

BOARD OF ADJUSTMENT OFFICIAL MINUTES

August 7, 2017

Members Present: Staff:

Jay C Gragg	Catherine Hernandez, Planning Manager
Alan Neff	Ted Murphree, City Attorney
John Kuderer	Margaret Pahl, Senior Planner
George Britton Jr.	Shepard Beamon, Senior Planner
Maria Cruz	Oscar Aguilar, Planner
Richard Acosta	
Mary E. Rogers	
Seth Teel	
Roger Martinez	
Henry Rodriguez	
Jeff Finlay	
Jesse Zuniga	

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.

Monica Shaw, World Wide Languages, Interpreter was present

Item A-17-145 was postponed to a later date

Case Number:	A-17-124
Applicant:	Kaufman & Killen, Inc.
Owner:	Mission, DG Ltd.
Council District:	3
Location:	222 E. Mitchell Street
Legal Description:	Lots 1-4, 6-10, 17-21, 29, N. Irr. 4 ft. of A-29, A-31A, P-100, & Adj. 16 ft. strip, Block 1, NCB 3975
Zoning:	"MF-33 H HS RIO-4 MPOD-1 AHOD" Multi-Family Mission Historic Significant River Improvement Overlay Mission Protection Overlay Airport Hazard Overlay District
Case Manager:	Shepard Beamon, Senior Planner

Request

A request for an 11 foot variance from the MPOD-1 height limitation, as described in Section 35-339.06, to allow a multi-family development with a maximum height of 36.5 feet.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation of the variance. He indicated 55 notices were mailed, 0 returned in favor, 0 returned in opposition, and no response from the Roosevelt Park Neighborhood Association and the Mission San Jose Neighborhood Association is against.

Corey Edwards: Office of Historic Preservation, answered the boards questions regarding the submission of the project and regarding the view shed.

Rob Killen: representative gave a presentation and history regarding the project and explained in detail the plans and changes made to the project. He then answered the Boards questions regarding the project.

Russell Yager: Civil Engineer with Big Red Dog answered all the drainage questions from the Board.

Theresa A. Ybanez: spoke in opposition

Logan Underdown: San Antonio Archdiocese spoke in favor and explained the reasoning for the project.

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-17-124 closed.

A motion was made by **Mr. Kuderer**. "Regarding Appeal No A-17-124, a request for an 11 foot variance from the MPOD-1 height limitation to allow multi-family building #4 to encroach 11 inches into the protection angle, building #5 to encroach five feet three inches, building #6 to encroach 10 feet five inches, and building #7 to encroach eight feet 1.25 inches, subject property being Lots 1-4, 6-10, 17-21, 29, N. Irr. 4 ft. of A-29, A-31A, P-100, & Adj. 16 ft. strip, Block 1, NCB 3975, situated at 222 E. Mitchell Street, applicant being Mission DG, Ltd.

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 intent of the MPOD-1 overlay is to protect the views of Mission Concepcion and to ensure the viewshed is not obstructed. Although the proposed buildings fall within the protection angle, the HDRC found the design to be appropriate as the requested building

heights are not visible from the Mission and the view of the Mission is not obstructed. 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.*

The protection angle is a blanket equation that is applied to all missions within San Antonio. The protection angle does not take into account the surrounding environment of each mission. The buildings are being constructed at the requested heights to address drainage issues on the site. In order to meet the drainage grading requirements, the buildings must be elevated. Without meeting the drainage requirement, the site cannot be developed.

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

The MPOD-1 was established to preserve the historic integrity of the Mission and to prevent overshadowing over the missions. The request for the design of the new construction was reviewed and approved by the Historic Design and Review Commission. As the HDRC found that the new development will not be visible from the monument marker, the request will not overshadow or disrupt the historic integrity for the Mission.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the "MF-33 H HS RIO-4 MPOD-1 AHOD" Multi-Family Mission Historic Significant River Improvement Overlay Mission Protection Overlay Airport Hazard Overlay District.*

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

The request should not injure the rights of the neighboring properties as the requested use is consistent with the surrounding land uses, as required by the HDRC. The HDRC found that the essential character of the surrounding neighborhood and the Mission will not be altered and the proposed development is cohesive with surrounding area.

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 circumstance existing on the property was not created by the owner. The property is historic in nature and has been vacant since 2011. The new construction and rehabilitation of the existing building must meet the standards of the Historic District, the City's building code requirements, and drainage requirements. To adequately address all of these issues, additional infrastructure onsite will require the new structures be elevated beyond the MPOD-1 protection angle requirement." Mr. Martinez seconded the motion.

AYES: Kuderer, Martinez, Britton, Rodriguez, Neff, Finlay, Teel, Gragg, Acosta,

NAYS: Cruz, Rogers

VARIANCE ARE GRANTED

Mr. Zuniga arrived and replaced Mr. Acosta at 1:30 pm.

Case Number: A-17-146
Applicant: Jennifer Estrada
Owner: Jennifer Estrada
Council District: 2
Location: 226 Allensworth Street
Legal Description: Lots 8, NCB 6562
Zoning: "R-4 NCD-6" Residential Single-Family Mahncke Park
 Neighborhood Conservation District
Case Manager: Shepard Beamon, Senior Planner

Request

A request for a special exception to allow a one-operator beauty shop, as described in Section 35-399.01, for a period of two years.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation of the variance. He indicated 36 notices were mailed, 5 returned in favor, 1 returned in opposition, and no response from the Mahncke Park Neighborhood Association.

Kelly Estrada: read a prepared statement and 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-17-146 closed.

MOTION

A motion was made by **Mr. Rodriguez**, "Regarding Appeal No. A-17-146, a request for a special exception to allow a one operator beauty/barber shop in a home, subject property being Lot 8, NCB 6562, situated at 226 Allensworth Street, applicant being Jennifer Estrada.

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 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. The applicant will fulfill all requirements for a one-operator shop as established in the Unified Development Code. Therefore, the special exception will be in harmony with the purpose of the chapter.

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

The public welfare and convenience will be served as the operation is contained within a single-family structure. No portion of the operation is permitted to place the structure out of character with other homes in the community.

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 one room of the home, as required by the UDC. There will be 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.

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 or the neighborhood conservation district.” Mr. Martinez seconded the motion.

AYES: Rodriguez, Teel, Neff, Martinez, Rodriguez, Britton, Cruz, Acosta, Gragg, Finlay, Rogers

NAYS: None

VARIANCE IS GRANTED.

Mr. Zuniga replaced Mr. Acosta at 2:15pm on the Board of Adjustment

Case Number:	A-17-140
Applicant:	Lisa Miranda
Owner:	Lisa Miranda
Council District:	6
Location:	1710 Rob Roy Lane
Legal Description:	Lot 3, Block 9, NCB 34400
Zoning:	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Oscar Aguilera, Planner

Request

A request for renewal of a special exception to allow a one-operator beauty/barber shop.

Oscar Aguilera: Planner presented the background information and staff’s recommendation of the variance. He indicated 16 notices were mailed, 0 returned in favor, 2 returned in opposition, and no response from the Oak Creek Neighborhood Association.

Lisa Miranda: applicant stated they are requesting a Special Exception to provide a living for her family. She did advise the board of issues regarding her business and problems with parking and asked for Boards approval.

Thomas Perez: Vice President of the Oak Creek Neighborhood Association spoke in opposition.

Sam Sanchez: spoke on opposition and read BCAD info into the record.

Debra Franco: spoke in opposition

Brent Fleming: 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-17-140 closed.

MOTION

A **motion** was made by **Mr. Teel**. "Regarding Appeal No. A-17-140, a request for special exception to allow a four-year renewal for a one-operator beauty shop, subject property being Lot 3, Block 9, NCB 34400, situated at 1710 Rob Roy Lane, applicant being Lisa Miranda.

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 purpose of the special exception is to ensure that the operation of a one-operator beauty/barber shop does not negatively impact the character of the community. The applicant has fulfilled all requirements for a one-operator shop as established in the Unified Development Code. As such, staff finds that the special exception will be in harmony with the purpose of the chapter.

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

The 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 not have any 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. During the field visit, staff noted nothing visible from the street that would indicate the presence of a beauty/barber shop. Also, staff noted 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 purpose of the residential zoning district." The motion was seconded by Mr. Neff.

**AYES: Teel, Neff, Britton, Cruz, Finlay, Rodriguez, Kuderer, Finlay, Martinez, Rogers
NAYS: Zuniga**

VARIANCE IS GRANTED.

The Board of Adjustment convened for a 10 minute break at 3:40pm and reconvened at 3:50pm.

Case Number: A-17-139
Applicant: Fernando Aguilar
Owner: Fernando Aguilar
Council District: 10
Location: 9302 Perrin Beitel Rd
Legal Description: Lot 22, NCB 2588
Zoning: "C-2 AHOD" Commercial Airport Hazard Overlay District
Case Manager: Shepard Beamon, Senior Planner

Request

A request for a 26 foot variance from the 30 foot rear setback to allow a commercial building 4 feet from the rear property line.

Oscar Aguilar: Planner presented the background information and staff's recommendation. He indicated **13** notices were mailed, **0** returned in favor, **0** returned in opposition, and no neighborhood association.

Fernando Aguilar: applicant stated after doing some research he was under the impression he could make the fence taller according to what he read in the code for extra security.

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-17-139 closed.

MOTION

A motion was made by **Mr. Finlay**. "Regarding Appeal No., A-17-139, request for a 26 foot variance from the 30 foot rear setback to allow a commercial building four feet from the rear property line, subject property being Lot 8, Block 14, NCB 14009, situated at 9302 Perrin Beitel Road, applicant being Fernando Aguilar.

I move that the Board of Adjustment grant the applicant's request for the variance to the subject property 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 setbacks to ensure that neighboring property rights are not violated. The adjacent property placed the parking stalls and private vehicle circulation, creating an approximately 50 foot buffer between the residential buildings and the proposed addition. Therefore, granting the variance will not be 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 30 foot rear setback would make the addition impossible. The owner would be unable to build the addition and will be unable to provide the required parking.

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

The spirit of the ordinance is the intent of the requirements rather than the strict letter of the law. The intent of the setbacks is to reduce conflicts between different land uses. In this case, the two land uses have coexisted together since the 1980's. The existing parking and vehicular circulation for the multi-family lot is immediately adjacent to the proposed building addition, therefore reducing noise or other negative impacts between the land uses.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized*

in the "C-2 AHOD" Commercial Airport Hazard Overlay District.

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

The applicant is proposing a new addition to an existing dry cleaning building, originally constructed in 1978. The addition will not alter the existing 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.*

Literal enforcement of the 30 foot rear setback would make the addition impossible. The applicant would like to add an in-line addition to grow the business. Historically, this setback has not cause any harm, and there is little reason to demonstrate that this addition will." The Motion was seconded by Mr. Martinez.

AYES: Finlay, Martinez, Rodriguez, Britton, Teel, Zuniga, Cruz, Neff, Gragg, Kuderer, Rogers
NAYS: None

THE VARIANCE IS GRANTED

Case Number:	A-17-143
Applicant:	Brundage Mini-Storage #3, LTD
Owner:	Brundage Mini Storage #3, LTD
Council District:	9
Location:	1523 E. Sonterra Blvd
Legal Description:	Lot 4 Block 54, NCB 19221
Zoning:	"C-3 MLOD ERZD" General Commercial Military Lighting Edwards
Case Manager:	Oscar Aguilera, Planner

Request

A request for a variance to eliminate the 15 ft. "Type B" bufferyard requirement.

Oscar Aguilera: Planner presented the background information and staff's recommendation of the variances. He indicated 7 notices were mailed, 0 returned in favor, 1 returned in opposition and no neighborhood association.

Ben Sutterbell: representative described his project in detail and answered all questions and 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-17-143 closed.

A motion was made by **Mr. Kuderer**. "Regarding Appeal No. A-17-143, a variance request to eliminate the required 15 foot Type "B" bufferyard requirement along the eastern property line, subject property being Lot 4, Block 54, NCB 19221, situated at 1523 East Sonterra Boulevard, applicant being Brundage Mini Storage # 3, LTD.

I move that the Board of Adjustment grant the applicant's request for the variance to the subject property 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 applicant is still providing the bufferyard area, mostly located along the northeast portion of the property. Further, the applicant has a made an agreement with TxDOT to allow and maintain a 15 foot landscape installation in between the subject property line and US Highway 281 Access Road. Therefore, the bufferyard 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 prescriptive planting scheme would likely result in an unnecessary hardship. The applicant has presented a landscape plan along with a TxDOT agreement to maintain a landscaped bufferyard on TXDOT right-of-way. In addition, the property has irregular configuration that makes the property difficult to develop.

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

In this case, the bufferyard intent is accomplished by a natural 75 foot wide natural green buffer area between the property line and the highway's pavement. In addition the applicant has an agreement to provide the 15 foot landscape buffer along the property line adjacent to Highway 281 which 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 "C-3 MLOD-1 ERZD" General Commercial Camp Bullis Military Lighting 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 proposed landscaping plan for the complex shows compliance with every other aspect of the requirements. The requested variance to eliminate the bufferyard along US Highway 281 will be unnoticeable to the surrounding district because it will be established on the 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.*

The unique circumstances are the property's narrow, irregular shape and the existing easements. These conditions were not created by the owner and are not merely financial in nature." The motion was seconded by Mr. Martinez.

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

NAYS: None

VARIANCE IS GRANTED

Mr. Teel has left the Board of Adjustment Meeting and was replaced by Mr. Acosta at 4:00pm.

Case Number: A-17-142
Applicant: David Dye
Owner: David Dye
Council District: 10
Location: 2130 Thousand Oaks Drive
Legal Description: 4.13 acres out of Lot 42, Block 4, NCB 16125
Zoning: "O-2 MLOD-1 ERZD" High-Rise Office Camp Bullis Military
 Lighting Overlay Edwards Recharge Zone District
Case Manager: Shepard Beamon, Senior Planner

Request

A request for a 1) a 10 foot variance from the 15 foot rear setback, as described in Table 35-310.01, to allow 5 foot rear setback and 2) a 15 foot variance from the 20 foot side setback, as described in Table 35-310.01, to allow a 5 side setback and 3) a request for a variance to eliminate the 15 foot "Type C" bufferyard, as described in Section 35-510, to allow an office development.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation. He indicated 59 notices were mailed, 2 returned in favor, 5 returned in opposition, and no neighborhood association.

David Dye: gave a presentation regarding his project and answered questions from the Board.

David Sanchez: spoke in opposition

James Barajas: 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-17-142 closed.

A motion was made by **Mr. Martinez**. "Regarding Appeal No. A-17-142, a request for 1) a ten foot variance from the 15 foot rear setback to allow a five foot rear setback and 2) a 15 foot variance from the 20 foot side setback to allow a five foot side setback and 3) a request for a variance to eliminate the "Type C" bufferyard, subject property being 4.13 acres out of Lot 42, Block 4, NCB 16125, situated at 2130 Thousand Oaks Drive, applicant being David Dye.

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.*

As the closest adjacent multi-family building will be at least 60 feet away from the nearest office building and the single-family residences will be located even further, at least 200 feet away, the rights of the neighboring properties will not be violated.

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

The restrictions enforced with the required setbacks and bufferyard significantly reduce the amount of area that can be built upon. The abutting 200+ foot drainage easement also creates an unnecessary hardship, as the 30 foot rear setback and 15 foot bufferyard are not effectively providing separation between incompatible uses since the easement is undeveloped.

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 as there will be over 200 feet of separation from the neighboring Thousand Oaks subdivision and should present little to no negative impact on the neighborhood. The spirit will further be observed as a five foot setback will allow the site to be better developed and still provide room for maintenance.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the "O-2 MLOD-1 ERZD" High-Rise Office Camp Bullis Military Lighting 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 request should not injure the rights of the neighboring properties as the nearest multi-family building will be nearly 60 feet from the closest office building and the single-family development is separated by a 200 foot creek with dense vegetation. Further, the development will not be out of character with the surrounding streetscape as the corridor has mixed commercial and residential developments.

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 site has several unique challenges as the site is narrowly shaped, has steep topography, and has residential use and zoning abutting most of the developable portion of the lot, prompting larger setbacks. In this case, although the adjacent property to the east is zoned for high-rise office uses, the use is residential, generating a 20 foot setback. The multi-family zoned creek to the south, although undeveloped, creates a unique circumstance with both a larger setback and bufferyard. These conditions were not created by the owner and are not merely financial in nature." The Motion was seconded by Mr. Rodriguez

AYES: Martinez, Rodriguez, Neff, Teel, Gragg, Britton, Finlay, Cruz, Quijano, Acosta, Rogers

NAYS: None

THE VARIANCE IS GRANTED

Case Number:	A-17-136
Applicant:	Kerwin McClain
Owner:	Kerwin and Kathryn McClain
Council District:	3
Location:	402 Wimberly Boulevard

Legal Description: Lot 50, Block 3, NCB 13093
 Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District
 Case Manager: Shepard Beamon, Senior Planner

Request

A request for 1) a 10 foot variance from the 15 foot platted side setback, as described in Table 35-310.01, to allow a 5 foot side setback and 2) a nine (9) foot variance from the 20 foot rear setback, as described in Table 35-310.01, to allow a carport nine (9) feet in the rear setback.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation. He indicated 29 notices were mailed, 1 returned in favor, 0 returned in opposition, no neighborhood association.

John C. Salinas: applicant stated he wants to comply with all rules and regulations for the carport and asked for the Boards approval.

Bob King: representative explained the reasoning for the request and answered all of the Boards questions.

Kerwin McClain: applicant stated permits were pulled for original work done on the property.

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-17-136 closed.

A motion was made by **Mr. Gragg**. "Regarding Appeal No. A-17-136, a request for 1) a ten foot variance from the 15 foot platted side setback to allow a five foot side setback and 2) a nine foot variance from the 20 foot rear setback to allow a carport with an 11 foot rear setback, subject property being Lot 50, Block 3, NCB 13093, situated at 402 Wimberly Boulevard, applicant being Kerwin McClain.

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.*

In this case, the public interest is represented by adequate setbacks to preserve an open streetscape setback and to allow maintenance of the rear yard without trespass. As the proposed carport satisfies these principles, the requested variances are not contrary to public interest.

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

Literal enforcement of the ordinance would require that the property owner amend the plat to remove the building setback line and locate the carport elsewhere on the property, which 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 intent of the Code is to provide a minimum setback to establish safe and uniform development for the City of San Antonio. As the request will meet the City's established five foot side setback and does not interfere with Clear Vision along the alley, the spirit of the ordinance is upheld.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district in which the variance is located.*

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.*

If the requested variances are approved, the carport will not alter the character of the district, which has seen the addition of several carports over the years. Further, as the requested carport abuts an alley and is located on a corner lot, the request does not directly affect neighboring 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 not financial and was created over 50 years ago when the subdivision was platted in 1959. More recently, weather abnormalities have increased the desire to have protection for vehicles, which is not the fault of the owner." The motion was seconded by Mr. Kuderer.

AYES: Gragg, Kuderer, Rodriguez, Cruz, Finlay, Martinez, Teel, Britton, Acosta, Neff, Rogers

NAYS: None

THE VARIANCE IS GRANTED

Case Number:	A-17-141
Applicant:	Idalia Perez
Owner:	Idalia Perez
Council District:	5
Location:	247 Humboldt Street
Legal Description:	Lot 25 and 26, Block 7, NCB 7890
Zoning:	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

Case Manager: Shepard Beamon, Senior Planner

Request

A request for 1) a 2.5 foot variance from the 5 foot side setback, as described in Section 35-510.01, to allow a 2.5 side setback and 2) a 2 foot variance from the 5 foot rear setback to have an accessory dwelling to allow a 3 foot rear setback, as described in Section 35-310.01, and 3) a special exception to allow a 7 foot 3 inch fence in the rear yard, as described in Section 35-514.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation. He indicated 38 notices were mailed, 0 returned in favor, 1 returned in opposition, and no response from the Tierra Linda Neighborhood Association.

Idalia Perez: applicant requested interpretation services, apologized for building a larger fence than what was planned and 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-17-141 closed.

A motion was made by **Mr. Finlay**. "Regarding Appeal No. A-17-141, a request for 1) a two and a half foot variance from the five foot side setback to allow a two and a half foot side setback and 2) a two foot variance from the five foot rear setback to allow an accessory dwelling unit to have a three foot rear setback, subject property being Lots 25 and 26, Block 7, NCB 7890, situated at 247 Humboldt Street, applicant being Idalia Perez.

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.*

In this case, the public interest is represented by adequate setbacks to protect the rights of adjacent property owners. As the dwelling does not produce water runoff onto the adjacent property and allows for maintenance without trespass, 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.*

Literal enforcement of the ordinance would require that the property owner remove the structure. As the owner has a large family, the removal of the structure would result in a hardship as the primary dwelling and lot are not large enough to accommodate the structure appropriately.

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

The intent of the Code is to provide a minimum setback to establish safe and uniform development within the City of San Antonio. As the request will provide room for maintenance, the request will observe the spirit of the ordinance. The applicant will still be required to construct the dwelling to meet the building and fire codes and pass the necessary inspections.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district in which the variance is located.*

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.*

There are other properties with accessory dwellings and structures in the rear yards, and many also appear to be within the setback or on the property line. The request is not 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 configuration of the lot, including the existing home and the location of parking in the rear made the current location of the accessory dwelling an ideal location for construction." The motion was seconded by Mr. Rodriguez.

AYES:Finlay, Rodriguez, Martinez, Cruz, Teel, Acosta, Britton, Neff, Kuderer, Gragg, Rogers

NAYS:None

VARIANCE IS GRANTED

A motion was made by **Mr. Finlay**. "Regarding Appeal No. A-17-141, a request for a special exception to allow a seven foot and three inch fence in the rear yard along the side property line, subject property being Lots 25 and 26, Block 7, NCB 7890, situated at 247 Humboldt Street, applicant being Idalia Perez.

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 eight (8) foot rear fences as a special exception, authorized under certain circumstances in accordance with specific factors. In the case, the seven foot three inch tall, predominantly open fence does not exceed the allowed amount allowed with a special exception. The fence was built for additional security and is in harmony with the spirit of the chapter.

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

The public welfare and convenience can be served by the added protection of higher rear yard fencing, allowing the owner to protect the subject property.

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

The side yard fencing will create enhanced security for the subject property and is highly unlikely to injure adjacent properties, as it does not immediately abut a neighboring driveway.

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.

Side yard wrought iron fencing is not out of character in this neighborhood. Thus, granting the exception will not be detrimental to 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.

The purpose of the fencing standards is to protect the health, safety and general welfare of the public, enhance property values, and improve the appearance of the community. The fence does not detract from the appearance of the district and does not harm the general public. Therefore, the requested special exception will not weaken the general purpose of the district. " The motion was seconded by Mr. Rodriguez.

AYES: Finlay, Rodriguez, Cruz, Zuniga, Acosta, Britton, Neff, Rogers

NAYS: Martinez, Gragg, Kuderer

SPECIAL EXCEPTION FAILED

Mr. Kuderer has left the Board of Adjustment meeting at 5:30pm

Case Number:	A-17-144
Applicant:	Steven Belt
Owner:	Steven Belt
Council District:	10
Location:	14214 Prestwood
Legal Description:	Lot 3, Block 4, NCB 16286
Zoning:	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District

Case Manager: Shepard Beamon, Senior Planner

Request

A request for 1) a 9.5 foot variance from the platted 10 foot side setback, as described in UDC Section 35-516 (o) and 2) a three foot variance from the five rear setback, as described in Section 35-510.01, to allow a carport six inches from the side property line and two feet from the rear property line.

Shepard Beamon: Senior Planner presented the background information and staff's recommendation. He indicated 23 notices were mailed, 4 returned in favor, 0 returned in opposition, and no neighborhood association.

Steven Bratt: applicant explained the reason for his request and wished to enjoy his retirement 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-17-144 closed.

A motion was made by **Mr. Martinez**. "Regarding Appeal No. A-17-144, a request for 1) a nine and a half foot variance from the ten foot side setback to allow a carport half a foot from the side property line and 2) a three foot variance from the five foot rear setback to allow a carport to be two feet from the rear property line, subject property being Lot 3, Block 4, NCB 16286, situated at 14214 Prestwood Drive, applicant being Steven Belt.

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.*

In this case, the public interest is represented by minimum setbacks. The all-metal carport is two feet from the rear property line, providing room for maintenance and therefore is not contrary to the public interest. The carport along the side setback does not produce any water runoff on the adjacent property owner.

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

Literal enforcement of the ordinance would result in a carport that may not be of adequate length to cover the full length of the recreational vehicle. The existing driveway is not wide enough to allow for the side setback and adequate room for parking the vehicle, if the platted side setback were to be met.

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 accessory structure setback is to avoid any negative impact on the adjacent property. As there is room for maintenance and water runoff is directed away from the neighboring property, the spirit of the ordinance will be observed. The wider side

setback does not meet the City's standard side setback and is larger than what is permitted on most residential lots.

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 does not injure the adjacent properties as there is room for maintenance, it is made of metal, reducing the risk of fire spread, and there is no water runoff onto the adjacent property. The side setback does not directly impact any adjacent property owner.

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 the existing driveway which is not of adequate length to park a recreational vehicle. The owner instead must park the vehicle in the rear yard to avoid having any portion of the vehicle in the public right-of-way. The rear yard is not large enough to park the recreational vehicle and meet the five foot rear setback. The 10 foot side setback is the result of conditions created by the developer over 40 years and not created by the owner." The Motion was seconded by Ms. Cruz.

AYES: Martinez, Cruz, Teel, Neff, Finlay, Rodriguez, Acosta, Britton, Gragg, Rogers

NAYS: None

VARIANCE IS GRANTED

The July 17, 2017 Board of Adjustment Minutes were approved.

Director's Report: none

There being no further discussion the meeting adjourned at 5:30pm.

APPROVED BY: Mary E. Rogers DATE: 8-21-17 Chairman

OR _____ DATE: _____ Vice-Chair

ATTESTED BY: M. L. P. DATE: 8/25/17 Executive Secretary