

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES**

April 17, 2017

Members Present:	Staff:
Seth Teel	Catherine Hernandez, Planning Manager
Frank Quijano	Ted Murphree, City Attorney
Denise Ojeda	Margaret Pahl, Senior Planner
Maria Cruz	Shepard Beamon, Senior Planner
George Britton	Oscar Aguilar, Senior Planner
Henry Rodriguez	
John Kuderer	
Roger Martinez	
Jesse Zuniga	
Mary Rogers	
Richard Acosta	
Alan Neff	

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.

Mr. Kuderer made a motion for Case# A-17-085 to be moved to the top of the Agenda.
Mr. Martinez seconded the motion. A voice vote was taken and passed unanimously.

Case Number: A-17-085

Applicant: Tina Marti

Owner: Luis and Tina Marti

Council District: 10

Location: 2848 Nacogdoches Road

Legal Description: Lot F, NCB 12104

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

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a variance from the provisions described in UDC 35-370 to allow an accessory structure in the front yard, set back 66 feet from the property line

Margaret Pahl: Senior Planner presented the background information and staff's recommendation of the variance. She indicated 14 notices were mailed, 1 returned in favor, 0 returned in opposition, and no response from the MacArthur Park & Forest Oak Neighborhood Association.

Tina Marti: applicant stated she went through all the proper channels regarding the permits but the City was in error and asked the board for approval of the variance.

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-17-085 closed.

A motion was made by Mr. Kuderer . "Regarding Appeal No. A-17-085, a request for a variance to allow an accessory structure in the front yard, subject property being Lot F, NCB 12104, situated at 2848 Nacogdoches Road, applicant being Tina Marti.

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 not harmed by the location of an accessory structure 66 feet back from the front property line and therefore, 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.*

Literal enforcement of the ordinance would force the owner to relocate the building, an unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

In this case, the intent of the code is to preserve an open front yard streetscape. In this location however, Nacogdoches is classified as a secondary arterial street and the primary dwelling is located in the middle of a large lot. Therefore, the variance will observe the spirit of the code.

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 structure was built with materials matching the primary dwelling in a clearing among mature trees on the lot and does 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.*

The plight of the owner is unique in that the City granted building permits and inspected the structure for compliance with building codes.” Mr. Martinez seconded the motion.

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

NAYS: None

VARIANCE IS GRANTED.

Case Number: A-17-060

Applicant: GD Bar Family LP

Owner: GD Bar Family LP

Council District: 10

Location: 11110 North IH-35

Legal Description: Lot 40, NCB 14946

Zoning: “C-3R IH-1 AHOD” General Commercial Restrictive

Alcoholic Sales Northeast Gateway Corridor Airport Hazard Overlay District

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for 1) a 11 foot variance from the 20 foot rear setback to allow a building 9 feet from the rear property line; 2) a 10 foot variance from the 20 foot side setback to allow a building 10 feet from the side property line and 3) a variance from the requirement that 50% of the first floor street frontage be windows, each as described in UDC 35-339.01 regarding Gateway Corridors.

This case was postponed from the April 3, 2017 Board of Adjustment Meeting.

Margaret Pahl: Senior Planner presented the background information and staff’s recommendation of the variance. She indicated 8 notices were mailed, 0 returned in favor, 1 returned in opposition, and no neighborhood association.

Rob Killen: representative stated changes were made to the original request so that all parties involved could agree upon and asked for approval.

Trey Jacobsen: 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-17-060 closed.

MOTION

A motion was made by Mr. Martinez, "Regarding Appeal No. A-17-060, a request for 1) a 11 foot variance from the 20 foot rear setback to allow a building 9 feet from the rear property line; 2) a 10 foot variance from the 20 foot side setback to allow a building 10 feet from the side property line and 3) a variance from the requirement that 50% of the first floor street frontage be windows, subject property being Lot 40, NCB 14946, situated at 11110 North IH-35, applicant being GD Bar Family Limited Partnership.

I move that the Board of Adjustment grant the applicant's request for the variances 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 represented by setback requirements to ensure an open streetscape and uniform and safe development within the City. Properties with commercial zoning adjacent to other commercially zoned properties are permitted to construct on or near the property lines along the side and rear, making these requested variances not contrary to the public interest. It is unlikely that traveling public will notice the reduction in windows.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The rectangular shaped lot, approximately 300 feet long and 140 feet deep, is severely constrained by the large front building setback. The owner has revised the site plan to meet this front setback. Literal enforcement of the side and rear setbacks would result in an unnecessary hardship. Satisfying the percentage of glass is not possible given the other site constraints on the property.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The spirit of the ordinance will be observed by the revised site plan. The intent of the side and rear setbacks are to allow fire separation and room for maintenance without trespass, which can be accomplished despite the requested variances. The intent of the required window percentage is to increase interior light and encourage visibility and surveillance. The provided windows will satisfy the intent of the code.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized* **The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-3R IH-1 AHOD" General Commercial Restrictive Alcohol Sales Northeast Gateway Corridor 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 has revised the site plan layout in response to concerns voiced by the adjacent property owners at the last public hearing. These revisions generated different variances to the side and rear setbacks, but still provide room for fire separation and maintenance. The window percentage is difficult given the shape of the building, but will appear to have the typical amount of windows.

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 "IH-1" setback requirements impose significant design constraints, especially on properties such as this, which are considerably smaller in lot size. The applicant is providing the large front setback with room for significant landscaping to enhance the gateway corridor. The required percentage of windows creates a burden for a building with the longer façade designated as the front." Mr. Britton seconded the motion.

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

NAYS: None

VARIANCE IS GRANTED.

Case Number: A-17-081

Applicant: Natasha Uhlich

Owner: Carlos F. Melick

Council District: 2

Location: 8463 NE Loop 410

Legal Description: Lot 1, Block 2, NCB 18011

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

Case Manager: Shepard Beamon, Senior Planner

Request

A request for a nine (9) foot variance from the 25 foot platted side setback, as described in Table 35-310, to allow a new metal storage facility 16 feet from the side property line.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation of the variance. He indicated 5 notices were mailed, 0 returned in favor, 0 returned in opposition, and no neighborhood association.

Carlos F. Melick: applicant stated after purchasing the land, they were informed they cannot build on the lot line and asked the Board for their 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-17-081 closed.

MOTION

A motion was made by Mr. Teel. "Regarding Appeal No. A-17-081, a request for a 9 foot variance from the 25 foot platted side setback to allow a new metal storage facility 16 feet from the side property line, subject property being Lot 1, Block 2, NCB 18011, situated at 8463 NE Loop 410, applicant being Natasha Uhlrich.

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 the front and side setbacks to ensure that the neighboring property is not negatively impacted by inadequate separation. As the property only has one side abutting another property, it is unlikely the request will have any negative impact on the adjacent property.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The special condition on this lot that make enforcement of the ordinance an unnecessary hardship is the 1981 platted setback. The platted 25 foot setback would reduce the building 900 square feet minimum, in area. The lot has an irregular shape which further restricts the configuration of the building and parking.

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 eliminate overcrowding and un-uniform development of lots. The current zoning regulation requires a 30 foot side only if the side property abuts a residential use or zoning, which in this case, does not apply. Since there will be a minimum of a 16 foot setback, the request meets the spirit of the ordinance.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the "I-1 AHOD" General Industrial 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.*

As there are no abutting properties on the side for which the variance is requested, it is unlikely that approval of the variance will injure the rights of any property owner. Further, the request will still provide a 16 foot setback and is unlikely to detract from the character of the industrial zoned 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.*

The unique circumstance is a 1981 plat, which places large setbacks on smaller industrial lots. The applicant has proposed a building that provides adequate distance from the right-of-way and room to maintain the property without trespass.” Mr. Martinez seconded the motion.

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

NAYS: None

THE VARIANCE IS GRANTED.

Case Number: A-17-070

Applicant: Myfe Moore

Owner: Ethel Moore

Council District: 1

Location: 603 River Road

Legal Description: Lot 14, Block 3, NCB 6202

Zoning: “R-4 H RIO-1 AHOD” Residential Single-Family River

Road Historic River Improvement Overlay Airport Hazard Overlay District

Case Manager: Margaret Pahl, AICP, Senior Planner and Lauren Sage, Historic Preservation Specialist

Request

An appeal of the Historic Preservation Officer’s denial regarding an application for a Certificate of Appropriateness to allow the installation of 30 solar panels on the left slope of a hipped roof.

Margaret Pahl: Senior Planner presented the background information and staff’s recommendation. She indicated 32 notices were mailed, 4 returned in favor, 1 returned in opposition, and the River Road Neighborhood Association is in Favor.

Brad Biggert: representative stated the guidelines are vague and gave examples of other homes in the area and asked for the Boards approval.

Myfe Moore: applicant stated the structure is new and not historic but in the boundaries of the District and the Neighborhood Historic Committee approved the panels.

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-17-070 closed.

MOTION

A **motion** was made by **Mr. Neff**. “Regarding Appeal No. A-17-070, a request to reverse the Historic Preservation Official’s denial of a Certificate of Appropriateness to allow installation of 30 solar panels, subject property being Lot 14, Block 3, NCB 6202, situated at 603 River Road, applicant being Myfe Moore

I move that the Board of Adjustment grant the applicant’s request for the appeal of an administrative official’s decision regarding the subject property as described above, because the facts that we have determined, show that:

The subject property is located on a small dead end road with mature vegetation. The neighborhood is not used as a cut-through and the public is not often found within the confines of this small historic district. The installation of solar panels is a goal of the City’s Sustainability Plan. The historic design guidelines allow for installation of solar panels in some circumstances. Another case within the same district was recently passed by HDRC on November of 2012 with similarities. Alternate panel locations will not be usable.” **The Motion** was seconded by **Mr. Teel**.

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

NAYS: None

THE APPEAL IS GRANTED

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

The Board of Adjustment reconvened at 3:00pm

Case Number: A-17-083

Applicant: Estela Lopez

Owner: Estela Lopez

Council District: 4

Location: 1330 Bayou Drive

Legal Description: Lot 32, Block 59, NCB 15859

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

Case Manager: Shepard Beamon, Senior Planner

Request

A request for 1) a special exception to allow a six foot fence in a portion of the front yard, as described in Section 35-514; and 2) a variance from the Clear Vision requirement to allow a fence in a portion of the Clear Vision area, as described in Section 35-514.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation of the variances. He indicated 43 notices were mailed, 0 returned in favor, 0 returned in opposition, and no response from the Heritage Neighborhood Association.

Michael Lopez: applicant stated he built the fence to protect his family from constant harassment, vulgarity and for safety. The fence has been a relief and has given the family some peace.

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-17-083 closed.

A motion was made by **Mr. Martinez**. "Regarding Appeal No. A-17-083, a request for a special exception to allow a six foot fence in a portion of the front yard, **and a request for a variance of the Clear Vision requirements in a portion of the front yard**, subject property being Lot 32, Block 59, NCB 15859, situated at 1330 Bayou Drive, applicant being Estela Lopez.

I move that the Board of Adjustment grant the applicant's request for the special exception **and the variance on Clear Vision** 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 UDC allows eight (5) foot front fence as a special exception, authorized under certain circumstances. The additional fence height of three feet in the front is intended to provide safety, security, and privacy for the applicant. The owner is requesting less than the fence height allowed with a special exception, which is within harmony with the purpose of the chapter.

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 the Clear Vision requirement. There will be adequate visibility for entering and exiting the driveway. Though the fence is within the Clear Vision area, there are still 12 feet of clearance is standard, but in this in this neighborhood there are many fences in violation allowing this fence to continue and will not dramatically limit clear vision on this street.

The public welfare and convenience will be substantially served.

In this case, these criteria are represented by maximum fence heights to protect home owners. Allowing the six (6) foot front fence along the side property line will serve to provide increased security of the property and reduce conflict between neighbors. This is not contrary to the public interest.

B. The neighboring property will not be substantially injured by such proposed use.

The front yard fence will create enhanced security for the subject property and is highly unlikely to injure adjacent properties.

C. 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.

Such a variance for the clear vision is not contrary to the neighborhood as it exists right now. Six foot fencing in the front would not significantly alter the overall appearance of the district as similar fencing can be found on a neighboring property.

D. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.

The purpose of the fencing standards is to protect the health, safety and general welfare of the public. The special exception request is to add security for the owner. Therefore, the requested special exception will not weaken the general purpose of the district. Special Conditions exist on this property and in proximity limit the enforcement of the Clear Vision provision. Therefore in this instance vehicles are not blocking vision.” The motion was seconded by Mr. Rodriguez

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

NAYS: None

THE SPECIAL EXCEPTION AND VARIANCE PASSED

Case Number: A-17-086

Applicant: Hector Sanchez

Owner: Hector Sanchez

Council District: 9

Location: 13238 Grace Place

Legal Description: Lot 8, Block 3, NCB 16076

Zoning: “RE AHOD” Residential Estate Airport Hazard Overlay

District

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a special exception, as described in Section 35-514, to allow up to a 7.5 foot fence in the front yard of the property.

Margaret Pahl: Senior Planner presented the background information and staff’s recommendation. She indicated 16 notices were mailed, 1 returned in favor, 1 returned in opposition, and the Blue River Estates Neighborhood Association is in Favor.

Hector Sanchez: applicant stated he needed the fence to match the house and keep people off his property and asked for approval.

Guillermo Garcia: 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-17-086 closed.

A **motion** was made by Mr. Neff. "Regarding Appeal No. A-17-086, a request for a special exception to allow up to a 7.5 foot fence in the front yard, subject property being Lot 8, Block 3, NCB 16076, situated at 13238 Grace Place, applicant being Hector Sanchez.

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 UDC allows residential fencing up to eight feet in height to be permitted by a special exception. Since the estate is at the end of a stub street, the special exception would be in harmony with the purpose of the section.

B. *The public welfare and convenience will be substantially served.*

The public welfare and convenience can be served by blocking entrance onto private property at the terminus of a short stub street.

C. *The neighboring property will not be substantially injured by such proposed use.*

The neighboring property will not be injured by the proposed gate. The neighboring properties front on Plumeria Street and are permitted 6 foot tall rear yard fencing along the shared property lines.

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.*

This home site is unique. It is large and its frontage is a stub street, which potentially was constructed in anticipation of further subdividing this large tract. When an individual purchased and created a single lot in 1976, the future of this property was changed. In addition, the home is built with a 100 foot front setback, where privacy fencing could normally be installed. Thus, granting the exception will not detract from the character of the district.

E. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*

In this case, the home is built with a 100 foot front setback. Therefore, the requested special exception will not weaken the general purpose of the district." The motion was seconded by Mr. Britton.

AYES: Neff, Britton, Rodriguez, Cruz, Quijano, Ojeda, Teel, Zuniga, Kuderer, Rogers
NAYS: Martinez

THE IS VARIANCE GRANTED

Case Number: A-17-082

Applicant: Steve Catalini
 Owner: Steve Catalini and Stefanie Howton
 Council District: 9
 Location: 16903 Happy Hollow
 Legal Description: Lot 1, Block 21, NCB 14835
 Zoning: "R-6 MLOD AHOD ERZD" Residential Single-Family Military Lighting Overlay Edwards Recharge Zone
 Overlay Airport Hazard Overlay District
 Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request to a 5 foot variance from the 5 foot side setback to allow an accessory structure on the side property line, as described in Section 35-370(b)(1).

Margaret Pahl: Senior Planner presented the background information and staff's recommendation. She indicated 21 notices were mailed, 0 returned in favor, 1 returned in opposition and no neighborhood association is in favor.

Steven Catalini: applicant stated it was the only place where he could put the structure and requested 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-17-082 closed.

A motion was made by Mr. Rodriguez. "Regarding Appeal No. A-17-082, a request for a 5 foot variance from the 5 foot side setback to allow an accessory structure on the side property line, subject property being Lot 1, Block 21, NCB 14835, situated at 16903 Happy Hollow, applicant being Steven Catalani.

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 setback limitations to protect

property owners and eliminate risks for health and safety hazard for surrounding properties, which the applicant has addressed through fire rating. The structure, in its current location, will not be contrary to public interest as it will not pose a fire hazard or visibility hazard to the other residents or drivers in the area.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The property has several mature trees within the rear yard and an underground swimming pool that imposes a limitation to construct a reasonably sized accessory building elsewhere on the property. A literal enforcement would result in an unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The spirit of the ordinance represents the intent of the requirement. The applicant has fire rated the building and provided room for maintenance without trespassing on the neighboring property. Further, structure is located 28 feet from the street and does not create any visual obstruction.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized* The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-6 MLOD AHOD ERZD" Residential Single-Family Military Lighting Overlay Airport Hazard Overlay Edwards Recharge Zone 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 accessory building is detached and located in the rear yard along the side property line, 28 feet from the street edge. The applicant has fire rated the building, decreasing the risk of fire spread to other neighboring properties and the structure does not detract from the overall character of the neighborhood.

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 existing on the property is that there are several mature trees and a swimming pool within the rear yard that limits the location of the structure elsewhere on the property." The motion was seconded by Mr. Martinez.

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

NAYS: None

VARIANCE IS GRANTED.

Case Number: A-17-084

Applicant: Angelita DeLuna

Owner: Angelita DeLuna

Council District: 3

Location: 448 E. Mitchell

Legal Description: Lot 5, Block 6, NCB 3013

Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 4 foot variance from the minimum 5 foot side setback, as described in Section 35-310-1 to allow a carport one foot from the side property line.

Margaret Pahl: Senior Planner presented the background information and staff's recommendation. She indicated 35 notices were mailed, 0 returned in favor, 0 returned in opposition and no response from the Roosevelt Park Neighborhood Association.

Angelita De Luna: applicant stated she needed the structure because of her and her father's health conditions and for protection of her vehicles then requested the Boards approval.

Guillermina P. Vela: 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-17-084 closed.

A motion was made by Ms. Ojeda. "Regarding Appeal No. A-17-084, a request for a 2 foot variance from the minimum 5 foot side setback to allow a carport three feet from the side property line, subject property being Lot 5, Block 6, NCB 3013, situated at 448 E. Mitchell, applicant being Angelita DeLuna.

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.*

A variance of 2 feet to allow the carport to be 3 feet from the property line would not be contrary to the public interest, and match the variance requested in the application.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

According to the applicant, the carport can meet a three foot setback, requiring a two foot variance.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The intent of the required setback in this case is to allow air flow, room for maintenance and access to light. The requested two foot variance to allow a three foot setback, verified by a survey, will observe the spirit of the Code.

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.*
The applicant states that the carport is three feet from the property line. There are several carports adjacent to the side property lines in this neighborhood, so the essential character may not be altered by the requested variance of two feet to allow a carport with a three foot setback.
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 plight of the owner is that the driveways during this time period were designed to lead to detached garages in the rear yard, rather than for a structure adjacent to the existing home. The applicant has requested approval to allow a carport three feet from the property line, which can be verified by a survey submitted with the required inspections. Additionally adding a gutter system which will lead the water away from the neighbor house is encouraged." The motion was seconded by Mr. Zuniga.

AYES: Ojeda, Rodriguez, Britton, Kuderer, Teel, Cruz, Neff, Martinez, Rogers

NAYS: Zuniga, Quijano,

VARIANCE IS GRANTED.

Case Number: A-17-087

Applicant: Victor Santos Velasquez

Owner: Victor Santos Velasquez

Council District: 2

Location: 4415 Monaco Drive

Legal Description: Lot 25, Block 5, NCB 13510

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

Case Manager: Shepard Beamon, Senior Planner

Request

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

Shepard Beamon: Senior Planner presented the background information and staff's recommendation of the variance. He indicated 26 notices were mailed, 2 returned in favor, 1 returned in opposition, and no response from the East Terrell Hills Neighborhood Association.

Victor Santos Velasquez: applicant amended his request to a 20 foot variance and requested 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-17-087 closed.

A motion was made by **Mr. Kuderer**. “Regarding Appeal No. A-17-087, a request for a 20 foot variance from the 30 foot platted setback to allow a carport 10ft from the front property line, subject property being Lot 25, Block 5, NCB 13510, situated at 4415 Monaco Drive, applicant being Victor Santos Velasquez.

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 request is not contrary to the public interest as the carport does not encroach in the public right-of-way and does not obscure the view for the adjacent properties.*
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. A literal enforcement of the ordinance would not grant the applicant the right to protect his vehicles. A 30 foot front setback is considerably large and the home is built at the front setback, making it difficult to provide additional covered parking without encroaching into the setback.*
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. The spirit of the ordinance will be observed in that granting the variance would still protect 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 carport is within character of the neighborhood as there are similar carports composed of metal within the neighborhood. Further, as the carport is made of metal, the risk of fire spread is reduced.*
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances. The unique circumstance is that the platted front setback permits no addition in the front of the home. The owner has multiple vehicles that require adequate protection from inclement weather.”* The motion was seconded by Mr. Martinez.

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

NAYS: None

VARIANCE GRANTED.

Case Number: A-17-088

Applicant: Maria Perez

Owner: Maria Perez and Ramiro T. Perez

Council District: 5

Location: 1107 Prado

Legal Description: Lot19, NCB 7346

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

Case Manager: Oscar Aguilera, Planner

Request

A request for a request for a 5 foot variance from the 5 foot side setback, per section 35-516, to allow a carport to be on the side property line.

Oscar Aguilera: Planner presented the background information and staff's recommendation of the variance. He indicated 44 notices were mailed, 7 returned in favor, 0 returned in opposition, and no neighborhood association.

Maria Perez: applicant stated she put gutters on the structure and asked for 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-17-088 closed.

A motion was made by **Ms. Ojeda**. "Regarding Appeal No. A-17-088, a request for a 5 foot variance from the 5 foot side setback to allow a carport to be on the side property line, subject property being Lot 19, NCB 7346, situated at 1107 Prado, applicant being Maria Perez.

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 minimum setbacks that help to establish uniform and safe development within the City of San Antonio. The proposed carport meets the front setback requirement. The carport not only protects the owner's vehicles from inclement weather, but also shields the side of the home. The carport has a gutter that prevents the water drainage from going into neighboring properties and the carport is made of metal. Therefore, the request is not contrary to the public interest.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

A literal enforcement of the ordinance would result in the removal of the carport. If the carport included any setback, there would be no space to provide a carport, as the driveway is only 10 feet wide.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

Granting the requested variance will result in substantial justice in that the property owner will be able to keep a carport to protect her property from inclement weather and several other homeowners on the block have similar carports. The spirit of the ordinance is observed in that the carport meets front setback, does not pose a fire risk, and will not drain water onto adjacent properties

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the "R-4 AHOD" Single-Family 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.*

Adjacent properties are unlikely to be negatively affected by the requested changes in that the carport's design meets the front setback and the carport will not drain water onto the adjacent 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 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 plight of the owner is the lack of side yard and space to park a vehicle on the property. There is no feasible way to provide a setback and include covered protection for the owner's vehicle. The plight of the owner is not merely financial in nature." Ms. Cruz seconded the motion.

AYES: Teel, Martinez, Zuniga, Rodriguez, Neff, Britton, Cruz, Ojeda, Kuderer, Rogers

NAYS: Quijano

THE VARIANCE IS GRANTED.

Case Number: A-17-089

Applicant: Steve Cevallos

Owner: Steve and Mary P. Cevallos

Council District: 3

Location: 238 Astor Street

Legal Description: Lot19, 20, 21, Block 10, NCB 1698

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

Case Manager: Oscar Aguilera, Planner

Request

A request for a request for a 5 foot variance from the 5 foot side setback, per section 35-516, to allow a carport to be on the side property line.

Oscar Aguilera: Planner presented the background information and staff's recommendation of the variance. He indicated 34 notices were mailed, 0 returned in favor, 0 returned in opposition, and no response from the Highland Park Neighborhood Association.

Steve Cevallos: applicant stated he put gutters on the structure and has plenty of room for maintenance and asked for 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-17-089 closed.

Mr. Martinez made a **motion**. "Regarding Appeal No. A-17-089, a request for a 3 foot variance from the 5 foot side setback to allow a carport 2ft from the the side property line, subject property being Lots 19, 20, 21, Block 10, NCB 1698, situated at 238 Astor Street, applicant being Steve Cevallos.

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 minimum setbacks that help to establish uniform and safe development within the City of San Antonio. The proposed carport meets the front setback. There is side entrance to the home that includes stairs that protrude four feet into the driveway which reduces the parking area. The carport has gutters that prevent the water drainage from going into neighboring properties, the carport's posts are located a foot form the side property line, and the carport is made of metal, reducing the risk of fire spread.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

A literal enforcement of the ordinance would result in the applicant not having reasonable accommodations as the owner has health issues. The applicant states that his wife, his mother and he are all disabled. Staff finds that this results in an unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

Granting the requested variance will result in substantial justice in that the property owner will be able to provide reasonable accommodations from inclement weather as the owner has health issues. Furthermore, the spirit of the ordinance is observed in that the carport meets front setback, does not pose a fire risk, and will not drain water onto adjacent properties.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the "R-4 AHOD" Single-Family 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. Adjacent properties are unlikely to be negatively affected by the requested changes in that the carport's design consists of metal and the carport will not drain water onto the adjacent properties. There are several properties within the community that include a carport. The request would not be out of 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.*
The carport serves to provide safe route for the owner to access their home from their vehicle in the case of inclement weather. Severe weather conditions can make it difficult to get from the home into the vehicle due to slippery conditions. The plight of the owner is not merely financial in nature." Ms. Cruz seconded the motion.

AYES: Teel, Martinez, Zuniga, Rodriguez, Neff, Britton, Cruz, Ojeda, Kuderer, Rogers
NAYS: Quijano

THE VARIANCE IS GRANTED.

The April 3, 2017 Board of Adjustment Minutes were approved.

Director's Report: Staff Informed the Board of the next meeting on May 1, 2017.

There being no further discussion the meeting adjourned at 5:45pm.

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

DATE: 5-10-17

ATTESTED BY: M. Murphy DATE: May 10, 17
Executive Secretary