

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 5, 2015**

Members Present:

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

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Kristen Flores, Planner
Paul Wendland, City Attorney

Call to Order

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

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

CASE NO. A-15-135

Applicant – Brown & Ortiz, PC
Lots 1 & 2, Block 32, NCB 17643
9418 & 9526 W Military Drive
Zoning: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting 1) a one foot variance from the six foot maximum fence height, as described in Section 35-514, to allow for the construction of a seven foot tall wall along a portion of the property; and 2) a two foot variance from the maximum six foot fence, also described in Section 35-514, to allow columns eight feet in height.

Margaret Pahl Planner, Senior Planner, presented the background and staff’s recommendation of the variances. She indicated 48 notices were mailed, 1 returned in favor, 1 returned in opposition and no response from the Westover Hills Neighborhood Association.

Daniel Ortiz, representative, explained proposed project and amended the request to construct the fence as proposed in the presented site plan.

Architect, explained the changes and details of the site plan.

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-15-135 closed.

MOTION

The motion was made by **Mr. Velasquez**. “Regarding Appeal No. A-15-135, variance application to maximum fence height subject property description Lots 1 & 2, Block 32, NCB 17643, situated at 9418 & 9526 W. Military Drive, applicant being Brown & Ortiz.

“I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-15-135, 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:

- 1) “Such variance will not be contrary to the public interest” in that **the variance request serves to mitigate the effects of having commercial operations in close proximity to residential uses. The Wal-Mart Neighborhood Market is slightly elevated above adjacent property, and thus an additional foot of wall height is necessary to prevent light from customers and deliveries to the store negatively affecting adjacent properties.**
- 2) “Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship” in that **the subject property is elevated above adjacent properties. As such, one additional foot in wall height, and two additional feet for decorative columns, is merited to protect adjacent property owners.**
- 3) “The spirit of the ordinance is observed and substantial justice is done” in that **the requested variances would allow one additional foot in wall height, an adequate height to ensure the protection of adjacent property owners. This would result in substantial justice and, as the spirit of the ordinance intends to provide adequate protection for property owners.**
- 4) “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 “C-2 AHOD” Commercial Airport Hazard Overlay District.**
- 5) “Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located” in that **the neighborhood to the southeast does have a six foot tall subdivision perimeter wall. However, as those properties are located downhill of the subject property, additional height is needed. As the wall seeks only one additional foot of height, it is unlikely that the design of the wall will detract from the essential character of the district in which it is located.**

- 6) “The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located” in that **the property owner is attempting to establish a means to protect adjacent property owners from unintended lighting stemming from the business. This is not merely financial in nature, nor is this due to, or the result of, general conditions within the district in which the property is located.**” The motion was seconded by **Mr. Garcia**.

Mr. Velasquez amended the motion to reference the exhibit of the site plan presented at this continuance. **Mr. Martinez** seconded the motion.

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

NAYS: None

THE VARIANCES ARE GRANTED.

CASE NO. A-15-149

Applicant – Michele Haussmann

Lot 1, block 4 NCB 12062

12215 Starcrest Drive

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

The applicant is requesting a 25 foot variance from the 40 foot minimum buffer yard, as described in Table 35-510-1, along the rear property line to allow a 15 foot buffer yard.

Margaret Pahl, Senior Planner, presented the background and staff’s recommendation of the variance. She indicated 30 notices were mailed, 0 returned in favor, and 0 returned in opposition.

Michele Haussman, explained the proposed project of a mini storage business, and presented supporting information for the variance requested.

Rob Copeland, Engineer, explained the drainage situation.

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-15-149 closed.

MOTION

The motion was made by **Mr. Quijano**. “Regarding Appeal No. A-15-149, variance application to reduce 40 foot minimum bufferyards to 15 feet subject property description Lot 1 Block 4 NCB 12062, situated at 12215 Starcrest Drive, applicant being Michele Haussmann I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-15-149, 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:

1. “Such variance will not be contrary to the public interest” in that **the public interest is represented by minimum buffers installed to protect adjacent properties from future conflicts generated by differing uses. The variance is not contrary to the public interest.**
 2. “Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship” in that **The special circumstance present on the subject property is that the site plans were designed for construction when only a 15 foot buffer was required by the adjacent property’s zoning district. Now, a 40 foot wide buffer is required along a portion of the rear boundary.**
 3. “The spirit of the ordinance is observed and substantial justice is done” in that **the buffer yard is intended to mitigate the impact between two incompatible uses. In this case though, a self storage facility is not an intense use. Therefore, this variance observes the spirit of the code.**
 4. “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 **“C-3 AHOD” General Commercial Airport Hazard Overlay District.**
 5. “Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located” in that **the subject property is currently heavily wooded and its proposed development will change the habitat and refuge it has provided to birds and wildlife. However, the requested reduction in buffer yard width for the 140 linear feet of the shared boundary is not likely to alter the character of the district or injure the adjacent property.**
 6. “The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, 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 site is subject to on-site detention, which only impacts 15-20% of the parcels within city limits. In addition, a fire lane 26 feet in width also is required for this project. This is not merely financial.”**
- The motion was seconded by **Ms. Cruz**.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-147

Applicant – Eugenio Medrano
Lot 3, Block 25, NCB 34400D
11610 Rousseau Street
Zoning: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay
District

The applicant is requesting a 5 foot variance from the minimum 10 foot front building setback, as shown on Table 35-310-1, to allow a carport 5 feet from the front property line

Margaret Pahl, Senior Planner, presented the background and staff’s recommendation of the requested variance. She indicated 38 notices were mailed, 0 returned in favor, 0 returned in opposition, and the NA Neighborhood Association is in opposition.

Art Rios, representative, explained the request for the variance. Explained the need for the larger carport is to accommodate the needs a family member with a disability.

Eugenio Medrano, applicant, explained the reasons for the carport

The following citizens appeared to speak:

Jori Zabava, 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-15-147 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Regarding Appeal No A-15-147, variance application to allow a 5 foot front setback subject property description Lot 3 Block 25 NCB 3440 D, situated at 11610 Rousseau Street, applicant being Eugenio Medrano.

I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-15-147, 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:

- 1) “Such variance will not be contrary to the public interest” in that the applicant has shown support from residents in the neighborhood.

- 2) "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that the carport is in an open area and allows air to flow through it. As noted and as part of the motion, to specify an open air carport, if approved.
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that the carport is setback from the property line so it doesn't pose a fire threat.
- 4) "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 R-6 Residential Airport Hazard Overlay District .
- 5) "Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located" in that the applicant has shown examples of other similar carports, also has indicated the support of the adjacent homeowner.
- 6) "The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located" in that the variance request is not merely financial." The motion was seconded by **Mr. Neff.**

AYES: Velasquez, Neff, Quijano, Britton, Cruz, Garcia, Rogers, Ozuna

NAYS: Zuniga, Martinez, Camargo

THE VARIANCE FAILED.

2:40 p.m. Board members recessed for 10 minutes.

CASE NO. A-15-150

Applicant – Rosa Castro

Lots 36 & 37, Block 38, NCB 1632

617 Essex Street

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

The applicant is requesting a 3.5 foot variance from the minimum 5 foot side setback, as described in Section 35-310.01, to allow a new carport 1.5 feet from the side property line.

Kristin Flores, Planner, presented background, and staff's recommendation of the variance. She indicated 27 notices were mailed, 2 returned in favor, 0 returned in opposition, and no response from the Denver Heights Neighborhood Association.

Roland Castro, applicant, explained the reason for the variance to allow a wide 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-15-150 closed.

MOTION

A motion was made by **Ms. Rogers to continue this case until the meeting on November 2, 2015.** The motion was seconded by **Mr. Quijano.**

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

NAYS: None

THE CONTINUANCE IS GRANTED.

CASE NO. A-15-148

Applicant – Jamie Rocha
Lots 24 & 25, Block 15, NCB 3614
1415 West Hollywood Avenue
Zoning: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay
District

The applicant is requesting a 3 foot variance from the minimum 5 foot side yard setback, as described in Section 35-310.01, to allow a rear in-line addition 2 feet from the property line.

Kristin Flores, Planner, presented background and staff’s recommendations of the requested variance. She indicated 38 notices were mailed, 1 returned in favor, and 1 returned in opposition. No response from the Keystone Neighborhood Association.

Jaime Rocha, applicant, stated the reason for the request is to expand and beautify 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-15-148 closed.

MOTION

A motion was made by **Mr. Velasquez.** “Regarding Appeal No. A-15-148, variance application for a 3 foot variance from the minimum 5 foot side yard setback, to allow a rear in-line addition 2 feet from the property line subject property description __Lots 24 & 25, Block 15, NCB 3614, situated at 1415 West Hollywood Avenue, applicant being Jamie Rocha.

"I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-15-148, 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:

- 1) "Such variance will not be contrary to the public interest" in that **the home addition is not fully constructed thus initial construction can meet fire standards. The proposed home addition is flanked by a neighboring driveway and stands approximately 12 feet from adjacent structures, more than the 10 feet currently required by code.**
- 2) "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that **_the home addition does not allow the applicant to utilize the door in the current home. The applicant wishes to integrate the new structure with the current home the addition need to be built in-line.**
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **After completion of the home addition, in the proposed location, 12 feet of spacing will remain between adjacent structures. Also, initial construction will be required to meet fire standards. .**
- 4) "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 **"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District.**
- 5) "Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located" in that **the proposed home addition has is not fully constructed thus initial construction will address fire standards and possible effects of water runoff. In addition, as the home is adjacent to a driveway, approximately 12 feet of space is present between adjacent structures, more than the 10 feet required by the current code.**
- 6) "The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located" in that **the abnormally large space between adjacent structures. The home addition is proposed to be located with approximately 12 feet between adjacent structures. The home addition has is not fully constructed and initial construction will be required to meet current fire standards."**
The motion was seconded by Mr. Martinez.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-153

Applicant – Ricardo Renteria
Lot 18, Block 16, NCB 3284
819 East Drexel Avenue
Zoning: “R-4 AHOD” Residential Single-Family Airport Hazard Overlay
District

The applicant is requesting a 1 foot variance from the minimum 5 foot side yard setback, as described in Section 35-310.01, to allow a new home 4 feet from the side property line.

Kristin Flores, Senior Planner, presented the background and staff’s recommendation for the variance. She indicated 17 notices were mailed, 2 returned in favor, 0 returned in opposition and no response from the Highland Park Neighborhood Association.

Rene Lafuente, representative, stated the reason for the request is to allow the preservation of a pecan tree.

The following 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-15-153 closed.

MOTION

A motion was made by **Mr. Quijano**. “Regarding Appeal No. A-15-153, variance application for a 1 foot variance from the minimum 5 foot side yard setback subject property description Lot 18, Block 16, NCB 3284, situated at 819 East Drexel Avenue, applicant being Ricardo Renteria.

“I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-15-153, 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:

- 1) “Such variance will not be contrary to the public interest” in that **this pecan tree is irreplaceable and ensuring new development respects natural surroundings is not contrary to the public interest. In addition, as it stands now, the home is located approximately 15 feet from adjacent structures.**
- 2) “Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship” in that **a literal enforcement of the ordinance would require the applicant to remove an irreplaceable pecan tree present on the lot before construction.**

- 3) “The spirit of the ordinance is observed and substantial justice is done” in that **providing adequate housing, in keeping with the neighborhood, is within the spirit of the ordinance. In addition, assuring natural surroundings are maintained is in keeping with the ordinance and substantial justice will be served.**
- 4) “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 **“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District.**
- 5) “Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located” in that **The Highland Park neighborhood is an older neighborhood with many large trees and homes with side setbacks of three feet. Adding to the housing stock in the area, which respects irreplaceable trees in the area, is not contrary to the essential character of the community. The home, as it stands now, is approximately 15 feet from adjacent structures.**
- 6) “The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located” in that **The unique circumstance in this case is the desire to preserve a pecan tree located on the edge of the home. The desire to save an irreplaceable tree on the lot is not a circumstance created by the owner of the property and is not merely financial.** The motion was seconded by Mr. Velasquez.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-154

Applicant – Shannon O’Malley
Lot 3 & east 5 ft. of 2, NCB 6939
811 E. Magnolia Avenue
Zoning: “R-4 H RIO-1 AHOD” Residential Single-Family River Road Historic
River Improvement Overlay Airport Hazard Overlay District

The applicant is requesting a 9 foot variance from the minimum 20 foot rear setback, as described in Table 35-310-1, to allow a rear addition 11 feet from the rear property line.

Margaret Pahl, Senior Planner, presented the background and staff’s recommendation of the variance. She indicated 30 notices were mailed, 1 returned in favor, 0 returned in opposition, and no response from the River Road Neighborhood Association.

Shannon O'Malley, applicant, stated the reason for the variance is to add a new master suite and additional storage.

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-15-154 closed.

A motion was made by **Mr. Velasquez** Regarding Appeal No. A-15-154, variance application for a 9 foot variance from the minimum 20 foot rear setback to allow a rear addition 11 feet from the rear property line. Subject property description Lot 3 & east 5 ft. of 2, NCB 6939, situated at 811 E. Magnolia, applicant being Shannon O'Malley. "I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-15-154, 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:

- 1) "Such variance will not be contrary to the public interest" in that **he proposed encroachment in this case is the restroom, which includes only opaque windows, making the variance not contrary to the public interest.**
- 2) "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that **The special circumstance present on the subject property is that the historic district design standards require that building addition be concealed behind the original structure to preserve the integrity of the district streetscape.**
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **The spirit of the ordinance is defined as the intent of the code rather than the letter of the law. Rear setbacks are designed to provide separation and privacy, which in this case is further enhanced by the dense vegetation. This variance observes the spirit of the code. Additionally, the eleven (11) feet is adequate space between the adjacent properties.**
- 4) "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 **"R-4 H AHOD" Residential Single-Family River Road Historic Airport Hazard Overlay District.**
- 5) "Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located" in that **the surrounding neighborhood is one of the most desirable locations in the City of San Antonio. The proposed addition to add a master bedroom, closet space and bath will be hidden behind the original home and will not alter the character of the district.**
- 6) "The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located" in that **designing additions to**

homes in a historic district can be difficult; it must be unnoticeable from the public street. The proposed design has been reviewed and approved by the HDRC.” The motion was seconded by Ms. Rogers.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-146

Applicant – Alfred Talamantez
Lots 24 & 25, Block 15, NCB 3614
612 West Elsmere Place
Zoning: “RM-4 NCD-2 AHOD” Mixed Residential Alta Vista Neighborhood
Conservation Airport Hazard Overlay District

The applicant is requesting for 1) a 12 foot variance from the maximum driveway width, as described in the Alta Vista Neighborhood Conversation District Residential Design Standards, to allow 24 foot wide driveways; 2) a variance from the lot limitation of 1 driveway, as described in the Alta Vista Neighborhood Conversation District Residential Design Standards, to allow 2 driveways; 3) a variance from the requirement that multifamily parking be located in the rear yard, as described in the Alta Vista Neighborhood Conversation District Residential Design Standards, to allow parking in the front yard; and 4) a 5 foot variance from the maximum 3 foot solid screen, as described in Section 35.314 (d), fence to allow an 8 foot fence in a portion of the front yard.

Kristin Flores, Planner, presented the background and staff’s recommendation of the variances. She indicated 28 notices were mailed, 1 returned in favor, 0 returned in opposition. Alta Vista and Beacon Hill Neighborhood Association is in favor of the parking variances, but opposes the fence variance.

Alfred Talamantez, applicant, explained the need for the variance to address current and future parking issues, and is requesting the fence variance, because the fence is considered to be in the front.

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-15-146 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No **A-15-146**, variance application for 1) a 12 foot variance from the maximum driveway width, as described in the Alta Vista Neighborhood Conversation District Residential Design Standards, to allow 24 foot wide driveways; 2) a variance from the lot limitation of 1 driveway, as described in the Alta Vista Neighborhood Conversation District Residential Design Standards, to allow 2 driveways; 3) a variance from the requirement that multi-family parking be located in the rear yard, as described in the Alta Vista Neighborhood Conversation District Residential Design Standards, to allow parking in the front yard; and 4) a 5 foot variance from the maximum 3 foot solid screen, as described in Section 35.314 (d), fence to allow an 8 foot fence in a portion of the front yard.

, subject property description **Lots 24 & 25, Block 15, NCB 3614**, situated at **612 West Elsmere Place**, applicant being **Alfred Talamantez**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-146**, 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 variances will not increase fire hazard or water runoff to adjacent properties. In fact, the requested variances will enhance the adjacent properties by providing an additional sound barrier and ensuring on-street parking by residents is eliminated at adjacent properties.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in **the special condition in this case is the location of the current home in relation to traffic median and design standards triggered by the proximity to railroad.** The applicant built parking, with pervious pavers, in the front of the home to provide residential parking. However, as it stands now, only a portion of the driveway is accessible. The proximity to the railroad has triggered the need for additional fence height to provide privacy and serve as a sound barrier for current residents. By granting the variance the spirit of the ordinance is observed and substantial justice is done in that **the requested variance will result in substantial justice. Providing adequate parking, of good design, is within the spirit of the ordinance. In addition, providing additional privacy and a sound barrier is in keeping with the ordinance and substantial justice will be served.** 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 “RM-4 NCD-2 AHOD” Residential Mixed Alta Vista Neighborhood Conservation 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. **The parking area, as it stands now, is built with pervious pavers, and ensures adequate parking for residents thus eliminating on-street parking. In addition, the fence is directly adjacent to the railroad right of way. Each proposed variance is in keeping with the character of the community.** The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located. **The unique circumstance in this case is the close proximity to the railroad right of way. This proximity has led the applicant to provide more security and privacy for the residents. The variances for the driveway are a result of the traffic median**

constructed due to the proximity to the railroad. This plight is not created by the owner of the property or merely financial.” The motion was seconded by Ms. Cruz.

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

NAYS: None

THE VARIANCES ARE GRANTED.

CASE NO. A-15-151

Applicant – 120 Ninth Street LLC

Lot 10, Block 34, NCB 456

120 Ninth Street

Zoning: “FBZ T6-2 RIO-2 AHOD” Form-Based Zone Transect 6 River Improvement Overlay
Airport Hazard Overlay District

The applicant is requesting for a variance from the requirement, as described in 35-209 (e) 6 D7, that a parking garage include a 2-story liner building to allow a parking garage without a liner building.

Margaret Pahl, Senior Planner, presented background and staff’s recommendations of the requested variance. She indicated 20 notices were mailed, 0 returned in favor, and 0 returned in opposition. No response from the Downtown Residents Neighborhood Association.

Andy Ender, representative, explained the proposed project of residential units and parking stalls.

The following citizens appeared to speak:

Bill Long, concerned about pedestrian friendly area.

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-15-151 closed.

MOTION

A motion was made by **Mr. Garcia**. “Regarding Appeal No. A-15-151, variance application for the elimination of a liner building around a parking structure subject property description Lot 10, Block 34, NCB 456, situated at 120 Ninth Street, applicant being 120 Ninth Street LLC.

“I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-15-151, 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:

- 1) “Such variance will not be contrary to the public interest” in that **the public interest is represented by mitigating the aesthetic impact of a parking structure. The HDRC has already required sufficient mitigation measures, making the variance not contrary to public interest.**
- 2) “Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship” in that **the special circumstance present on the subject property is that the HDRC required detailed artistic design features which conceal and beautify the proposed garage, making the liner building more pleasing to the pedestrians.**
- 3) “The spirit of the ordinance is observed and substantial justice is done” in that **the spirit is represented by incorporating design features which conceal the parking garage at the pedestrian level. Therefore, this variance observes the spirit of the code.**
- 4) “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 **“FBZ T6-2 RIO-2 AHOD” Form-Based Zone Transect 6 River Improvement Overlay Airport Hazard Overlay District.**
- 5) “Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located” in that **The surrounding neighborhood is in a state of transition, changing land uses from primarily industrial to a mix of uses. This high density residential project implements the goals for this area and its design conforms to all other form-based regulatory requirements. Therefore, this variance will not alter the character of the district.**
- 6) “The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located” in that **the project is regulated by a variety of design standards, some of which conflict and proceeded in good faith to comply with all design requirements.”** The motion was seconded by Mr. Neff.

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

NAYS: None

THE VARIANCE IS GRANTED.

Consideration and Adoption of the 2016 Board of Adjustment Calendar Schedule.

MOTION

A motion was made by **Mr. Velasquez** to approve the 2016 Board of Adjustment Calendar with omission of the April 18, 2015 meeting. The motion was seconded by Mr. Garcia.

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

NAYS: None

THE MOTION PASSED

Mr. Ozuna made a motion approve to approve the September 21, 2015 minutes with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 4:42 pm.

DATE: October 1, 15