested two feet variance will not harm adjacent properties as the request eliminates the whole side setback and the two foot variance would allow the homeowner to maintain a carport at the particular location. Property owners should expect to enjoy their property, not to have encroachment from neighboring development negatively influence fair and equal access to air and light. 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 therefore the motion is that there will be a granting of a two variance from the normal five foot side setback, requesting that the current carport be moved back three feet from the property line." The motion was seconded by Mr. Kuderer.

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

NAYS: None

THE VARIANCE IS GRANTED.

Board members recessed for five minutes.

CASE NO. A-15-089

Applicant – Jamal E Said
Lot 16, Block 19, NCB 10419
635 E Nottingham
Zoning: “NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District

The applicant is requesting a two and a half foot variance from the five foot side yard setback, as required in Section 35-371, to allow an accessory dwelling unit two and a half feet from the side property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 30 notices were mailed, 2 were returned in favor and none were returned in opposition and no response from the Oak Park/Northwood Neighborhood Association.

Jamal Said, applicant, stated the variance would provided extra living space for his family. He also stated the location of the addition would be more feasible to deter around from building near the tree and running plumbing pipes in the location so the roots could be avoided.

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-15-089 closed.

MOTION

A motion was made by **Mr. Kuderer**. “Re Appeal No. **A-15-089**, variance application for a **two and a half foot variance from the five foot side yard setback, as required in Section 35-371, to allow an accessory dwelling unit two and a half feet from the side property line**, subject property description **Lot 16, Block 19, NCB 10419**, situated at **635 E Nottingham**, applicant being **Jamal E Said**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-089**, 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 setbacks designed to ensure equal access to air and light. Since the requested variance would allow a 9 foot deep addition to the existing garage, the variance is not contrary to 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 the existing garage setback of 2.5 feet. A literal enforcement would result in the applicant not being permitted to convert the garage into living space, an unnecessary hardship. This conversion is considered a change of use, which triggers**

compliance with all minimum requirements. The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance allows an in-line addition to an existing home if the home has a 3 foot setback. With only a 6 inch difference, the requested 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 "NP-8 AHOD" Neighborhood Preservation 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 garage is detached and located in the rear yard. A narrow, single-wide driveway provides the only visibility from the public way. Therefore, the small addition will likely 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 is requesting a variance to allow use of the existing garage and a small addition as living space. The garage was built when a 3 foot setback was required."** The motion was seconded by Ms. Cruz.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-091

Applicant – Jerzy Sieczynski

Lot 21, NCB 6685

1912 W Laurel Place

Zoning: "MF-33 AHOD" Multi-Family Airport Hazard Overlay District

The applicant is requesting a ten foot variance from the 20 foot rear building setback line as shown on Table 35-310-1 to allow a single family home to be built ten feet from the rear property line.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 38 notices were mailed, one was returned in favor and one was returned in opposition and no response Gardendale Neighborhood Association.

Jerzy Sieczynski, applicant, stated he would like to make an investment in the property. He also stated he owns several properties in the neighborhood that he would like to build on them and comply with all city codes.

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-15-091 closed.

MOTION

A motion was made by **Mr. Rodriguez**. "Re Appeal No. **A-15-091**, variance application for a **ten foot variance from the 20 foot rear building setback line as shown on Table 35-310-1 to allow a single family home to be built ten feet from the rear property line**, subject property description **Lot 21, NCB 6685**, situated at **1912 W Laurel Place**, applicant being **Jerzy Sieczynski**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-091**, 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 lots within this subdivision are only 80 feet deep, and the applicant was unaware that the minimum rear yard in the "MF-33" zoning district was different for single-family development, increasing from 10 feet to 20 feet. Therefore the 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 staff finds that the special condition present in this case is that the applicant is developing a single-family home on a very small non-conforming lot of record. The lot has been repossessed for taxes on multiple occasions. The proposed house is 15 feet by 50 in the current plan; reducing its size through literal enforcement would result in a hardship. The spirit of the ordinance is observed and substantial justice is done in that the 10 foot setback is permitted in this district for multi-family construction. The ordinance requires setbacks to allow for long term maintenance and fire separation. Both of these goals can be accomplished with the requested variance, making it 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 "MF-33 AHOD" Multi-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 reducing the rear setback will actually push the house back on the lot to a more consistent front setback shared by other homes on the block. 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 lot is its size, only 80 feet in depth. This condition was not created by the owner."** The motion was seconded by **Ms. Cruz**.

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

NAYS: None

THE VARIANCE IS GRANTED.

Ms. Cruz departed at 2:52 pm.

CASE NO. A-15-092

Applicant – Marcelino Mendez

Lots 32 & 33, Block 10, NCB 13961

5459 Castroville Road

Zoning: Zoning: “C-3 R AHOD” General Commercial Restrictive Alcohol Sales Airport Hazard Overlay District

The applicant is requesting 1) a two foot variance from the four foot maximum predominately open fence height, as described in Section 35-514, to allow a six foot tall predominately open fence in the front yard of the property and 2) a three foot variance from the three foot maximum solid screen fence height, as described in Section 35-514, to allow a six foot tall corrugated metal fence in the front yard and 3) a variance from the prohibition against corrugated or sheet metal as a fencing material, as described in Section 35-514, and 4) a request for a 25 foot variance from the 30 foot side setback requirement, as described in Section 35-310.01, to allow a commercial structure to remain five feet from the side property line.

Logan Sparrow, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 20 notices were mailed, one was returned in favor and none were returned in opposition.

Marcelino Mendez, applicant, stated he repaired the existing fence. He also stated the fence will provide safety and security.

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-15-092 closed.

MOTION

A motion was made by **Mr. Neff**. “Re Appeal No. **A-15-092**, variance application for **1) a two foot variance from the four foot maximum predominately open fence height, as described in Section 35-514, to allow a six foot tall predominately open fence in the front yard of the property and 2) a three foot variance from the three foot maximum solid screen fence height, as described in Section 35-514, to allow a six foot tall corrugated metal fence in the**

front yard and 3) a variance from the prohibition against corrugated or sheet metal as a fencing material, as described in Section 35-514, and 4) a request for a 25 foot variance from the 30 foot side setback requirement, as described in Section 35-310.01, to allow a commercial structure to remain five feet from the side property line, subject property description Lots 32 & 33, Block 10, NCB 13961, situated at 5459 Castroville Road, applicant being Marcelino Mendez. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-15-091, 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 reduce the threat of fire and to provide equal access to air and light. The public interest is further represented by fence height limitations to protect property owners and to encourage a sense of community. In this case, the applicant applied for, and obtained building permits, for the commercial structure. The adjacent property is used for residential purposes, but zoned "C-3 R AHOD" General Commercial Restrictive Alcohol Sales Airport Hazard Overlay District. It is possible that, during the review of the project, commercial plans examiners noted commercial zoning, not realizing it was a residential use, and permitted the current structure five feet from the side property line. The adjacent home is located about seven feet from its side property line, making the total distance between these two structures 12 feet, a safe distance for fire prevention. A review of the building plans also indicate that the wall facing the residential structure does have a two hour fire rated wall, reducing further fire risk. The applicant states that the property, while under construction, fell victim to theft of several expensive construction materials. The fence was built to protect the property from future thefts. Along the south property line, being that portion of the property along Castroville Road, the applicant built a six foot tall wrought-iron fence. The corrugated metal fence along the east and north property line is also six feet tall. Because the fencing serves to protect the subject property from theft, as well as to buffer the property from adjacent residential uses, staff finds that the fence variance requests are not contrary to the public interest, either. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that a literal enforcement of the ordinance would result in the applicant having to demolish the existing commercial structure that was granted permits for construction by the City of San Antonio. This would result in substantial hardship. A literal enforcement of the code would also result in the applicant having to reduce the height of front yard fencing to four feet, a height that may permit further theft from the subject property. Also, the applicant would be forced to remove the solid-screen corrugated-metal fencing, which does serve as a buffer for adjacent residential properties. These, too, would result in substantial hardship for the applicant. The spirit of the ordinance is observed and substantial justice is done in that granting the requested variances will result in substantial justice as the applicant could effectively secure the property from criminal activity and provide buffering from adjacent residential uses. 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 "C-3 R AHOD" General Commercial Restrictive Alcohol Sales 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 **despite the commercial structure being permitted in violation of the side setback requirement, the building is unlikely to harm adjacent property because it is still located 12 feet from the nearest adjacent structure, a safe distance for fire prevention, and designed with a two-hour fire rated wall. Additionally, increased fence height, and the materials used, do not detract from the character of this community as the property is located at the exit ramp from Highway 90 and match the increasingly commercial nature of the corridor.** 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 plight of the owner of the property is that permits were issued for the commercial structure when they should not have been. The applicant, and their contractor, applied for permits and inspections and passed each. Additionally, the fence variances are requested to protect the property from theft. These problems are not merely financial in nature, nor are they the fault of the applicant. Also I would like to go back and state one of the variances. Basically to limit this variance approval to the fence construction that was already constructed on the north but not the west.** The motion was seconded by Mr. Camargo.

AYES: Neff, Camargo, Quijano, Velasquez, Britton, Fehr, Rodriguez, Kuderer, Martinez, Rogers, Ozuna.

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-094

Applicant – Juan Flores
Lot 40, Block 4, NCB 6493
1129 Elvira

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

The applicant is requesting 1) a 15 foot variance from the 20 foot rear building setback to allow a home to remain five feet from the rear property line and 2) a four foot variance from the five foot side setback to allow a home to remain one foot from the side property line, both as described in Table 35-310-1.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 55 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Prospect Hill Neighborhood Association

Juan Flores, applicant, stated he was informed by his father, before he passed away last year, that the additions to the home were constructed with permits and codes. He also stated that code enforcement cited him when he cleaned up the property. He further stated his mother currently lives in the home and will need care due to medical issues.

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-15-094 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-094**, variance application for **1) a 15 foot variance from the 20 foot rear building setback to allow a home to remain five feet from the rear property line and 2) a four foot variance from the five foot side setback to allow a home to remain one foot from the side property line, both as described in Table 35-310-1**, subject property description **Lot 40, Block 4, NCB 6493**, situated at **1129 Elvira**, applicant being **Juan Flores**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-091**, 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 setbacks designed to ensure equal access to air and light. The requested variances allow the two structures to remain, functioning as an accessory dwelling unit, similar to other structures on the block. Therefore, the 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 **staff finds that the special condition present in this case is that the structure was built on the adjacent lot and though the properties have been used as a single home site, a plat amendment would be required to officially combine the adjacent lots. The applicant hopes to retain the building for use as a caretaker facility for his elderly mother.** The spirit of the ordinance is observed and substantial justice is done in that **the ordinance allows an accessory dwelling unit 5 feet from both the side and rear property lines and without regard for the spacing between the structures. The requested variance addresses the conflicts created by this building located on a separate lot, triggering the need for a 20 foot rear setback, when only 5 feet is provided and a 5 foot side setback, when only 1 foot is provided.** 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 **the character of this area is eclectic, with a variety of affordable homes. The variance will allow the family to remain in this location where they have lived for over 40 years and will not injure the adjacent properties.** 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 is requesting a variance to allow the small residential building, constructed without permits, to remain.**" The motion was seconded by Ms. Rogers.

AYES: Velasquez, Rogers, Quijano, Neff, Britton, Fehr, Rodriguez, Kuderer, Martinez, Camargo, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-096

Applicant – Brown and Ortiz PC

P 11A, P 12C, NCB 15069

12305 SW Loop 410

Zoning: Zoning: "UD AHOD" Urban Development Airport Hazard Overlay District

The applicant is requesting 1) variance from the development standards specific to the Urban Development District including block lengths and internal streets, building orientation, and buffers; and 2) a variance from the prohibition against gated access, as specified in Section 35-310.15, to allow a gated multi-family apartment complex served by private driveways with up to 322 units on a 17.3 acre parcel.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 5 notices were mailed, none were returned in favor and none were returned in opposition.

Ken Brown, representative, stated the property is uniquely shaped and configured. He also stated due to the form based zoning they would not be able to connect to any infrastructure because of the flood plain and highway. He further stated funds provided by the city would be lost due to lack of construction on the property.

The following citizens appeared to speak:

Barbara Guerrero, citizen, 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-15-096 closed.

MOTION

A motion was made by **Mr. Quijano**. "Re Appeal No. **A-15-096**, variance application for 1) **variance from the development standards specific to the Urban Development District**

including block lengths and internal streets, building orientation, and buffers; and 2) a variance from the prohibition against gated access, as specified in Section 35-310.15, to allow a gated multi-family apartment complex served by private driveways with up to 322 units on a 17.3 acre parcel, subject property description P 11A, P 12C, NCB 15069, situated at 12305 SW Loop 410, applicant being Brown and Ortiz PC. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-15-091, 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 in the Heritage South Sector Plan and a goal for increased housing options. The recently adopted plan hoped for new investment and revitalization. The variances as requested would allow the project to proceed, consistent with 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 the isolation of this parcel from other infrastructure, making compliance with the "UD" provisions for street connectivity an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the intent of the UDC is to ensure that new development is compatible with surrounding development. In this case, surrounding development is scarce and the applicant has been awarded housing funds from the City to assist in the construction of this project. As such, the spirit of the ordinance is being observed.** 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 "UD AHOD" Urban 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 project will be the first character defining development within the area. Over 300 residential units are planned. Therefore, the new apartment complex will not negatively impact 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 unique circumstance is that the property is surrounded by vacant land, some of which is characterized as wetlands regulated by the Corps of Engineers. This is not merely financial and not caused by the applicant.**" The motion was seconded by Mr. Rodriguez.

AYES: Quijano, Rodriguez, Neff, Velasquez, Britton, Fehr, Kuderer, Martinez, Camargo, Rogers, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-098

Applicant – 815 Avenue B L.P.

Lots A, A1, 1,2,3,4,5,6,7,8, and NW 50 feet of 9 & 10, Block 27, NCB 449

815 Avenue B

Zoning: “FBZD T6-2 RIO-2 AHOD” Form Based Zoning River North Transect River Improvement Airport Hazard Overlay District

The applicant is requesting 1) a variance from the setback frontage requirement on the fourth story to allow a six story residential building without the ten foot setback; and 2) a variance from the minimum 15 foot river setback to allow encroachment to within 4 feet on the northwest corner of the building.

Margart Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 20 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Downtown Residents Neighborhood Association.

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-15-098 closed.

MOTION

A motion was made by **Mr. Rodriguez**. “Re Appeal No. **A-15-098**, variance application to **1) a variance from the setback frontage requirement on the fourth story to allow a six story residential building without the ten foot setback; and 2) a variance from the minimum 15 foot river setback to allow encroachment to within 4 feet on the northwest corner of the building**, subject property description **Lots A, A1, 1,2,3,4,5,6,7,8, and NW 50 feet of 9 & 10, Block 27, NCB 449**, situated at **815 Avenue B**, applicant being **815 Avenue B L.P.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-068**, 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, the public interest is represented by the specific guidelines designed to create the urban form envisioned for River North. The architects have proposed a design which addresses the constraints of the site and the goals of the code. As such, the public interest would be served by granting the variance.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **according to the applicant, the special condition present in this case include the myriad of design considerations, including the hidden structured parking and detailed architectural façade elements that make literal enforcement an unnecessary hardship.** The

spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance is being observed by the architectural details incorporated to provide the variation anticipated from the setback. As such, the variances will observe the spirit of the ordinance goals.** 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 "FBZD T6-2 RIO-2 AHOD" Form Based Zoning River North Transect River Improvement 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 project will introduce new housing opportunities, consistent with several of the City's goals. It will create the desired essential character envisioned in the River North Master Plan. Therefore, the variance will not injure adjacent properties in 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 is requesting these variances to allow the addition of over 300 new residential dwelling units in a previously industrial part of downtown. The proposed building is built on or near the three street frontages, has been reviewed and approved by the Historic Design and Review Commission, and provides hidden structured parking. Many of the competing components of the regulations create a unique circumstance warranting consideration."** The motion was seconded by Mr. Martinez.

AYES: Rodriguez, Martinez, Quijano, Neff, Velasquez, Britton, Fehr, Kuderer, Camargo, Rogers, Ozuna

NAYS: None

THE VARIANCE IS GRANTED.

The time is 4:05 p.m. The City Zoning Board of Adjustment, in accordance with Section 551.071 of the Texas Government Code, shall now go into executive session for the purpose of consultation with attorney regarding the case titled Sanchez v San Antonio Board of Adjustment and Sarosh Management and East Central Independent School District v San Antonio Board of Adjustment and Sarosh Management and possible action. After such deliberation, the Zoning Board of Adjustment will reconvene in Open Session.

Mr. Britton made a motion to approve the May 18, 2015 minutes. **Mr. Garcia** seconded the motion with all members voting in the affirmative.

Mr. Britton departed at 4:50 p.m.

There being no further discussion, meeting adjourned at 4:49 pm.

APPROVED BY: _____

Andrew Ozuna, Chairman

OR

Mary Rogers
Mary Rogers, Vice-Chair

DATE: _____

ATTESTED BY: _____

[Signature]
Executive Secretary

DATE: 6-15-15