

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
November 2, 2015**

Members Present:

Mary Rogers
Frank Quijano
Alan Neff
Jeffrey Finlay
George Britton
Maria Cruz
Jesse Zuniga
John Kuderer
Christopher Garcia
Roger Martinez
Lydia Fehr

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.

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

Election of Officers

Chairman

Catherine Hernandez, Planning Manager, called for nomination for Chairman.

Mr. Quijano nominated Ms. Mary Rogers for Chairman.

ALL VOTED IN AFFIRMATIVE.

Vice Chair

Catherine Hernandez, Planning Manager, called for nomination for Vice Chair.

Ms. Cruz nominated John Kuderer for Vice Chair.

ALL VOTED IN AFFIRMATIVE.

Pro-Temp Chair

Catherine Hernandez, Planning Manager, called for nomination for Pro-Tem Chair.

Mr. Zuniga nominated Roger Martinez for Pro-Tem Chair.

ALL VOTED IN AFFIRMATIVE.

CASE NO. A-15-139

Applicant – Roberto Marquez
Lot 13, Block 2, NCB 3856
6324 Les Harrison Drive
Zoning: “R-4” Residential Single-Family District”

The applicant is requesting for 1) the elimination of the 5 foot minimum side setback, as described in Section 35-310-1, to allow for the construction of a carport on the property line; 2) a variance to allow an increase of the maximum 50% impervious cover in the front yard, as described in Section 35-515(d).

Kristin Flores, Planner, presented the background and staff’s recommendation of the variance. She indicated 39 notices were mailed, 1 returned in favor, and 0 returned in opposition. No responses from the Hidden Meadow and Great Northwest Neighborhood Associations.

Roberto & Cecila Marquez, applicants, requesting the variances for the safety of their handicapped son.

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-15-139 closed.

MOTION

The motion was made by **Mr. Martinez**. “Regarding Appeal No. A-15-139, variance application for 1) the elimination of the 5 foot minimum side setback, as described in Section 35-310-1, to allow for the construction of a carport on the property line; 2) a variance to allow an increase of the maximum 50% impervious cover in the front yard, subject property description Lot 13, Block 2, NCB 3856 situated at 6324 Les Harrison Drive, applicant being Roberto Marquez.

“I move that the Board of Adjustment grant the applicant’s request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.”

Specifically, we find that:

- 1) "Such variance will not be contrary to the public interest" in that **these criteria are represented by minimum side setbacks and limits of impervious cover to protect home owners. The proposed carport would only provide 5 feet of space however; there are ways these issues can be mitigated. Since the carport has not yet been built, these issues will be addressed. Staff recommends approval of an increase to allow up to 60% impervious cover in the front yard**
- 2) "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that **the special condition is the sloped drive way. The current driveway, where most residents would plan to build a carport, slopes significantly toward the street. Allowing the applicant to create a carport that meets the ADA design slope standard, where the current driveway does not, is a reasonable accommodation.**
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **granting the requested side set back variance will result in substantial justice as the carport will provide reasonable accommodations for the residents of the home. In addition, fire standards and water runoff mitigation can be addressed with initial construction.**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized in the **"R-4" Residential Single-Family 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 large amount of foliage in the neighborhood and on the subject property is likely to block the view of the carport from the public right of way.**
- 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 presented in this case is the presence of a driveway which is unable to accommodate the needs of the handicap resident in the home." The motion was seconded by Mr. Garcia."

AYES: Martinez, Garcia, Quijano, Neff, Britton, Cruz, Zuniga, Kuderer, Fehr, Finlay, Rogers

NAYS: None

THE VARIANCES ARE GRANTED.

CASE NO. A-15-142

Applicant – David Moreno
Lot 12, Block 10, NCB 481
1819 North Hackberry Street

Zoning: "RM-6 AHOD" Residential Mixed Airport Hazard Overlay District

The applicant is requesting a 14 foot variance from the 20 foot minimum rear setback requirement, as described in Table 35-310-1, to allow a home to be constructed 6 feet from the rear property line.

Kristin Flores, Senior Planner, presented the background and staff's recommendation of the requested variance. She explained that the applicant was amending the request to a 10 foot variance, rather than the 14 foot. She indicated 26 notices were mailed, 1 returned in favor, 5 returned in opposition, and no response from the Government Hill Neighborhood Association.

Nathan Moreno, representative, stated the reason for the requested variance is to build a duplex with garage storage 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-15-142 closed.

MOTION

A motion was made by **Mr. Garcia**. **"Regarding Appeal No. A-15-142 variance application a 10 foot variance from the 20 foot minimum rear setback requirement to allow a home to be constructed 10 feet from the rear property line subject property description Lot 12, Block 10, NCB 481, situated at 1819 North Hackberry Street, applicant being David Moreno.**

"I move that the Board of Adjustment grant the applicant's request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship."

Specifically, we find that:

- 1) "Such variance will not be contrary to the public interest" in that the lot size is closer to "RM-4" square footage requirements than the current "RM-6", where a ten (10) foot setback is the "RM-4" base district requirement.**
- 2) "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that the applicant wishes to build a duplex on a lot with minimum square footage which could pose a hardship.**
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that permitting a setback of ten (10) feet could allow substantial justice to be done. .**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized in "RM-6 AHOD" Residential Mixed Airport Hazard Overlay District."**
- 5) "Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located" in that**

allowing a ten (10) foot setback may not injure the appropriate use of adjacent conforming properties.

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 **a unique circumstance in this case could be the limited square footage of the subject property.** The motion was seconded by **Mr. Kuderer.**”

AYES: Garcia, Kuderer, Britton, Cruz, Zuniga, Rogers

NAYS: Quijano, Neff, Martinez, Fehr, Finlay

THE VARIANCE FAILED.

CASE NO. A-16-001

Applicant – Jesse Huizar

Lots 28, 29 and the W. 7.5 ft of 30, Block 4, NCB 600

603 Montana

Zoning: ““AE-2 AHOD” Arts & Entertainment Airport Hazard Overlay District

The applicant is requesting a special exception to allow the relocation of a residential building, as described in Section 35-399.03, from 316 Jim Street to a lot located at 603 Montana Street.

Kristin Flores, Planner, presented background, and staff’s recommendation of the variance. She indicated 36 notices were mailed, 0 returned in favor, 0 returned in opposition, and no response from the Denver Heights Neighborhood Association.

Edgar Dodson, representative, explained the reason for the special exception is to separate a duplex into 2 (two) single-family homes.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-16-001 closed.

MOTION

A motion was made by **Mr. Fehr**. “Re: Appeal No. A-16-001, Application for a special exception to relocate a residential structure, Subject Property Description Lots 28, 29 and the W. 7.5 ft of 30, Block 4, NCB 600, located at 603 Montana, Applicant: Jesse Huizar .

“I move that the Board of Adjustment grant the applicant’s request for a Special Exception for the subject property as 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 UD 35-399.03.”

Specifically, we find that the following conditions have been satisfied:

1. "The special exception will be in harmony with the spirit and purpose of the chapter" in that: **A residential use on this vacant lot is preferred, given the neighborhood is largely composed of residential dwellings. Therefore, granting the special exception will be in harmony with the spirit and purpose of the chapter.**
2. "The public welfare and convenience will be substantially served" in that: **The structure will be used as a single family home, as permitted within the "AE-2" base zoning district by making use of an undeveloped parcel within a neighborhood that could benefit from incremental revitalization.**
3. "The neighboring property will not be substantially injured by such proposed use" in that: **The addition of this home will add integrity to the streetscape, bring families to the block and convert a vacant lot into a personal yard.**
4. "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 homes in this area are small, modest homes that are well maintained and contribute to the character of the district. The proposed homes are similar in size and character.**
5. "The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district" in that **the site plan submitted by the applicant shows the proposed placement of the homes will satisfy the minimum front, side and rear yard setbacks of the district.** The motion was seconded by **Mr. Cruz.**

AYES: Fehr, Cruz, Quijano, Neff, Britton, Zuniga, Kuderer, Martinez, Garcia, Finlay, Rogers

NAYS: None

THE REQUEST IS GRANTED.

CASE NO. A-15-166

Applicant – Dan Weissman

Lots P-47E and P-47A, NCB 15634

5627 Sherry Drive

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

The applicant is requesting a 2 foot variance from the maximum 6 foot fence height to allow an 8 foot fence around the rear yard of a mobile-home park.

Kristin Flores, Planner, presented background and staff's recommendations of the requested variance. She indicated 54 notices were mailed, 2 returned in favor, and 0 returned in opposition. No response from the Southwest Community Association.

Robert Jenkins, Property Manager and Representative, stated the reason for the request is for the residents security due to a high theft crime rate in the area.

The following citizens appeared to speak:

Cecil DeLeon, spoke in opposition.

Maria Salas, concerned with fire hydrant access.

Dennis Cooper, 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-15-166 closed.

MOTION

A motion was made by **Mr. Neff**. "Regarding Appeal No. A-15-166, variance application for a 2 foot variance from the maximum 6 foot fence height to allow an 8 foot fence around the rear yard of a mobile-home park subject property description Lots P-47E and P-47A, NCB 15634, situated at 5627 Sherry Drive, applicant being Dan Weissman.

"I move that the Board of Adjustment grant the applicant's request regarding 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 community has experienced high levels of criminal activity. The proposed fence will serve to provide increased privacy and security of the property.**
- 2) "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that **this community experiences a high levels of criminal activity.**
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **the additional fence height is intended to provide safety, security, and privacy of the residents of Lakeside Village.**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized in the **"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District.**
- 5) "Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located" in that **this community is directly south of the Loop 410 and has commercial uses adjacent to it.**

- 6) "The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property. **The unique circumstance on this property is the occurrence of crime in the area. This is not merely financial and was not created by the property owner.**" The applicant stated the future investment of a graffiti retardant material to coat the fence to help prevent graffiti. The motion was seconded by Mr. Kuderer.

AYES: Neff, Kuderer, Quijano, Britton, Cruz, Zuniga, Garcia, Fehr, Finlay, Rogers
NAYS: Martinez

THE VARIANCE IS GRANTED.

[REDACTED]
2:51 p.m. Board members recessed for 10 minutes.

[REDACTED]
CASE NO. A-15-150 has been withdrawn.

[REDACTED]
CASE NO. A-15-163

Applicant – John Hurtado
Lot 3, Block 7, NCB 1200
2410 Dignowity
Zoning: "I-1 EP-1 AHOD" General Industrial Facility Parking/Traffic Control
Airport Hazard Overlay District

The applicant is requesting a 15 foot variance from the minimum 30 foot front setback, as described in Table 35-310-1, to allow a manufactured home to remain 15 feet from the street right of way line.

Margaret Pahl, Senior Planner, presented the background and staff's recommendation for the variance. She indicated 19 notices were mailed, 0 returned in favor, 0 returned in opposition and no response from the Government Hill Alliance Neighborhood Association.

John Hurtado, installed manufactured home without permit, and wants to be compliant with the city.

The following citizens appeared to speak:

Anthony Moore, 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-15-163 closed.

MOTION

A motion was made by **Mr. Quijano**. "Regarding Appeal No. A-15-163, variance application for a 15 foot variance from the minimum 30 foot front setback, as described in Table 35-310-1, to allow a manufactured home to remain 15 feet from the street right of way line subject property description Lot 3, Block 7, NCB 1200, situated at 2410 Dignowity, applicant being John Hurtado.

"I move that the Board of Adjustment grant the applicant's request regarding 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 the minimum setbacks used in the industrial districts to mitigate the impact of industrial uses on the public.**
- 2) "Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship" in that **the subject property is that the setback is established for an industrial use, rather than the residential use.**
- 3) "The spirit of the ordinance is observed and substantial justice is done" in that **the intent of a 30 foot front setback is based on the impact of an industrial use. The manufactured home is setback 30 feet from the fence and therefore observes the spirit of the code.**
- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized in **"I-1 EP-1 AHOD" General Industrial Facility Parking/Traffic Control 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 owns most of the property surrounding the subject property and aside from the industrial use to the northeast, the area is vacant.**
- 6) "The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property. The unique circumstances **are that the owner had the home installed 30 feet from the front fence, but the street right of way is far wider than the improvements. The City is unlikely to ever need to widen the street, making the current 15 foot setback adequate.**" The motion was seconded by Mr. Garcia.

AYES: Quijano, Garcia, Neff, Britton, Cruz, Zuniga, Kuderer, Martinez, Fehr, Finlay, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-16-002

Applicant – Scott Dye

Lot P-5D ABS 421, CB 4298

14970 Watson Road

Zoning: “NP-8 AHOD” Residential Neighborhood Preservation Airport Hazard Overlay District

The applicant is requesting a 100 foot variance from the maximum lot width of 150 feet, as described in Section 35-353, to allow the subdivision of a 3.9 acre parcel with 346 feet of frontage into 2 lots.

Margaret Pahl, Senior Planner, presented the background and staff’s recommendation of the variance. She indicated 7 notices were mailed, 1 returned in favor, and 0 returned in opposition.

Scott Dye, applicant, explained the planned project of dividing the plot into 2 (two) lots.

No citizens appeared to speak

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-16-002 closed.

A motion was made by **Mr. Finlay**. “Regarding Appeal No. A-16-002, variance application for a 100 foot variance from the maximum lot width of 150 feet to allow the subdivision of a 3.9 acre parcel with 346 feet of frontage into 2 lots subject property description Lot P-5D ABS 421, CB 4298, situated at 14970 Watson Road, applicant being Scott Dye.

“I move that the Board of Adjustment grant the applicant’s request for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.”

Specifically, we find that:

- 1) “Such variance will not be contrary to the public interest” in that **to allow a two lot subdivision of a nearly 4 acre parcel 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 lots are large (3.9 acres) and the district limitations force the owner into more lots than desired. Therefore this unique circumstance makes literal enforcement an unnecessary hardship.**
- 3) “The spirit of the ordinance is observed and substantial justice is done” in that **the variance modifying the maximum lot width in this rural part of town observes the spirit of the code.**

- 4) "Such variance will not authorize the operation of a use other than those uses specifically authorized **in the "NP-8 AHOD" Neighborhood Preservation Airport Hazard Overlay District.**
- 5) "Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located" in that **the requested variance will allow a subdivision for a new home site, and this will not alter the character of the rural 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 requested lot width variance will be indiscernible to the passerby because this area is rural with large lots.**" The motion was seconded by Ms. Cruz.

AYES: Finlay, Cruz, Quijano, Neff, Britton, Zuniga, Kuderer, Martinez, Garcia, Fehr, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-167

Applicant – Joseph Milligan

Lot 2, Block 7, NCB 3861

206/208 Natalen Avenue

Zoning: "MF-33 NCD-6 AHOD" Multi-Family Residential Mahncke Park

Neighborhood Conservation Airport Hazard Overlay District

The applicant is requesting for 1) an 18 foot variance from the maximum 12 foot driveway width to allow a driveway 30 feet in width; and 2) a variance from the prohibition of parking in the front yard to allow parking stalls in the front yard.

Margaret Pahl, Senior Planner, presented the background and staff's recommendation of the variances. She indicated 19 notices were mailed, 0 returned in favor, 0 returned in opposition, and no response from the Mahncke Park Neighborhood Association.

Joseph Milligan, applicant, explained he created a parking lot to help residents with easy access to get in and out. He stated he wants to be compliant with code.

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-15-167 closed.

MOTION

A motion was made by **Mr. Neff**. “Regarding Appeal No. A-15-167, variance application for 1) an 18 foot variance from the maximum 12 foot driveway width to allow a driveway 30 feet in width; and 2) a variance from the prohibition of parking in the front yard to allow parking stalls in the front yard, subject property description Lot 2, Block 7, NCB 3861, situated at 206/208 Natalen Avenue, applicant being Joseph Milligan.

“I move that the Board of Adjustment grant the applicant’s request regarding 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 having adequate off-street parking for permitted uses.**
- 2) “Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship” in that **the structure was originally built as a duplex and includes two parking stalls in the rear. The lower unit has no rear exit, making access to parking difficult for the elderly owner.**
- 3) “The spirit of the ordinance is observed and substantial justice is done” in that **several other similar properties nearby have used the same method to provide improved off-street parking.**
- 4) “Such variance will not authorize the operation of a use other than those uses specifically authorized for the **“MF-33 NCD-6 AHOD” Multi-Family Residential Mahncke Park Neighborhood Conservation Airport Hazard Overlay District.**
- 5) “Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located” in that **the requested variance will allow the applicant to provide off-street parking, necessary on this narrow street. In addition, the variance will allow easy access to the parking for the resident on the ground floor unit.**
- 6) “The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property. **The unique circumstances on this property include that the applicant believed he had gone through the correct process to construct the parking pad.**” The motion was seconded by **Mr. Martinez.**

AYES: Neff, Martinez, Quijano, Britton, Cruz, Zuniga, Kuderer, Garcia, Fehr, Finlay, Rogers

NAYS: None

THE VARIANCES ARE GRANTED.

Ms. Rogers made a motion to approve the October 19, 2015 minutes with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 4:10 pm.

APPROVED BY: Mary E Rogers OR _____
Chairman Vice-Chair

DATE: 11-16-15

ATTESTED BY: Marlene King DATE: 11-30-15
Executive Secretary