

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES**

February 6, 2017

Members Present:	Staff:
Jay C. Gragg	Catherine Hernandez, Planning Manager
Frank Quijano	Ted Murphree, City Attorney
Denise Ojeda	Margaret Pahl, Senior Planner
Maria Cruz	Shepard Beamon, Senior Planner
George Britton	
Henry Rodriguez	
John Kuderer	
Roger Martinez	
Alan Neff	
Mary Rogers	

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.

Arianne Villanueva, World Wide Translators, was present.

Mr. Rodriguez entered the Meeting at 1:05pm

A Resolution appointing a member of the Board of Adjustment to the Planning Commission Technical Advisory Committee.

Case Liaison: Yvette Thomas

Ms. Rogers nominated Alan Neff to the Planning Commission Technical Advisory Committee. Mr. Martinez seconded the motion. A voice vote was taken and passed unanimously.

Ms. Cruz nominated John Kuderer as the alternate to the Planning Commission Technical Advisory Committee. Mr. Gragg seconded the motion. A voice vote was taken and passed unanimously.

Case Number: A-17-045

Applicant: Swanson Development Group
 Owner: Swanson Development Group
 Council District: 6
 Location: 6847 Callaghan Road
 Legal Description: Lots 14 and Block 1, NCB 12781
 Zoning: "C-2 AHOD" Commercial Pedestrian Airport Hazard Overlay District
 Case Manager: Margaret Pahl, Senior Planner

Margaret Pahl: Senior Planner, presented the background information and stated the applicant requested a continuance to February 20, 2017.

James Griffin: representative, officially requested a continuation to February 20, 2017.

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-17-045 closed.

MOTION

A **motion** was made by **Mr. Kuderer** "Regarding Appeal No. A-17-045 to continue the case to February 20, 2017. **Mr. Rodriguez** seconded the motion. A voice vote was taken and passed unanimously.

Case Number: A-17-037

Applicant: Hilda G. de Hoyos
 Owner: Hilda G. de Hoyos
 Council District: 7
 Location: 1910 W. Gramercy Place
 Legal Description: Lot 25, Block 32, NCB 1934
 Zoning: "R-6 H AHOD" Residential Single-Family Monticello Park Historic Airport Hazard Overlay District
 Case Manager: Shepard Beamon, Senior Planner

Request

A request for a special exception to allow a four-year renewal of a special exception, granted on February 4, 2013, for a one-operator beauty shop.

Shepard Beamon: Senior Planner, presented the background information and staff's recommendation of the requested variance. He indicated 27 notices were mailed, 1 in favor, 0 in opposition, and no response from the Jefferson and Woodlawn Lake Neighborhood Association.

Hilda De Hoyos: applicant, has followed all guidelines and requested renewal of her request.

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-17-037 closed.

MOTION

A **motion** was made by **Mr. Rodriguez**. "Regarding Appeal No. A-17-037, a request for a special exception to allow a four-year renewal of a special exception for a one-operator beauty shop, subject property being Lot 25, Block 32, NCB 1934, situated at 1910 W. Gramercy Place, applicant being Hilda de Hoyos.

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

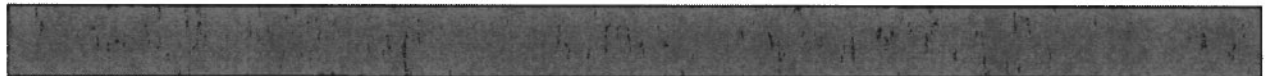
Specifically, we find that:

- A. *The special exception will be in harmony with the spirit and purpose of the chapter. The applicant has fulfilled all requirements for a one-operator shop as established in the UDC and the operation of the business does not negatively impact the character of the community.*
- B. *The public welfare and convenience will be substantially served. Public welfare and convenience will be served as it will provide a valuable service to the residents of the neighborhood.*
- C. *The neighboring property will not be substantially injured by such proposed use. The subject property will be primarily used as a single family residence. The beauty/barber shop will occupy only a small portion of the home, as required by the UDC. A neighboring property owner should have no indication that a portion of the home is being used for this purpose.*
- D. *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. The requested special exception is not likely to negatively impact adjacent property owners as the home is in character with those around it. There is nothing visible from the street that would indicate the presence of a beauty/barber shop. Also, there is a large driveway capable of providing any necessary parking for the proposed use.*
- E. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district. The primary use of the dwelling remains a single-family home. The granting of this special exception will not weaken the purposes of the residential zoning district.* " The motion was seconded by **Mr. Martinez**.

AYES: Rodriguez, Martinez, Gragg, Britton, Cruz, Neff, Ojeda, Quijano, Kuderer, Rogers

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED



Case Number: A-17-041

Applicant: Tanya Scisney

Owner: Renate Scisney Revocable Trust

Council District: 4

Location: 10303 Tippecanoe

Legal Description: Lot 19, Block 67, NCB 15910

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

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a special exception to allow a one-operator beauty shop in the home, pursuant to Section 35-399.

Margaret Pahl: Planner, presented the background information and staff's recommendation of the variances. She indicated 30 notices were mailed, 2 returned in favor, 1 returned in opposition, and received conditional support from the Heritage Neighborhood Association.

Tanya Scisney: applicant, stated she works out of the house due to her medical condition and hopes to develop a relationship with all her new neighbors.

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-17-041 closed.

A motion was made by **Ms. Ojeda**. "Regarding Appeal No. A-17-041, a request for a special exception to allow a one-operator beauty shop, subject property being Lot 19, Block 67, NCB 15910 situated at 10303 Tippecanoe, applicant being Tanya Scisney.

I move that the Board of Adjustment grant the applicant's request for the special exception for an initial period of two years for the subject property as described above, because the testimony presented to us, and the facts that we have determined show that the special exception will not weaken the purposes of the UDC.

Specifically, we find that:

- A. *The special exception will be in harmony with the spirit and purpose of the chapter. The purpose of the review is to ensure that the operation of one-operator beauty/barber shop does not negatively impact the character of the community.***
- B. *The public welfare and convenience will be substantially served. Public welfare and convenience will be served as it will provide a valuable service to the residents of the neighborhood.***
- C. *The neighboring property will not be substantially injured by such proposed use. The subject property will be primarily used as a single family residence. The beauty/barber shop will occupy only a small portion of the home, as required by the UDC. A neighboring property owner should have no indication that a portion of the home is being used for this purpose.***

- D. *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. The requested special exception is not likely to negatively impact adjacent property owners as the home is in character with those around it. There is nothing visible from the street that would indicate the presence of a beauty/barber shop. Also, there is a large driveway capable of providing any necessary parking for the proposed use.*
- E. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district. The primary use of the dwelling remains a single-family home. The granting of this special exception will not weaken the purposes of the residential zoning district.”* The motion was seconded by Ms. Cruz.

AYES: Ojeda, Cruz, Neff, Gragg, Rodriguez, Britton, Quijano, Martinez, Kuderer, Rogers

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED.

Case Number: A-17-043

Applicant: Alfredo Nunez

Owner: Alfredo Nunez

Council District: 5

Location: 3938 S. Zarzamora Street

Legal Description: Lot 32, Block 12, NCB 15910

Zoning: “C-1 AHOD” Light Commercial Airport Hazard Overlay District

Case Manager: Shepard Beamon, Senior Planner

Request

A request for a 10 foot variance from the 10 foot side setback, as described in Section 35-510.01, to allow a covered patio to be on the side property line.

Shepard Beamon: Senior Planner, presented the background information and staff’s recommendation of the variance. He indicated 24 notices were mailed, 1 returned in favor, 0 returned in opposition, and no response from the Quintana Community Neighborhood Association.

Alfredo Nunez: representative: gave his presentation on behalf of the applicant and requested approval.

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-17-043 closed.

A motion was made by **Ms. Cruz**. “Regarding Appeal No. A-17-043, a request for a 10 foot variance from the 10 foot side setback to allow a covered patio on the side property line, subject property being Lot 21, Block 1, NCB 7037, situated at 3938 South Zarzamora Street, applicant being Alfredo Nunez.

I move that the Board of Adjustment grant the applicant's request for the 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. *The variance is not contrary to the public interest.* In this case, the public interest is represented by the front setback to ensure the safety for adjacent property owners. The patio covering includes a gutter to direct rainwater away from the adjacent property. Also, the patio was built to add additional covered space for the community to enjoy and does not create any hindrances.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.* In order to provide adequate parking and circulation for traffic, the patio must be situated in its current location. The lot configuration does not permit locating the covered patio anywhere else on the site.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.* The intent of a side setback is to protect the adjacent properties from increased safety hazards. The addition respects the front setback and does not create any visual obstructions or safety hazards to neighboring properties.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the "C-1 AHOD" Light 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.* The covered patio does not detract from the character of the neighborhood as there are several other commercial properties along the corridor with similar lot layouts. Further, the adjacent property will not be injured as it has a primary structure built on the side property line.
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.* With the exception of "C-1", no other Commercial zoning districts require a side setback, including the less intense "NC" Neighborhood Commercial. This is a unique circumstance that is no fault of the owner. Further, the business could not expand in the front due to the front setback, or the opposite side due to parking and circulation." **The motion was seconded by Mr. Rodriguez.**

AYES: Cruz, Rodriguez, Quijano, Neff, Britton, Gragg, Ojeda, Martinez, Kuderer, Rogers
NAYS: None

VARIANCE IS GRANTED.

Case Number: A-17-038

Applicant: Nicolas Olmos Lara

Owner: Nicolas Olmos Lara

Council District: 9

Location: 203 Serenade Drive

Legal Description: Lot 1, Block 11, NCB 13207

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

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 13 foot variance from the 30 foot platted front setback, as described in Section 35-516 (o), to allow a carport to be 17 feet from the front property line.

Margaret Pahl: Senior Planner, presented background information, and staff's recommendation of the variance. She indicated 24 notices were mailed, 1 returned in favor and 0 returned in opposition and the Greater Harmony Hills Neighborhood Association Board of Directors is opposed.

Nicolas Olmos Lara: applicant, stated that he is only trying to protect his vehicles and from the elements. (Mr. Lara requested Spanish translation services)

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-17-038 closed.

A motion was made by **Mr. Neff**. "Regarding Appeal No. A-17-038, a request a 13 foot variance from the 30 foot platted front setback to allow a carport to be 17 feet from the front property line, subject property being Lot 1, Block 11, NCB 13207, situated at 203 Serenade Drive, applicant being Nicolas Olmos Lara.

I move that the Board of Adjustment grant the applicant's request for the 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. *The variance is not contrary to the public interest. In this case, the public interest is represented by the front setback adopted in 1959 which created expansive front yards. If the variance is granted, the carport will still be 27 feet from the curb, making the request not contrary to public interest.*
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. The special condition which creates an unnecessary hardship is the 30 foot*

platted setback, which is 20 feet deeper than the adopted zoning setback, an unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. The intent of a front setback is to create an open street view and establish uniform development standards. The carport does not conflict with the intent of the front setback as it will maintain a 17 foot front setback contributing to the open street view.*
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District.*
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located. The applicant is proposing to remain 17 feet back from the property line, not injuring the essential character of the district.*
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances that the property is subject to a building setback line recorded in 1959, at a time when large front yards were desirable. The requested variance will retain a 17 foot front setback, plus the additional 10 feet included within the city right of way and satisfy the side setback as well."* The motion was seconded by Mr. Kuderer.

AYES: Neff, Kuderer, Rodriguez, Cruz, Martinez, Quijano, Gragg, Ojeda, Britton, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

Case Number: A-17-039

Applicant: Refugio Villafañá

Owner: Refugio Villafañá

Council District: 4

Location: 10327 Cone Hill Drive

Legal Description: Lot 32, Block 12, NCB 15910

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

Case Manager: Shepard Beamon, Senior Planner

Request

A request for a 20 foot variance from the 20 foot platted front setback, as described in Section 35-516 (o), to allow a carport to be on the front property line.

Shepard Beamon: Senior Planner, presented the background information and staff's recommendation of the variance. He indicated 32 notices were mailed, 2 returned in favor, 0 returned in opposition and no response from the Heritage Neighborhood Association.

Refugio Villafana: applicant, stated he built the structure to for his disabled wife who has fallen in the past.

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-17-039 closed.

MOTION

A motion was made by **Mr. Kuderer** “Regarding Appeal No. A-17-039, a request for a 20 foot variance from the 20 foot platted setback to allow a carport on the front property line, subject property being Lot 32, Block 12, NCB 15910, situated at 10327 Cone Hill , applicant being Refugio Villafana.

I move that the Board of Adjustment grant the applicant’s request for the 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. *The variance is not contrary to the public interest.* In this case, the public interest is represented by the front setback to ensure safe development and to protect adjacent property owners. The carport is not contrary as the carport does not interfere with Clear Vision requirements and does not require maintenance with trespass.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.* The special condition which creates an unnecessary hardship is the 20 foot platted setback, which would only allow a four foot deep carport. The carport was constructed to assist the home owner who is disabled. The literal enforcement would result in the removal of majority of the structure.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.* The intent of a front setback is to establish uniform and safe development standards. The carport does not injure the rights of the adjacent property owners and does create any safety hazards for motorists and pedestrians.
4. *The 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.* The carport has been constructed to match the appearance of the existing home and does not alter the character of the district. Further, the carport does not increase the risk of fire spread or water runoff on 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. The unique circumstance is that the home's two car garage has been converted into livable space and the platted setback significantly limits the construction of additional coverage for vehicles." The motion was seconded by **Mr. Gragg**.

AYES: Kuderer, Gragg, Rodriguez, Britton, Cruz, Neff, Ojeda, Martinez, Quijano, Rogers

NAYS: None

THE VARIANCE IS GRANTED

The Board of Adjustment recessed for a 10 minute break at 2:50pm

The Board of Adjustment reconvened at 3:00pm

Case Number: A-17-040

Applicant: Jose Contreras

Owner: Jose & Paula Contreras

Council District: 1

Location: 119 Beal Street

Legal Description: Lot 5, Block 50, NCB 2744

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

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 1) a 10 foot variance from the minimum 10 foot front setback and 2) a 5 foot variance from the 5 foot side setback, both as described in Table 35-310-1, to allow a carport on the front and side property lines.

Margaret Pahl: Senior Planner, presented the background information and staff's recommendation of the variance. She indicated 25 notices were mailed, 0 returned in favor, 0 returned in opposition, and no response from the Keystone Neighborhood Association.

Paola Contreras: applicant, built the structure because of recent falls and fractures that she obtained and also so she can protect her vehicle and property. (Spanish translations requested)

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-17-040 closed.

MOTION

A motion was made by **Mr. Martinez**. “Regarding Appeal No. A-17-040, a request for 1) a 10 foot variance from the minimum 10 foot front setback and 2) a 3 foot variance from the 2 foot side setback to allow a carport on the front and side property lines, subject property being Lot 5, Block 50, NCB 2744, situated at 119 Beal Street, applicant being Jose Contreras.

I move that the Board of Adjustment grant the applicant’s request for the 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. *The variance is not contrary to the public interest. In this case, the public interest is represented by the need for covered parking for multiple cars and specifically to protect the owner’s wife.*
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, in that the carport is already constructed and has a gutter.*
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done by allowing the owner to keep the carport similar as constructed but only adjusted for the side property lot. The adjacent property owner is in support.*
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the “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 applicant has installed gutters and will be required to fire rate the structure similar to other structures in the area.*
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances in that the owner’s wife needs assistance and is fearful of slipping.” The carport is built behind the fence assuming the fence is built on the property line. The motion was seconded by Mr. Rodriguez.*

AYES: Martinez, Rodriguez, Neff, Ojeda, Britton, Cruz, Gragg, Quijano, Kuderer, Rogers
NAYS: None

THE VARIANCE IS GRANTED

Case Number: A-17-044

Applicant: Jacob Shalley
 Owner: Jacob & Hayley Shalley

Council District: 10

Location: 118 Northridge Drive

Legal Description: Lot 15, Block 16A, NCB 10442

Zoning: "NP-8 AHOD" Neighborhood Preservation Airport Hazard Overlay District

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for six foot variance from the minimum 20 foot rear setback, as described in Table-35-310-1, to allow a single-story building addition to be 14 feet from the rear property line. (including credit for half of the alley 15 feet in width)

Margaret Pahl: Senior Planner, presented the background information and staff's recommendation of the variance. She indicated 29 notices were mailed, 5 returned in favor, 6 returned in opposition, and Oak Park –Northwood Neighborhood Association is in support.

Jacob Shalley: applicant, stated the rear addition is his best option and needs the room for his growing family. Mr. Shalley has tried to work with the community.

The following citizens appeared to speak.

Robert Kozel, spoke in favor.

John Carroll, spoke in opposition.

Dianne Porter, spoke in opposition.

Janet Black, spoke in opposition.

Charles Shelton, spoke in opposition.

Amy Shalley, 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-17-044 closed.

MOTION

A motion was made by Mr. Martinez, "Regarding Appeal No. A-17-044, a request for a 6 foot variance from the 20 foot rear setback to allow a single-story building addition to be 14 feet from the rear property line, subject property being Lot 15, Block 16A, NCB 10442, situated at 118 Northridge Drive, applicant being Jacob Shalley.

I move that the Board of Adjustment grant the applicant's request for the 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. *The variance is not contrary to the public interest.* With the 15 foot wide public alley and the proposed setback, the new structure will be more than 20 feet from the adjacent property lines, matching the minimum rear setback.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.* Literal enforcement of the ordinance would result in the applicant redesigning the rear addition, impacting the existing rear elevation of the home. The special condition is the restrictive covenants, limiting additions to a single story.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.* The intent of the rear setback is to provide separation between single-family structures and create outdoor space for the quiet enjoyment of the residents. In this case, the neighborhood is served by a rear alley increasing the separation between rear yards by 15 feet of public property. The spirit of the ordinance is observed by recognizing that this public property contributes to the separation.
4. *The 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.* The requested variance will not be visible from the public right of way or alter the essential character of the district. While widening the addition may reduce the setback, it would increase the wall size visible to the immediate neighboring property owners.
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 circumstance in this case is the restrictive covenants that impact the available options for enlarging a home to meet the needs of the owners. While one could claim this condition impacts every owner in the district, the city building reviews do not enforce these and have permitted other two story additions in the neighborhood. One in the next block of Northridge was permitted in 2008."* The motion was seconded by Mr. Martinez

AYES: Martinez, Cruz, Ojeda, Rodriguez, Britton, Gragg, Quijano, Kuderer, Neff, Rogers
NAYS: None

THE VARIANCE IS GRANTED

The Board of Adjustment convened for a 5 minute break at 4:45pm.

The Board of Adjustment reconvened at 4:50 pm.

Case Number: A-17-046

Applicant: Michael Hernandez
 Owner: Michael Hernandez
 Council District: 5

Location: 1434 Tampico Street

Legal Description: Lot 41, NCB 3757

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

Case Manager: Shepard Beamon, Senior Planner

Request

A request for 1) a 13.5 foot variance from the minimum 20 foot rear setback, as described in Section 35-510.01, to allow a rear building addition to be 6.5 feet from the property line, to allow a covered patio to be on the front property line and 2) a six (6) foot variance from the 20 foot platted setback, as described in Section 35-516(o) to allow a home addition to be 14 feet from the front property line.

Shepard Beamon: Senior Planner, presented the background information and staff's recommendation of the variance. He indicated 24 notices were mailed, 17 returned in favor, 0 returned in opposition, and no response from the Avenida Guadalupe Neighborhood Association.

Michael Hernandez: applicant, stated he was blessed to have overwhelming support from his neighbors and humbly asked for the Boards approval.

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-17-046 closed.

MOTION

A motion was made by **Mr. Rodriguez**, "Regarding Appeal No. A-17-046, a request for 1) a 13.5 foot variance from the minimum 20 foot rear setback to allow a rear building addition to be 6.5 feet from the property line, to allow a covered patio to be on the front property line and 2) a six (6) foot variance from the 20 foot platted setback to allow a home addition to be 14 feet from the front property line, subject property being Lot 41, NCB 3757, situated at 1434 Tampico, applicant being Michael Hernandez.

I move that the Board of Adjustment grant the applicant's request for the 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. *The variance is not contrary to the public interest. The public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by setbacks to prevent encroachment into public right of way and to protect adjacent property owners. The additions will not encroach into the right of way and will meet the City required 10 foot front setback. Further, the additions will allow room for maintenance without trespass and will not produce water runoff on the adjacent property.*

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. The literal enforcement of the ordinance would not allow the owner of the property to expand the primary dwelling, as there are large setbacks in the front, side, and rear of the home.*
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. The intent of setbacks is to create an open street view and establish uniform development standards and to protect the rights of property owners. The additions will not significantly disrupt uniformity and will not injure the rights of adjacent property owners.*
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District.*
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located. The additions will not detract from the neighborhood as the front addition will not significantly deviate from the front setback and the rear addition is unlikely to go noticed. Both the front and rear additions will not produce water runoff on adjacent properties and will not require maintenance with trespass.*
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. The property currently has 20 foot front setback, 20 foot rear setback, and a 10 foot side setback. The setbacks significantly reduce the amount of space the owner can use to add on to the primary dwelling. This circumstance was not created by the owner and is not merely financial in nature." Mr. Kuderer seconded the motion.*

AYES: Rodriguez, Kuderer, Martinez, Ojeda, Cruz, Britton, Gragg, Quijano, Neff, Rogers
NAYS: None

THE VARIANCE IS GRANTED

Case Number: A-17-047

Applicant: Carlos Gomez

Owner: Carlos Gomez

Council District: 2

Location: 1739 Dawson Street

Legal Description: Lots 19 and 20, Block 9, NCB 1364

Zoning: "MF-33 EP-1 AHOD" Multi-Family Facility Parking/Traffic

Control Airport Hazard Overlay District

Case Manager: Shepard Beamon, Senior Planner

Request

A request for a five (5) foot variance from the five (5) foot side setback, as described in Section 35-510.01, to allow an accessory structure on the side property line.

Shepard Beamon: Senior Planner, presented the background information and staff's recommendation of the variance. He indicated 38 notices were mailed, 4 returned in favor, 0 returned in opposition and no response from the Harvard Place Neighborhood Association.

Carlos Gomez: applicant (requested Spanish translation services) stated he could maintain the property and after a modification of the overhang it meets specification.

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-17-047 closed.

MOTION

A **motion** was made by **Mr. Neff**, "Regarding Appeal No. A-17-047, a request for a **four** foot variance from the five foot side setback to allow an accessory structure **near** the side property line, subject property being Lots 19 and 20, Block 9, NCB 1364, situated at 1739 Dawson Street, applicant being Carlos Gomez.

I move that the Board of Adjustment grant the applicant's request for the 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. *The variance is not contrary to the public interest. The public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by setbacks to protect adjacent property owners. The carport is composed entirely of metal and poses little risk of fire spread to the adjacent property.*
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. The literal enforcement of the ordinance would force the owner to remove a significant amount of the structure.*
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. The intent of setbacks is to create an open street view, establish uniform development standards, and to protect the rights of property owners. The carport does not injure the rights of adjacent property owners and is in keeping with the open street view. Further, the carport meets the rear and front setbacks, and does not encroach into any public right-of-way.*
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the "MF-33 EP-1 AHOD" Multi-Family Parking Facility/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. The carport's location is unlikely to interfere with the safety of the adjacent property as it is located towards the rear of the property, farther from the adjacent property's primary dwelling and is composed of metal, which reduces the risk of fire spread. Lastly, as the carport is located in the rear of the property, it is unlikely to detract from the character of the neighborhood as it cannot be easily seen from the street.*
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 are that the carport was built to protect the owner's personal property from damage from inclement weather. The carport is needed to remain as built to adequately cover two vehicles."* Mr. Martinez seconded the motion.

AYES: Neff, Martinez, Rodriguez, Kuderer, Ojeda, Cruz, Britton, Gragg, Quijano, Rogers

NAYS: None

THE VARIANCE IS GRANTED

The January 6, 2017 Board of Adjustment Minutes were approved.

Director Report: the Board was informed of a work session scheduled for February 20, 2017 at 11:00 am in the Tobin Room prior to the meeting to discuss new policies and procedures.

There being no further discussion the meeting adjourned at 5:15pm.

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

DATE: 2-20-17

ATTESTED BY: M. L. Rogers DATE: Feb. 21, 17
Executive Secretary