

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 2, 2017**

Members Present:

Mary Rogers
Jay Gragg
Jeff Finlay
George Britton
John Kuderer
Alan Neff
Seth Teel
Henry Rodriguez
Roger Martinez
Richard Acosta
Denise Ojeda

Staff:

Catherine Hernandez, Planning Manager
Ted Murphree, City Attorney
Logan Sparrow, Principal Planner
Oscar Aguilera, Planner
Shepard Beamon, Senior Planner

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.

Olga Valadez, World Wide Languages Translator, present.

Case Number: A-17-172
Applicant: Smash Hit Ent., Inc./Mike Bigby
Owner: Michael J. Bigby
Council District: 8
Location: 5893 Babcock Road
Legal Description: Lot 53, Block 1, NCB 14701
Zoning: "C-3R AHOD" General Commercial Restrictive Alcoholic Sales
Airport Hazard Overlay District
Case Manager: Shepard Beamon, Senior Planner

Request

A request for 55 foot variance from the minimum 150 foot distance requirement, as described in Section 28-47 (c)(1), to allow a distance of 95 feet between two signs along a major arterial.

Shepard Beamon, Senior Planner presented the background information and staff's recommendation of the special exception. He indicated 11 notices were mailed, 0 returned in favor, and 0 returned in opposition. No Response from the Oakland Estates Neighborhood Association.

Ms. Ojeda entered the meeting at 1:13 p.m.

Wesley Puttman, representative, explained the applicant's reasons for adding another sign to the property as asked for the Boards approval.

The following citizens appeared to speak.

Patrick Christensen, **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-17-172 closed.

MOTION

A motion was made by **Mr. Rodriguez**. "Regarding Appeal No A-17-172, a request for a 55 foot variance from the minimum 150 foot distance requirement to allow a distance of 95 feet between two signs, subject property being Lot 53, Block 1, NCB 14701, situated at 5893 Babcock Road, applicant being Michael Bigley.

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 necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography; or*
2. *A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property; and*

Currently, the two tenants have no signage other than those attached to the façade of the building. As there is no available space on the existing sign that advertises the rear businesses, the requested sign is necessary for the promotion of the businesses on site.

3. *After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:*

- A. *Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.*

Businesses along major arterials around the city are afforded reasonable signage opportunities. Staff finds that the applicant's request does not grant a privilege not enjoyed by other similarly situated businesses.

- B. *Granting the variance will not have a substantially adverse impact on neighboring properties.*

It is unlikely that adjacent properties will be negatively affected by the requested variance. The sign will not interfere with clear vision, nor does the proposed sign package detract from the community.

C. Granting the variance will not substantially conflict with the stated purposes of this article.

The legislative purposes of the adopted sign regulations are to provide minimum standards to protect the general public by regulating the design, construction, location, use and maintenance of outdoor advertising signs. They are also created to ensure that businesses have the ability to reasonably market their business to the public. The proposed sign is not significantly larger than signs enjoyed by similarly situated businesses.” The motion was seconded by Mr. Teel.

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

NAYS: None

THE VARIANCE IS GRANTED.

Case Number: A-17-173
Applicant: Eco-Site, LLC
Owner: IVST, L.P.
Council District: 7
Location: 2814 Majestic Drive
Legal Description: Lot 28, Block 2, NCB 14144

Zoning: "C-2 NCD-3 AHOD" Commercial Ingram Hills Neighborhood
Conservation Airport Hazard Overlay District
Case Manager: Shepard Beamon, Senior Planner

Request

A request for a 135 foot variance from the 200 foot distance requirement between a wireless communication tower and all residential zoning districts, as described in Section 35-385 (d)(2), to allow a distance of 65 feet.

Shepard Beamon, Senior Planner presented the background information and staff's recommendation of the variance. He indicated 27 notices were mailed, 4 returned in favor, and 3 returned in opposition and no response from the Ingram Hills Neighborhood Association.

Bebb Francis: representative gave a presentation explaining their reasons for the need of the cell tower in the area. He gave stats, reports and introduced his team who were available to answer questions.

David Oros: representative gave a brief demonstration of the potential results in the area and answered questions from the Board.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-173 closed.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No A-17-173, a request for a 135 foot variance from the 200 foot distance requirement between a wireless communication tower and all residential zoning districts to allow a distance of 65 feet, subject property being Lot 28, Block 2, NCB 14144, situated at 2814 Majestic Drive, applicant being Eco-Site, LLC.

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 variance is not contrary as the tower is necessary to provide adequate radio frequency signal strength to better serve those individuals within close proximity. Per the applicant, the location selected is the best location to achieve this goal.

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

Literal enforcement would result in an unnecessary hardship as the wireless provider cannot co-locate on an existing tower as there are no suitable structures within a ½ mile radius that could be reasonably altered for substantial additional height to meet the engineering requirement.

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

As the tower will meet all other requirements required for a wireless communications tower and is permitted by right in the "C-2" zoning district, the request respects the spirit of the ordinance.

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

The requested variances will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-2 NCD-3 AHOD" Commercial Ingram Hills Neighborhood Conservation Airport Hazard Overlay District.

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

The requested 65 foot distance should not negatively impact the adjacent residential properties as the tower will be small in overall footprint. The requested distance is adequate room to maintain the structure without trespass on the any adjacent property.

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

As the lot measures less than 175 feet wide, there is no possible way to meet the distance requirement.” The motion was seconded by **Mr. Rodriguez.**

AYES: Finlay, Rodriguez, Teel, Cruz, Acosta, Gragg, Kuderer, Rogers

NAYS: Britton, Martinez, Ojeda

Before the vote was tallied Ms. Rogers asked for a motion to reconsider. Mr. Martinez made a motion to reconsider item A-17-173. Mr. Kuderer seconded the motion.

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

NAYS: Britton, Ojeda

Motion to reconsider passes.

Mr. Martinez made a motion to continue item A-17-173 to November 6, 2017. The Motion was seconded by Mr. Acosta.

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

NAYS: Britton, Ojeda

Item A-17-173 has been continued to November 6, 2017.

Case Number:	A-17-182
Applicant:	Calixta R. de Veliz
Owner:	Calixta R. de Veliz
Council District:	1
Location:	1307 W. French Place
Legal Description:	Lot South 84 feet of 25, Block 4, NCB 1994
Zoning:	“C-3NA NCD-5 AHOD” General Commercial Non-Alcoholic Sales Beacon Hill Neighborhood Conservation Airport Hazard Overlay District
Case Manager:	Shepard Beamon, Senior Planner

Request

A request for 1) a variance from the NCD-5 fencing height requirement to allow a 6 foot tall wrought iron fence in the front yard and 2) a variance from the NCD-5 fencing height requirement to allow a 7.5 foot tall wrought iron gate in the front yard.

Shepard Beamon, Senior Planner, presented background, and staff's recommendation of the variance request. He indicated 19 notices were mailed, 0 returned in favor, and 0 returned in opposition.

Calixta de Veliz, applicant, requested interpretation services, She is requesting the variance for safety reasons. Items have been taken from her property and the area is often tagged with graffiti. She has had people knock at her door at 11 and 3am making her fear for her safety.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-182 closed.

MOTION

A motion was made by **Mr. Neff**. "Regarding Appeal No A-17-182, a request for 1) a two foot variance from the NCD-5 maximum four foot predominantly open fencing to allow a six foot tall wrought iron fence in the front yard and 2) a three foot and six inch variance from the NCD-5 maximum four foot fence height to allow a seven foot and six inch tall wrought iron gate in the front yard, subject property being the South 84 feet of Lot 25, Block 4, NCB 1994, situated at 1307 West French Place, applicant being Calixta de Veliz.

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 request is not contrary as the fence is composed of wrought iron as which do many neighboring properties and does not completely obstruct views of the property.

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

Meeting the maximum height allowed by the NCD would only allow a four foot fence and gate, which is not substantial defense and protection for the property as detailed by the applicant.

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

Substantial justice will be done as the fence's height provides the additional safety and security needed by the applicant.

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

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-3NA NCD-5 AHOD" General Commercial Non-Alcoholic Sales Beacon Hill Neighborhood Conservation Airport Hazard Overlay District.

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

The fence does not interfere with Clear Vision for the neighboring property and has no negative impact on surrounding properties since many properties in the area have similar fences with and heights.

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.*

As the subject property is located next a commercial property and is near a heavily travelled arterial, the fence adds the needed additional security for the home owner."
The motion was seconded by Mr. Teel.

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

THE VARIANCE IS GRANTED.

The Board of Adjustment convened at 3:00pm for a 10 minute break and reconvened at 3:10pm.

Case Number: A-17-165
Applicant: Robert Muchew
Owner: Assistance League of San Antonio
Council District: 1
Location: 2611 West Avenue
Legal Description: East 136.23 Feet of the North 90 Feet of Lot 7, Block 6, NCB 10378
Zoning: "C-2 AHOD" Commercial Airport Hazard Overlay District.
Case Manager: Oscar Aguilera, Planner

Request

A request for a special exception to allow an 8 foot tall metal fence in the rear yard.

Oscar Aguilera, Planner, presented background, and staff's recommendation of the variance requests. She indicated 23 notices were mailed, 1 returned in favor, and 0 returned in opposition and no response from the Dellview Area Neighborhood Association.

Sherry Cassinger, representative, stated the variance is needed for protection and safety of the volunteers and property. Last year the League spent \$15,000 to secure the property when that money should have been spent on services.

No Citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A 17-165 closed.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No A-17-165, a request for a special exception to allow an eight foot tall wrought iron fence in the rear yard, subject property being East 136.23 Feet of the North 90 Feet of Lot 7, Block 6, NCB 10378, situated at 2611 West Avenue, applicant being Robert Muchew.

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 request for an eight foot fence is in harmony with the public interest as the fence is intended to protect the subject property, the staff, and clients.

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

Allowing the property owner to install an eight foot rear fence will help to deter acts of trespass in the future and ensure the safety of the applicant and clients.

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

Granting the requested special exception will not injure neighbors as the fence will be able to protect the subject property from trespass and ensure the safety of employees and clients.

- 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.*

Eight foot fencing in the rear would not significantly alter the overall appearance of the district and will provide the required safety for the property owner and clients.

- 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. The special exception request is to add security for the staff and clients. Therefore, the requested special exception will not weaken the general purpose of the district.” The motion was seconded by **Mr. Gragg**.

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

NAYS: None

THE VARIANCE IS GRANTED.

Case Number: A-17-175
Applicant: Howard E. Butt III Trustee
Owner: Big City Trust
Council District: 1
Location: 133 Thelma Drive
Legal Description: Lot 123, NCB 6761

Zoning: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District.
Case Manager: Oscar Aguilera, Planner

Request

A request for 1) a special exception to allow an 8 foot tall fence on the side and rear of the property and 2) a special exception for a 6 foot wrought iron fence in the front yard.

Oscar Aguilera, Planner, presented the background information, and staff’s recommendation of the variance request. He indicated 20 notices were mailed, 6 returned in favor, 0 returned in opposition.

Todd Pillen, representative, stated the applicant is requesting the special exception for added security to the home and family and is in keeping with the neighborhood character.

The following citizens appeared to speak.

N. Fatti: 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-17-175 closed.

MOTION

A motion was made by **Mr. Martinez**. “Regarding Appeal No A-17-175, a request for a special exception to allow an eight foot tall fence on the side and rear of the property and 2) a special exception to allow a six foot wrought iron fence in the front yard, subject property being Lot 123, NCB 6761, situated at 133 Thelma Drive, applicant being Howard E. Butt III Trustee.

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 request for a six foot fence in the front yard and an eight foot fence on the side and rear yard will be in harmony with the spirit and purpose of this chapter as the fence is intended to protect the subject property, the owner's family, and the owner. In addition, there are similar fences, both in style and height, within the neighborhood.

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

The public welfare and convenience will be substantially served by allowing the property owner to install a six foot fence in the front yard and an eight foot fence on the side and rear yard. This fencing will help to deter acts of trespass in the future and ensure the safety of the owner and their property.

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

The fence will be able to protect the subject property from trespass and ensure increased safety. The neighboring property will not be substantially injured since the fence is similar in height and will provide a similar security benefit to the adjacent owners.

- 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 six foot fencing in the front yard and an eight foot fencing on the side and rear yard would not significantly alter the overall appearance of the district because it is similar to several other fences in the community.

- 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. The special exception request is to add security. Therefore, the requested special exception will not weaken the general purpose of the district." The motion was seconded by Mr. Rodriguez.

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

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED.

Case Number: A-17-176
Applicant: Image Homes, Ltd
Owner: Lisa Armstrong
Council District: 8
Location: 25 Crescent Ledge
Legal Description: Lot 4, Block 104, NCB 16386

Zoning: "PUD R-6 MLOD-1 MSAO" Planned Unit Development Residential
Single-Family Camp Bullis Military Lighting Overlay, Military
Sound Attenuation Overlay District
Case Manager: Oscar Aguilera, Planner

Request

A request for a special exception to allow an 8 foot tall stone fence along the north property line.

Oscar Aguilera, Planner, presented background information, and staff's recommendation of the variance requests. He indicated 9 notices were mailed, 0 returned in favor, 0 returned in opposition and the Dominion Home Owners Association is in favor.

Randy McCullum, representative, expressed the applicants concerns which include destruction of her fence and trespass. They have worked with the homeowners association who is in favor.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-176 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Regarding Appeal No A-17-176, a request for a special exception to allow an eight foot tall stone fence along the north property line, subject property being Lot 4, Block 104, NCB 16386, situated at 25 Crescent Ledge, applicant being Image Homes, Ltd.

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 request for an eight foot stone fence along the north property line is in harmony with the spirit and purpose of the chapter as there is an extreme slope within these properties that makes it necessary to have an eight foot fence. The public will not see the fence since it is a gated community. In addition, there are similar fences, both in style and height, within the neighborhood.

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

There is an extreme slope within these properties that makes it necessary to have an eight foot fence. Allowing the property owner to install an eight foot stone fence along the north property line will provide both neighbors with increased security and privacy. The public welfare and convenience will be substantially served.

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

The eight foot stone fence will be able to protect the subject property from trespass and ensure the safety and privacy of the owner and their family.

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 eight foot stone fencing along the north property line would not significantly alter the overall appearance of the district as other property owners have similar fencing.

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. The special exception request compensates for the extreme slope and adds security for the owner. Therefore, the requested special exception will not weaken the general purpose of the district.” The motion was seconded by Mr. Teel.

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

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED.

Case Number:	A-17-167
Applicant:	David Mitchell
Owner:	David Mitchell
Council District:	8
Location:	9444 Bandera Road
Legal Description:	Lot 3, Block 1, NCB 17930
Zoning:	“C-2 CD AHOD” Commercial Airport Hazard Overlay District with Conditional Use for Auto and Truck Repair
Case Manager:	Shepard Beamon, Senior Planner

Request

A request for a 15 foot variance from the 30 foot rear setback, as described in Section 35-310.01, to allow commercial building to be 15 feet from the rear property line.

Shepard Beamon, Senior Planner, presented background information, and staff's recommendation of the variance request. He indicated 9 notices were mailed, 0 returned in favor, 0 returned in opposition.

Mario Garcia, representative, stated a previous structure on the property was dilapidated and needed to be taken down, in order to rebuild they went thru the zoning process and realized they needed a variance to continue.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-167 closed.

MOTION

A motion was made by **Mr. Teel**. "Regarding Appeal No A-17-167, a request for a 15 foot variance from the 30 foot rear setback to allow a 15 foot rear setback, subject property being Lot 3, Block 1, NCB 17930, situated at 9444 Bandera Road, applicant being David Mitchell.

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 requested 15 foot setback is adequate as there is enough room to maintain the structure without trespass.

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

Literal enforcement would cause an unnecessary hardship as the 30 foot rear setback reduces the size of the proposed metal building that is replacing an existing 10 year old metal structure.

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

The spirit of the code will be observed as the new structure will provide adequate separation between two conflicting uses.

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

The requested variances will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-2 CD AHOD" Commercial Airport Hazard Overlay District with Conditional Use for Auto and Truck Repair.

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 have any impact on the adjacent properties as the closest structure on the residential property is over 150 feet away from the proposed metal building.

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.*

To meet the full 30 foot rear setback, the business would lose a large amount of developable space on the site." Mr. Rodriguez seconded the motion.

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

NAYS: None

THE VARIANCE IS GRANTED

Case Number:	A-17-171
Applicant:	Gil Vargas
Owner:	William Gonzaba
Council District:	5
Location:	720 Pleasanton Road
Legal Description:	Lot 51 through 56, NCB 8602
Zoning:	"C-1 AHOD" Light Commercial Airport Hazard Overlay District and "C-2 AHOD" Commercial Airport Hazard Overlay District
Case Manager:	Shepard Beamon, Senior Planner

Request

A request for 1) a 26 foot variance from the 30 foot rear setback. as described in Section 35.310.01 to allow a 4 foot rear setback and 2) a request for a 11 foot variance from the 15 foot rear bufferyard requirement, as described in Section 35.510, to allow a 4 foot rear buffer.

Shepard Beamon, Senior Planner, presented background information, and staff's recommendation of the variance requests. He indicated 30 notices were mailed, 0 returned in favor, and 0 returned in opposition.

Gil Vargas, applicant, is requesting the variances to enclose the patio area for an employee break room. This will provide privacy for the neighbors as well as the employees.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-171 closed.

MOTION

A motion was made by **Ms. Ojeda**. "Regarding Appeal No A-17-171, a request for 1) a 26 foot variance from the 30 foot rear setback to allow a four foot rear setback and 2) a request for an eleven foot variance from the 15 foot rear bufferyard requirement to allow a four foot rear bufferyard, subject property being Lots 51 through 56, NCB 8602, situated at 720 Pleasanton Road, applicant being Gil Vargas.

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.*

As portions of the building currently sit on the rear property line and four feet off the rear property line, the addition would not significantly increase the encroachment into the rear setback and still provide room to maneuver in the rear yard.

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

Literal enforcement would not allow expansion of the building. Approval of the requested variances would provide a safe, enclosed break area for the clinic's employees.

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

The addition will not increase water runoff on the adjacent property and will provide adequate room for maintenance without trespass.

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

The requested variances will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-1 AHOD" Light Commercial Airport Hazard Overlay District and "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.*

As most of the homes adjacent to the subject property are located a minimum of 50 feet from the rear property line, it is highly unlikely that the addition would increase the risk of fire spread to the adjacent homes. Additionally, the addition would be located in rear of the property, and would not change the outward appearance of the business.

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 compact configuration of the property and the shallow rear yard. As the building already encroaches, there is no space to increase the building footprint for the property without the variances.” The motion was seconded by Mr. Martinez.

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

NAYS: None

THE VARIANCE IS GRANTED

Case Number: A-17-174
Applicant: Leonarda V. Romo
Owner: Leonarda V. Romo
Council District: 1
Location: 511 North Navidad Street
Legal Description: South 40 Feet of Lots 25-28, NCB 2817
Zoning: “MF-33 AHOD” Multi-Family Airport Hazard Overlay District.
Case Manager: Oscar Aguilera, Planner

Request

A request for a 3 foot variance from the 5 foot side setback, as described in Section 35-516 (O), to allow an eave overhang one foot from the side property line.

Oscar Aguilera, Planner, presented background information, and staff’s recommendation of the variance request. He indicated 30 notices were mailed, 1 returned in favor, 0 returned in opposition.

Leonarda V. Romo: applicant, requested interpreter assistance, stated she built the structure to accommodate her handicap husband and granddaughter who are both in a wheelchair.

Mr. Neff read a letter submitted in opposition from Mary L. Hernandez, 513 N. Navidad.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-174 closed.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No A-17-174, a request for a three foot variance from the five foot side setback to allow an addition to be two feet from the side property line and 2) a one foot variance from the two foot setback to allow an eave overhang one foot from the side property line, subject property being the South 40 Feet of Lots 25-28, NCB 2817, situated at 511 North Navidad Street, applicant being Leonarda V. Romo.

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 three foot variance to allow the addition to be located two feet from the side property line is not contrary to the public interest as the distance provides room for maintenance. Also allowing the eave one foot from the property line is acceptable as it will not produce water runoff on the adjacent property.

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

Literal enforcement of the side setback would prohibit the addition entirely. The two foot side setback with a one foot overhang would allow for room to maintain the structure.

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

The addition provides the owner with adequate space to maintain the structure. Further, with proper fire-rating the structure will not negatively impact the adjacent property.

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

The variance will not authorize the operation of a use other than those uses specifically authorized in the "MF-33 AHOD" Multi-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 addition does not injure the adjacent properties as there is room for maintenance and the addition does not disrupt 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 unique circumstance existing on the property is that the home sits on a small lot and the home was originally built in 1927, which is smaller than many lots in the district.” Mr. Teel seconded the motion.

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

NAYS: None

THE VARIANCE IS GRANTED.

Mr. Rodriguez left the meeting at 4:11pm

Case Number: A-17-170
Applicant: Gerald D. Aldorf
Owner: Gerald D. Aldorf
Council District: 9
Location: 2018 Encino White Street
Legal Description: Lot 55, Block 2, NCB 17582
**Zoning: “R-6 MLOD-1 ERZD” Residential Single-Family Camp Bullis
Military Lighting Overlay Edwards Recharge Zone District**
Case Manager: Oscar Aguilera, Planner

Request

A request for a 9 foot 11 inch variance from the 10 foot front setback, as described in UDC 35-516, to allow a carport one inch from the front property line.

Oscar Aguilera, Planner, presented background information, and staff’s recommendation of the variance request. He indicated 30 notices were mailed, 1 returned in favor, 0 returned in opposition.

Gerald Aldorf, applicant, hired a contractor who he believed would get a permit. The applicant stated he built the carport to protect his vehicles from sun and hail.

The following Citizens appeared to speak.

Don Evans: spoke in opposition.

Oscar Garza: yielded his time to Mr. Don Evans.

Michael Guillory: spoke in opposition

Curt Tempel: spoke in opposition

Ginny Lewis: 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-17-170 closed.

MOTION

A motion was made by **Mr. Teel**. “Regarding Appeal No A-17-170, a request for a nine foot and eleven inch variance from the ten foot front setback to allow a carport one inch from the front property line, subject property being Lot 55, Block 2, NCB 17582, situated at 2018 Encino White Street, applicant being Gerald D. Aldorf.

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 carport, in its current location does not interfere with the Clear Vision requirements and does not obstruct clearance for the public right-of-way.

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

Literal enforcement of the ordinance would result in an unnecessary hardship as the carport was constructed to protect vehicles from inclement weather, and without it, would leave the owner’s personal property susceptible to damages and to exposure of inclement weather.

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 Code, rather than the strict letter of the law. In this case, the intent of the front setback is to prevent overcrowding of front yards and the request fulfills this intent.

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

The variance will not authorize the operation of a use other than those uses specifically authorized in the “R-6 MLOD-1 ERZD” Residential Single-Family 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 carport has no negative impact on the neighboring properties as it does not interfere with Clear Vision from the neighboring driveway. Further, the carport provides room for maintenance without trespass.

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

The unique circumstance existing on the property is the location of the driveway on a cul-de-sac, which creates difficulty in locating the property line and meeting the front setback.” The motion was seconded by **Mr. Kuderer**.

AYES: None

NAYS: None Teel, Kuderer, Rodriguez, Finlay, Britton, Acosta, Ojeda, Gragg, Neff, Martinez, Rogers

THE VARIANCE FAILED

Ms. Rogers made a motion to approve the September 18, 2017 minutes with all members voting in the affirmative.

Directors Report: Staff notified the Board of an upcoming work session in October and an update on prior Board of Adjustment cases and procedure.

There being no further discussion, meeting adjourned at 5:25 pm.

Oct. 2, 2017

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APPROVED BY:  OR 10-16-17
Chairman Vice-Chair

DATE: _____

ATTESTED BY:  DATE: Oct. 18, 17
Executive Secretary